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# Rules and Regulations

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 234

**[Regulation HH; Docket No. R–1782]**

**RIN 7100–AG40**

### Financial Market Utilities

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is publishing a final rule amending the requirements relating to operational risk management in the Board's Regulation HH, which applies to certain financial market utilities (FMUs) that have been designated as systemically important (designated FMUs) by the Financial Stability Oversight Council (FSOC) under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act). The amendments update, refine, and add specificity to the operational risk management requirements in Regulation HH to reflect changes in the operational risk, technology, and regulatory landscape in which designated FMUs operate. The final rule also adopts specific incident-notification requirements.

**DATES:**

*Effective date:* The final rule is effective April 15, 2024.

*Compliance dates:* Designated FMUs must be in compliance with the rule by September 11, 2024, except for the incident management and notification requirement in § 234.3(a)(17)(vi), under Amendatory Instruction 3, with which designated FMUs must be in compliance by June 13, 2024.

**FOR FURTHER INFORMATION CONTACT:** Emily Caron, Assistant Director (202–452–5261) or Katherine Standbridge, Senior Financial Institution and Policy Analyst (202–452–3873), Division of Reserve Bank Operations and Payment Systems; or Corinne Milliken Van Ness, Senior Counsel (202–452–2421) or M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

**SUPPLEMENTARY INFORMATION:**

## I. Overview

Title VIII of the Dodd-Frank Act, titled the ''Payment, Clearing, and Settlement Supervision Act of 2010,'' was enacted to mitigate systemic risk in the financial system and to promote financial stability, in part, through an enhanced supervisory framework for designated FMUs. Section 803(6) of the Act defines an FMU as a ''person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.'' [1] Pursuant to section 805(a)(1)(A) of the Act, and as described below, the Board is required to prescribe risk-management standards governing the operations related to the payment, clearing, and settlement activities of certain designated FMUs.

The Board adopted Regulation HH, Designated Financial Market Utilities, in July 2012 to implement, among other things, the statutory provisions under section 805(a)(1)(A) of the Act.[2] In November 2014, the Board published amendments to the risk-management standards in Regulation HH, 12 CFR part 234, based on the *Principles for Financial Market Infrastructures* (PFMI).[3]

In October 2022, the Board published for comment a notice of proposed rulemaking (NPRM) to amend the requirements relating to operational risk management in Regulation HH. The Board proposed to update, refine, and add specificity to the operational risk management requirements in Regulation HH. The proposed amendments reflected changes in the operational risk, technology, and regulatory landscape in which designated FMUs operate since the Board last amended Regulation HH in 2014. The Board also proposed to adopt specific incident-notification requirements.[4] The public comment period for the proposed amendments closed on December 5, 2022. The Board is now adopting final amendments to Regulation HH, with modifications to certain sections of the proposal as discussed below.

## II. Background

### *A. Financial Market Utilities*

FMUs provide essential infrastructure to clear and settle payments and other financial transactions. Financial institutions, including banking organizations, participate in FMU arrangements pursuant to a common set of rules and procedures, technical infrastructure, and risk-management framework.

If a systemically important FMU fails to perform as expected or fails to effectively measure, monitor, and manage its risks, it could pose significant risk to its participants and the financial system more broadly. For example, the inability of an FMU to complete settlement on time could create credit or liquidity problems for its participants or other FMUs. An FMU, therefore, should have a robust risk-management framework, including appropriate policies and procedures to measure, monitor, and manage the range of risks that arise in or are borne by the FMU.

### *B. Title VIII of the Dodd-Frank Act*

In recognition of the criticality of FMUs to the stability of the financial system, Title VIII of the Dodd-Frank Act established a framework for enhanced supervision of certain FMUs. Section 804 of the Act states that the FSOC shall designate those FMUs that it determines are, or are likely to become, systemically important. Such a designation by the FSOC makes an FMU subject to the supervisory framework set out in Title VIII of the Act.

Section 805(a)(1)(A) of the Act requires the Board to prescribe risk-management standards governing the operations related to payment, clearing, and settlement activities of designated

[1] 12 U.S.C. 5462(6).

[2] 77 FR 45907 (Aug. 2, 2012).

[3] 79 FR 65543 (Nov. 5, 2014). The PFMI, published by the Committee on Payment and Settlement Systems (now the Committee on Payments and Market Infrastructures) and the Technical Committee of the International Organization of Securities Commissions in April 2012, is widely recognized as the most relevant set of international risk-management standards for payment, clearing, and settlement systems.

[4] 87 FR 60314 (Oct. 5, 2022).

FMUs.[5] As set out in section 805(b) of the Act, the applicable risk-management standards must (1) promote robust risk management, (2) promote safety and soundness, (3) reduce systemic risks, and (4) support the stability of the broader financial system.[6]

A designated FMU is subject to examination by the federal agency that has primary jurisdiction over the FMU under federal banking, securities, or commodity futures laws (the ''Supervisory Agency'').[7] At present, the FSOC has designated eight FMUs as systemically important, and the Board is the Supervisory Agency for two of these designated FMUs—The Clearing House Payments Company, L.L.C. (on the basis of its role as operator of the Clearing House Interbank Payments System (CHIPS)) and CLS Bank International.[8] The risk-management standards in the Board's Regulation HH apply to Board-supervised designated FMUs.[9]

*C. Regulation HH Risk-Management Standards for Designated FMUs*

Section 234.3 of Regulation HH includes a set of 23 risk-management standards addressing governance, transparency, and the various risks that can arise in connection with a designated FMU's payment, clearing, and settlement activities, including legal, financial, and operational risks. These standards are based on and generally consistent with the PFMI. The Regulation HH standards generally employ a flexible, principles-based approach. In several cases, however, the Board adopted specific minimum requirements that a designated FMU must meet in order to achieve the overall objective of a particular standard.

1. Operational Risk Management

Section 234.3(a)(17) of Regulation HH, as amended in 2014, requires that a designated FMU manage its operational risks by establishing a robust operational risk-management framework that is approved by its board of directors.[10] Specifically, a designated FMU must (1) identify and mitigate its plausible sources of operational risk; (2) identify, monitor, and manage the operational risks it may pose to other FMUs and trade repositories; (3) ensure a high degree of security and operational reliability; (4) have adequate, scalable capacity to handle increasing stress volumes; (5) address potential and evolving vulnerabilities and threats; and (6) provide for rapid recovery and timely resumption of critical operations and fulfillment of obligations, including in the event of a wide-scale or major disruption. Section 234.3(a)(17) also contains several specific minimum requirements for business continuity planning, including a requirement for the designated FMU to have a business continuity plan that (1) incorporates the use of a secondary site at a location with a distinct risk profile from the primary site; (2) is designed to enable critical systems to recover and resume operations no later than two hours following disruptive events; (3) is designed to enable it to complete settlement by the end of the day of the disruption, even in case of extreme circumstances; and (4) is tested at least annually.[11]

Although the term ''operational risk'' is not defined in current Regulation HH, when the Board proposed amendments to § 234.3(a)(17) in 2014, it described operational risk as the risk that deficiencies in information systems, internal processes, and personnel or disruptions from external events will result in the deterioration or breakdown of services provided by an FMU.[12] Consistent with an all-hazards view of managing operational risk, the Board believes operational risk could arise internally and externally. Internal sources of operational risk include the designated FMU's people, processes, and technology.[13] External sources of operational risk are those that fall outside the direct control of a designated FMU. For example, external sources of operational risk can include the designated FMU's participants and other entities, such as other FMUs, settlement banks, liquidity providers, and service providers, which may transmit threats through their various connections to the designated FMU. External sources of operational risk also include physical events, such as pandemics, natural disasters, and other destruction of property, as well as information security threats, such as cyberattacks and technology supply chain vulnerabilities. These internal and external sources of operational risk can manifest in different scenarios (including wide-scale or major disruptions) and can result in the reduction, deterioration, or breakdown of services that a designated FMU provides. A designated FMU must plan for these types of scenarios and test its systems, polices, procedures, and controls against them.

Importantly, the Board believes that effective operational risk management, in combination with sound governance arrangements and effective management of general business risk (including the risk of losses from operational events), promotes operational resilience, which refers to the ability of an FMU to: (1) maintain essential operational capabilities under adverse conditions or stress, even if in a degraded or debilitated state; and (2) recover to effective operational capability in a time frame consistent with the provision of critical services.[14]

[5] 12 U.S.C. 5464(a)(1). The Act directs the Board to ''tak[e] into consideration relevant international standards and existing prudential requirements'' when it promulgates these risk-management standards. *Id.* In addition, section 805(a)(2) of the Act grants the U.S. Commodity Futures Trading Commission (CFTC) and the U.S. Securities and Exchange Commission (SEC) the authority to prescribe such risk-management standards for a designated FMU that is, respectively, a derivatives clearing organization (DCO) registered under section 5b of the Commodity Exchange Act or a clearing agency registered under section 17A of the Securities Exchange Act of 1934. 12 U.S.C. 5464(a)(2).

[6] Further, under section 805(c), the risk-management standards may address areas such as (1) risk-management policies and procedures, (2) margin and collateral requirements, (3) participant or counterparty default policies and procedures, (4) the ability to complete timely clearing and settlement of financial transactions, (5) capital and financial resource requirements for designated FMUs, and (6) other areas that are necessary to achieve the objectives and principles for risk-management standards. 12 U.S.C. 5464(c).

[7] The Act's definition of ''Supervisory Agency'' is codified at 12 U.S.C. 5462(8). Section 807 of the Act authorizes the Supervisory Agencies to examine and take enforcement actions against the Supervisory Agencies' respective designated FMUs. The Act also describes certain authorities that the Board has with respect to designated FMUs for which it is not the Supervisory Agency, such as participation in examinations and recommendations on enforcement actions. 12 U.S.C. 5466.

[8] The SEC is the Supervisory Agency for The Depository Trust Company (DTC); Fixed Income Clearing Corporation (FICC); National Securities Clearing Corporation (NSCC); and The Options Clearing Corporation (OCC). The CFTC is the Supervisory Agency for the Chicago Mercantile Exchange, Inc. (CME); and ICE Clear Credit LLC (ICC). *See* U.S. Department of the Treasury, *Financial Market Utility Designations, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations.*

[9] The risk-management standards in Regulation HH would also apply to any designated FMU for which another Federal banking agency is the Supervisory Agency. At this time, there are no such designated FMUs.

[10] In this **SUPPLEMENTARY INFORMATION**, § 234.4(a)(17) will be informally referred to as the ''operational risk management standard.''

[11] 12 CFR 234.3(a)(17)(vii).

[12] 79 FR 3666, 3683 (Jan. 22, 2014). The Board also incorporated this definition of ''operational risk'' into part I of the *Federal Reserve Policy on Payment System Risk* (PSR policy) in 2014, *see* 79 FR 2838, 2845 (Jan. 16, 2014), and into its supervisory rating system for financial market infrastructure in 2016, *see* 81 FR 58932, 58936 (Aug. 26, 2016). The PSR policy is available at *https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.*

[13] Deficiencies in assessing and managing these sources of operational risk could cause errors or delays in processing, systems outages, insufficient capacity, fraud, data loss, and data leakage.

[14] *See* § 234.3(a)(2) and (15).

2. Evolution in the Operational Risk, Technology, and Regulatory Landscape

When the Board proposed amendments to Regulation HH's risk-management standards in 2014, the Board recognized that there was ongoing work and discussion domestically and internationally on developing operational risk-management standards and guidance and planning for business continuity with respect to cybersecurity and responses to cyberattacks.[15] For example, in 2016, the Committee on Payments and Market Infrastructures (CPMI) and Technical Committee of the International Organization of Securities Commissions (IOSCO) published *Guidance on cyber resilience for financial market infrastructures* (Cyber Guidance), which supplements the PFMI and provides guidance on cyber resilience, including in the context of governance, the comprehensive management of risks, and operational risk management.[16] The Cyber Guidance has informed the Federal Reserve's supervision of designated FMUs.[17]

More recently, new challenges to operational risk management have emerged, including a global pandemic and severe weather events. In addition, certain types of cyberattacks that were once thought to be extreme or ''tail-risk'' events, like attacks on the supply chain and ransomware attacks, have become more prevalent. Technology solutions for the mitigation and management of various operational risks have also advanced since 2014, including the development of new technologies that have the potential to improve the resilience of designated FMUs. Finally, the legal, regulatory, and supervisory landscape in which designated FMUs operate has evolved to reflect these changes in the broader operational risk environment. For example, in July 2021, the Board, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) proposed guidance for banking organizations on managing risks associated with third-party relationships.[18] In November 2021, the Board, OCC, and FDIC adopted requirements on computer-security incident notifications for banking organizations and bank service providers (interagency notification rule).[19] The evolution in the operational risk, technology, and regulatory landscape motivated the Board to conduct a full review of § 234.3(a)(17) to determine whether updates were necessary. Following this review, the Board believes that the outcomes required by the current operational risk management standard are generally still relevant and comprehensive. However, the Board has identified several areas where it believes updates to the rule are necessary.

*D. Overview of the Proposal*

The Board proposed to amend the operational risk management standard to reflect changes in the operational risk and threat landscape, as well as to reflect developments in designated FMUs' operations and technology usage since the Board last amended Regulation HH in 2014. The proposed amendments focused on four areas: (1) review and testing, (2) incident management and notification, (3) business continuity management and planning, and (4) third-party risk management. The Board also proposed several technical or clarifying revisions throughout §§ 234.2 and 234.3(a).[20]

## III. Summary of Public Comments and Analysis

The Board received six public comment letters. Two letters were from entities that operate designated FMUs, one letter was from a non-profit organization, and three letters were from individuals. The Board considered each of these comments as well as subsequent staff analysis in developing the final rule. The Board is adopting the proposed rule text with modifications to certain sections, as discussed below.

*A. Overall Response and Approach*

Commenters were generally supportive of the proposed amendments. Of the three substantive comments received, one commenter expressed support for the amendments as proposed. Two commenters, while expressing support for the overall proposal, raised concerns that aspects of the proposal were broader than necessary. These commenters suggested additional clarifications to and refinements in the scope of the proposed amendments. Both of these commenters raised concerns that amendments to Regulation HH should permit a designated FMU to apply a risk-based and proportionate approach to operational risk management. This comment was made both generally and with respect to specific aspects of the review and testing, business continuity management and planning, and third-party risk management sections of the proposed amendments. The Board generally understands a ''risk-based and proportionate approach'' as an approach whereby entities identify, assess, and understand the risks to which they are exposed and take measures commensurate with those risks.[21]

The final rule does not expressly specify that designated FMUs may use a risk-based and proportionate approach to comply with the amended operational risk management standard. The Board believes that it is unnecessary to do so. Designated FMUs currently use risk-based and proportionate approaches to manage operational risk, as the Board generally has implemented principles-based requirements in Regulation HH. The proposed amendments were not intended to affect designated FMUs' ability to continue to use risk-based and proportionate approaches where appropriate. Furthermore, other parts of Regulation HH's risk-management standards, such as the framework for the comprehensive management of risks found in § 234.3(a)(3), do not expressly specify a risk-based and proportionate approach. Thus, adding such language to the operational risk management standard could result in a difference in drafting not driven by a difference in intended meaning.

The Board has, however, amended certain aspects of the proposal to incorporate several specific concerns raised by the commenters. These concerns and the Board's response are described in the sections that follow.

[15] 79 FR 3666, 3683 (Jan. 22, 2014).

[16] CPMI–IOSCO, *Guidance on Cyber Resilience for Financial Market Infrastructures* (June 2016), *https://www.bis.org/cpmi/publ/d146.htm.*

[17] For example, when the Board finalized its ORSOM (*O*rganization; *R*isk Management; *S*ettlement; *O*perational Risk and Information Technology (IT); and *M*arket Support, Access, and Transparency) rating system for designated FMUs in 2016, it noted that the then-forthcoming Cyber Guidance would guide the Board's assessment of a designated FMU with respect to operational risk and cybersecurity policies and procedures. *81 FR 58932, 58934* (Aug. 26, 2016).

[18] 86 FR 38182 (July 19, 2021). The Board, OCC, and FDIC issued final third-party risk management guidance for banking organizations in June 2023. 88 FR 37920 (June 9, 2023).

[19] 86 FR 66424 (Nov. 23, 2021). Congress also recently enacted the Cyber Incident Reporting for Critical Infrastructure Act of 2022, which requires covered entities to report significant cyber incidents to the Cybersecurity and Infrastructure Agency (''CISA''). *See* Public Law 117–103, Div. Y (codified at 6 U.S.C. 681–681g).

[20] In addition to the technical changes described below in section III.G, the Board proposed a technical change to the title of § 234.3. Currently, the section is erroneously titled ''Standards for payment systems,'' which is the legacy title from the initial Regulation HH risk-management standards published in 2012. The Board proposed to replace ''payment systems'' with ''designated financial market utilities.''

[21] *See* Cyber Guidance, *supra* note 16, at 26.

*B. Compliance Date*

In the NPRM, the Board proposed an effective and compliance date of 60 days from the date the final rule was published in the **Federal Register**. Two commenters expressed the need for additional time to comply with the final rule and requested 180 days after publication to comply. Specifically, these commenters requested more time to enable designated FMUs to assess their current procedures and practices against the amendments and to implement any necessary changes. They also noted that the proposed third-party risk management requirements might necessitate changes to designated FMUs' contracts with third parties, which might take longer than 60 days. One commenter explained that it would take longer than 60 days to implement the incident notification requirement of the Board's proposed incident management framework. A third commenter considered the Board's amendment of the operational risk management standard overdue and viewed incident management and notification as the most important part of the proposal.

The Board is adopting the final rule with an effective date of April 15, 2024. Designated FMUs are expected to comply with the requirements of the final rule no later than September 11, 2024, with the exception of the requirement to establish a documented framework for incident management, set forth in in § 234.3(a)(17)(vi). Designated FMUs are expected to comply with § 234.3(a)(17)(vi) no later than June 13, 2024. Designated FMUs are encouraged, however, to comply with the provisions as soon as possible.

After consideration of the public comments as well as internal analysis, the Board is providing additional time to allow sufficient time for designated FMUs to review their existing policies, procedures, practices, and contracts against the requirements of the final rule and to minimize burden on designated FMUs and the markets they serve. However, the Board adopted an earlier compliance date for the requirement to establish a documented framework for incident management, set forth in § 234.3(a)(17)(vi). The Board believes that designated FMUs can leverage existing practices for incident management and notification and that an earlier compliance date balances the need for prompt conformance with § 234.3(a)(17)(vi), which the Board considers of critical importance to both the Board and designated FMUs' participants and other stakeholders, with the overall burden on designated FMUs.

*C. Review and Testing*

Section 234.3(a)(17)(i) of Regulation HH requires designated FMUs to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls that are reviewed, audited, and tested periodically and after major changes. This general review and testing requirement applies broadly to the systems, policies, procedures, and controls that the designated FMU develops to mitigate sources of operational risk. The Board proposed to amend § 234.3(a)(17)(i) to provide more specificity regarding its expectations around testing, review, and remediation. Just as the current general review and testing requirement in § 234.3(a)(17)(i) applies broadly to a designated FMU's systems, policies, procedures, and controls, the proposed amendments would also apply broadly to the systems, policies, procedures, and controls developed to mitigate the impact of the designated FMU's sources of operational risk.

Specifically, proposed § 234.3(a)(17)(i)(A) and (B) set forth the Board's expectations regarding review and testing. In § 234.3(a)(17)(i)(A)(*1*), the Board proposed to require a designated FMU to conduct tests of its systems, policies, procedures, and controls in accordance with a documented testing framework.[22] The Board further proposed in § 234.3(a)(17)(i)(A)(*2*) to require that a designated FMU's testing assess whether its systems, policies, procedures, or controls function as intended.[23]

In § 234.3(a)(17)(i)(B), the Board proposed to require a designated FMU to conduct a review of the design, implementation, and testing of systems, policies, procedures, and controls after the designated FMU experienced any material operational incidents (which are discussed in section III.C.1 below). The Board also proposed in § 234.3(a)(17)(i)(B) to require a designated FMU to review the design, implementation, and testing of systems, policies, procedures, and controls after significant changes to the environment in which it operates.[24]

Finally, the Board proposed in § 234.3(a)(17)(i)(C) to require a designated FMU to remediate, as soon as possible and following established governance processes, any deficiencies identified during tests and reviews.

1. Review and Testing—Section 234.3(a)(17)(i)(A) and (B)

(a) Summary of Comments

One commenter welcomed the additional clarity provided by the proposed amendments to § 234.3(a)(17)(i) generally, and another commenter appreciated the proposal's testing and review expectations. Two commenters suggested that all of § 234.3(a)(17)(i), including paragraphs (a)(17)(i)(A), (B), and (C), be amended to expressly contemplate the designated FMU taking a risk-based approach to testing, review, and remediation activities.

Commenters did not suggest other revisions to proposed § 234.3(a)(17)(i)(A). With respect to the proposed review requirements set out in § 234.3(a)(17)(i)(B), two commenters raised a concern that the proposed language could be interpreted to require a designated FMU to review *all* of its systems, policies, procedures, and controls after a material operational incident or significant change to the environment in which the designated FMU operates. These commenters suggested clarifying that § 234.3(a)(17)(i)(B) require review of only the *relevant* systems, policies, procedures, and controls affected by material operational incidents or significant changes to the environment.

[22] The Board explained in the NPRM that the testing framework should account for any interdependencies between and among the systems, policies, procedures, and controls that are being tested. The Board further explained that a designated FMU should take a comprehensive and risk-based approach to its operational risk management testing program, rather than focusing only on testing individual (or groups of) systems, policies, procedures, or controls (or components therein). A designated FMU could describe its testing framework in either a single document or in multiple documents, as appropriate, and could leverage relevant industry standards as it develops its testing framework. For example, a designated FMU could leverage standards developed by the National Institute of Standards and Technology (NIST), the Federal Financial Institutions Examination Council (FFIEC), the Financial Services Sector Coordinating Council (FSSCC), and the International Organization for Standardization (ISO).

[23] Such tests could include capacity stress tests, crisis management tabletop exercises, after-action reviews of incidents, business continuity tests both internally and with participants, vulnerability assessments, cyber scenario-based testing, penetration tests, and red team tests.

[24] The Board also proposed a technical amendment to the requirement for the designated FMU to review its recovery and orderly wind-down plan under § 234.3(a)(3)(iii)(G) from ''following'' to ''after'' changes to the designated FMU's systems and environment. This conforms with the review requirement under proposed § 234.3(a)(17)(i)(B). The Board also proposed a technical amendment to the requirement for the designated FMU to update its public disclosure under § 234.3(a)(23)(v) from ''following'' to ''to reflect'' changes to its systems and environment. The Board did not receive any comments on these technical amendments and is adopting them as proposed.

One commenter further suggested that, in the case of significant changes to the environment, § 234.3(a)(17)(i)(B) require a review only when the change is reasonably likely to create operational risk. The commenter noted such an approach would avoid reviews when there are changes to the environment that do not reasonably create operational risk.

(b) Final Rule

The Board is adopting proposed § 234.3(a)(17)(i)(A) and (B) with certain revisions based on internal analysis and public comments.

Consistent with the preamble to the proposed rule, the Board has clarified in § 234.3(a)(17)(i)(A)(*1*) that a designated FMU's documented testing framework must address *at a minimum* scope, frequency, participation, interdependencies, and reporting. A designated FMU may also choose to add additional pieces to their documented testing frameworks based on their own internal analysis. This could include documented governance processes around review and testing. Importantly, as described further below, a designated FMU would need to remediate deficiencies identified during testing, following established governance processes.

The Board has adopted two amendments to proposed § 234.3(a)(17)(i)(B). First, the Board has modified the rule text in § 234.3(a)(17)(i)(B) to reflect that a designated FMU's review of design, implementation, and testing after material operational incidents or after changes to the environment in which the designated FMU operates applies only to *affected and similar* systems, policies, procedures, and controls. The Board agrees with commenters that a designated FMU need not review irrelevant systems, policies, procedures, and controls.[25] The Board would consider relevant systems, policies, procedures, and controls to include those affected directly by a material operational incident or significant change to the environment. In addition, the Board would consider relevant systems, policies, procedures, and controls to include those that have not been directly affected but that share important features with (*i.e.,* are similar to) affected systems, policies, procedures, and controls. For example, a similar system could be one that is susceptible to the same type of vulnerability that has caused a material operational incident in a different system, but which was not actually affected in a particular instance.

Second, consistent with statements in the preamble to the NPRM and in response to comments, the Board has clarified that § 234.3(a)(17)(i)(B) requires designated FMUs to conduct reviews when a change to the environment in which the designated FMU operates could significantly affect the plausible sources or mitigants of operational risk.[26] Designated FMUs should exercise care to ensure that they effectively identify changes to the environment that have an operational risk component, but the review requirement would not be triggered by a change that does not relate to operational risk.

For the reasons described in section III.A, *supra,* the Board has not expressly referred to a risk-based and proportionate approach in the final rule. With respect to testing, § 234.3(a)(17)(i)(A)(*1*) requires a designated FMU's documented testing framework to address, at a minimum, scope, frequency, participation, interdependencies, and reporting—all of which could be calibrated based on a designated FMU's identification, assessment, and prioritization of risks.[27] With respect to review, the Board believes the requirement to conduct reviews after certain events is consistent with a risk-based approach. Moreover, the two clarifications the Board has made to § 234.3(a)(17)(i)(B) focus the requirements of that paragraph on the review triggers that the Board considers most important for a designated FMU's management of operational risk.

2. Remediation of Identified Deficiencies—Section 234.3(a)(17)(i)(C)

(a) Summary of Comments

Similar to the comments on the testing and review requirements, two commenters suggested that the rule text clarify that a designated FMU may take a risk-based approach to the remediation process. One commenter specifically recommended that the rule allow a designated FMU to remediate or mitigate an identified deficiency in a manner that is consistent with the designated FMU's risk appetite. As part of a risk-based approach, one commenter suggested that a designated FMU should be able to accept the risks associated with certain deficiencies so long as the risks are within the designated FMU's risk appetite.

One commenter noted that, while proposed § 234.3(a)(17)(i)(C) stated that a designated FMU's remediation of deficiencies in systems, policies, procedures, or controls should follow established governance processes, it was unclear if the requirement to follow governance processes referred solely to the need to validate remediation steps or if it was intended to be broader. The commenter suggested that governance processes for managing and overseeing remediation should include processes for decision making on prioritization of remediation approaches in addition to validation. One commenter noted that the proposed rule did not address expectations regarding validation of remediation steps. The commenter suggested that validation should be risk-based and proportionate to the deficiency that is being remediated.

(b) Final Rule

The Board is adopting § 234.3(a)(17)(i)(C) with one modification in response to concerns raised by commenters.[28] In order to address concerns that the proposal would have required a designated FMU to approach all deficiencies in the same manner, the Board has removed the word ''any'' from proposed § 234.3(a)(17)(i)(C).[29] In addition, the Board expects that a designated FMU, in establishing the governance processes contemplated by § 234.3(a)(17)(i)(C), would take into account the designated FMU's risk-tolerance policy.[30] In that regard, the Board notes that remediation could include both actions to eliminate a deficiency or vulnerability or to reduce the risk associated with a deficiency or vulnerability to an

[25] *See* 87 FR 60314, 60317 (Oct. 5, 2022) (proposing that a designated FMU conduct a review of the design, implementation, and testing of relevant systems, policies, procedures, and controls after the designated FMU experiences any material operational incidents).

[26] *See id.* (explaining that the operational risk environment, including sources of risk and the nature or types of threats, can change unexpectedly and quickly and that the proposal would ensure that designated FMUs review and make timely changes to their systems, policies, procedures, and controls following such changes).

[27] The Board expects that, in developing its documented testing framework, a designated FMU would be guided by the documented risk-management framework established by the board of directors, which must include, among other things, the designated FMU's risk-tolerance policy. 12 CFR 234.3(a)(2)(iv)(F).

[28] For the reasons described in section III.A, *supra,* the Board has not expressly referred to a risk-based and proportionate approach in the final rule.

[29] As noted above, proposed § 234.3(a)(17)(i)(C) would have required a designated FMU to remediate, as soon as possible and following established governance processes, *any* deficiencies identified during tests and reviews.

[30] A designated FMU must have governance arrangements that, among other things, are designed to ensure that the board of directors establishes a clear, documented risk-management framework that includes the designated FMU's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies. 12 CFR 234.3(a)(2)(iv)(F).

acceptable level.[31] For example, if a designated FMU were to identify a deficiency in a system that was slated for replacement in the near future, the designated FMU could consider steps to reduce the risk of that deficiency pending the implementation of the new system in lieu of working to eliminate the deficiency in the old system. When consistent with a designated FMU's risk tolerance and otherwise consistent with a robust operational risk framework, a designated FMU could determine and document its decision to accept the risk of a deficiency.

The Board expects that a designated FMU will conduct an internal risk analysis of all deficiencies identified in review and testing, as required in § 234.3(a)(17)(i)(A) and (B), and use established governance processes to determine how to address and prioritize identified deficiencies in order to reduce the level of risk posed by those deficiencies.[32] The decisions a designated FMU makes may depend upon the facts and circumstances.[33]

Finally, commenters noted that proposed § 234.3(a)(17)(i)(C) did not specifically address validation but that the NPRM stated that it would be imperative for a designated FMU to perform subsequent validation to assess whether the remediation measures have addressed deficiencies without introducing vulnerabilities. The Board continues to believe that designated FMUs should assess the effectiveness and broader impact of any changes they make to remediate a deficiency.[34] The Board acknowledges that the validation performed may depend on the nature of both the deficiency and any changes made to remediate the deficiency. As with remediation, the Board believes that a designated FMU, in its governance processes, could address validation in a risk-based manner.

*D. Incident Management and Notification*

The Board proposed in § 234.3(a)(17)(vi) to require a designated FMU to establish a documented framework for incident management that provides for the prompt detection, analysis, and escalation of an incident; appropriate procedures for addressing an incident; and incorporation of lessons learned following an incident.[35]

Specifically, in § 234.3(a)(17)(vi) the Board proposed to require that a designated FMU's incident management framework include a plan for notification and communication of material operational incidents. This plan, among other things, would need to identify the entities that would be notified of operational incidents, including non-participants that could be affected by material operational incidents at the designated FMU. Relevant entities may also include appropriate industry information-sharing fora, such as groups that are designed to share information about cyber threats or support cyber risk management.

In § 234.3(a)(17)(vi)(A), the Board proposed to require a designated FMU to notify the Board immediately when it activated its business continuity plan or had a reasonable basis to conclude that (1) there was an actual or likely disruption, or material degradation, to any of its critical operations or services,[36] or to its ability to fulfill its obligations on time; or (2) there was unauthorized entry, or the potential for unauthorized entry, into the designated FMU's computer, network, electronic, technical, automated, or similar systems that affects or has the potential to affect its critical operations or services.

In § 234.3(a)(17)(vi)(B), the Board proposed to require a designated FMU to establish criteria and processes, including the appropriate methods of communication, to provide for timely communication and responsible disclosure of material operational incidents to its participants or other relevant entities that have been identified in its notification and communication plan. As proposed, this incident notification requirement would arise in two circumstances. First, under proposed § 234.3(a)(17)(vi)(B)(*1*), a designated FMU would need to notify affected participants immediately in the event of actual disruptions or material degradation to its critical operations or services or to its ability to fulfill its obligations on time. Second, under proposed § 234.3(a)(17)(vi)(B)(*2*), a designated FMU would need to notify all participants and other relevant entities in a timely and responsible manner of all other material operational incidents that require immediate notification to the Board.[37]

1. Documented Incident Management Framework—Section 234.3(a)(17)(vi)

(a) Summary of Comments

One commenter broadly supported the proposal and viewed incident management and notification as the most important part of the Board's proposed amendments to Regulation HH. Two commenters did not object in concept to the requirement for a documented framework for incident management but expressed concerns with specific aspects of the proposed requirement to have a plan for notification and communication of material operational incidents. These concerns are discussed in sections III.D.2 and III.D.3, *infra.*

(b) Final Rule

The Board is adopting the introductory portion of § 234.3(a)(17)(vi) as proposed and, as discussed below, has adopted § 234.3(a)(17)(vi)(A) and (B) with certain modifications. In line with the all-hazards approach to operational risk management in this standard, the Board reiterates its belief that it is important for a designated FMU to be prepared to detect, address, and learn from any type of operational incident, regardless of the scenario or source of risk and the level of severity. Different types of incidents may require different levels of escalation internally or externally, and may require different strategies for containment or eradication. For example, given the increasing prevalence of cyberattacks in the financial sector, a designated FMU should plan for an incident where a participant (or another type of connected entity), rather than the designated FMU itself, is experiencing a cyberattack. In this scenario, a designated FMU should be operationally prepared to take, and should have a legal basis to take,

[31] The Board understands that the terms ''remediation'' and ''mitigation'' are sometimes used in different ways in the information technology and security field. The Board's use of ''remediation'' and ''mitigation'' is consistent with NIST's definitions of the terms. NIST defines ''remediation'' as ''the act of mitigating a vulnerability or a threat,'' and ''mitigation'' as ''a decision, action, or practice intended to reduce the level of risk associated with one or more threat events, threat scenarios, or vulnerabilities.'' These definitions can be found at *https://csrc.nist.gov/glossary/term/remediation* and *https://csrc.nist.gov/glossary/term/mitigation,* respectively.

[32] As noted above, a designated FMU's documented testing framework could address governance processes for remediation.

[33] A designated FMU should consult widely used and relevant industry standards to inform its understanding of how it should remediate deficiencies. These industry standards, such as those published by NIST, FFIEC, FSSCC, and ISO, are updated regularly and typically offer current and specific information on operational risk management practices.

[34] In the event a designated FMU accepts the risk of a deficiency, there may be no change to validate.

[35] These broad categories in incident management are generally consistent with those identified in the NIST computer-security incident handling guide. *See* NIST, *Computer Security Incident Handling Guide* (Special Publication 800–61, rev. 2), *https://nvlpubs.nist.gov/nistpubs/specialpublications/nist.sp.800-61r2.pdf.*

[36] Critical operations and critical services are discussed below in section III.G.2.

[37] As noted in the NPRM, a designated FMU would need to identify non-participant relevant entities in its plan for notification and communication of material operational incidents.

appropriate steps to mitigate the risk of contagion to itself or other participants, including, but not limited to, restricting or limiting a participant's access to the designated FMU or a particular functionality or disconnecting the participant from the FMU if necessary. Relatedly and as further discussed in section III.E.3, a designated FMU should also have processes and procedures to determine whether and when it would be appropriate to reestablish availability to such a participant.

2. Incident Notification to the Board—Section 234.3(a)(17)(vi)(A)

(a) Summary of Comments

Two commenters expressed concerns regarding the circumstances that would trigger a notice requirement to the Board. One commenter noted that proposed § 234.3(a)(17)(vi)(A) would require a designated FMU to notify the Board any time the designated FMU activated its business continuity plan. This commenter highlighted that activation of the business continuity plan may not involve an actual disruption to the designated FMU's critical operations or services and that the proposal could result in unnecessary notifications. Two commenters indicated concern with the words ''likely'' in proposed § 234.3(a)(17)(vi)(A)(*1*) and ''potential'' in proposed § 234.3(a)(17)(vi)(A)(*2*). The concerns raised include providing notifications where it was unnecessary, the potential for false alarms or misimpressions regarding a designated FMU's reliability, and desensitization of supervisors and participants due to excessive notification regarding insignificant events, with one commenter suggesting notices be limited to actual incidents. One commenter also noted that the ''likely'' and ''potential'' standards were different from other incident notification requirements such as under the Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) and suggested harmonizing the proposed notification requirements with other laws and regulations.

These commenters suggested a number of specific revisions to the proposal. One suggested limiting notification to the Board to actual disruptions or material degradations. Another suggested limiting notifications of an unauthorized entry, or the potential for unauthorized entry, to situations which could result in a serious detriment to participants or other relevant entities, and more generally suggested granting more discretion for a designated FMU to determine appropriate circumstances for notice based on the probability and severity of an event.

One commenter supported the requirement to provide ''immediate'' notification to the Board and affected parties. Two commenters requested clarification of the term ''immediately'' as used regarding notification of material operational incidents in proposed § 234.3(a)(17)(vi)(A) and (a)(17)(vi)(B)(*1*). These commenters requested that the explanation provided in the NPRM, which distinguished ''immediately'' from ''instantaneous,'' be directly incorporated into the text of Regulation HH. One commenter suggested that such a revision would provide greater clarity to participants and other relevant entities.

Finally, two commenters responded to a question in the NPRM regarding the process by which a designated FMU should provide notice to the Board. These commenters suggested that notices be provided to the team responsible for ongoing supervision of the designated FMU. One of the commenters noted that a designated FMU's supervisory team would likely continue to expect notice regardless of whether a designated FMU was required to notify a central point of contact. One of the commenters also suggested that the Board specify contacts and provide a method for delivering notices outside of business hours.

(b) Final Rule

The Board is adopting § 234.3(a)(17)(vi)(A) as proposed, with two revisions that respond to comments received. First, as proposed, § 234.3(a)(17)(vi)(A)(*2*) would have required notice to the Board of an unauthorized entry, or a *potential* for unauthorized entry, into a designated FMU's computer, network, electronic, technical, automated, or other systems that affect or have the potential to affect its critical operations or services. In light of concerns regarding unnecessary notices, the Board believes it is appropriate to clarify what constitutes the ''potential'' for unauthorized entry. The Board has amended § 234.3(a)(17)(vi)(A)(*2*) to refer instead to an unauthorized entry *or a vulnerability that could allow unauthorized entry*. The Board believes that it is important to receive notice from a designated FMU if the designated FMU has a reasonable basis to conclude that there exists a vulnerability (such as a zero-day vulnerability) that may be, but has not yet been, exploited.[38]

Second, the Board has clarified that a designated FMU must notify the Board of incidents ''in accordance with the process established by the Board.'' The Board will provide actual notice of this process to affected designated FMUs.

Other than with respect to these revisions, the Board has adopted § 234.3(a)(17)(vi)(A) as proposed. Given the large volume and value of payment, clearing, and settlement activity processed by designated FMUs and their interconnectedness with financial institutions and markets, material operational issues occurring at designated FMUs could have financial stability implications. Therefore, the Board continues to believe that it is critical for the Board to be notified immediately of these types of issues.[39] The Board notes that ''immediately'' as used in § 234.3(a)(17)(vi)(A) is meant to convey the urgency in notifying the Board of these material operational incidents. ''Immediate'' does not mean ''instantaneous,'' and as such the Board does not believe clarification expressly stating this is necessary. The Board would expect to be notified of an operational incident once the designated FMU activates its business continuity plan or has a reasonable basis to conclude that an incident meets any of the criteria in § 234.3(a)(17)(vi)(A), even if the designated FMU does not yet have detailed information on the root cause or measures for containment or remediation. In these cases, the Board would expect to receive any available information that the designated FMU has at the time of notification.

Except as described above, the Board continues to believe that notification is appropriate when a designated FMU has a reasonable basis to conclude that there is (1) an actual *or likely* disruption or material degradation to any critical operations or services, or to its ability to fulfill its obligations on time or (2) an unauthorized entry, or a vulnerability that could allow unauthorized entry, into the designated FMU's computer, network, electronic, technical, automated, or similar systems that

[38] ''Zero-day'' vulnerabilities are those for which patches are not yet available. *See, e.g.,* Board of Governors of the Federal Reserve System, Cybersecurity and Financial System Resilience Report, at 23 (Aug. 2023), *available at https://www.federalreserve.gov/publications/files/cybersecurity-report-202308.pdf.*

[39] The Board recognizes that, ''immediately'' poses a heightened requirement for notification by designated FMUs relative to banking organizations subject to the interagency rule. This heightened requirement is consistent with the systemic importance of designated FMUs and in line with expectations for designated FMUs for which the SEC is the Supervisory Agency. SEC Regulation SCI provides for immediate notification to the SEC upon any ''responsible SCI personnel'' having a reasonable basis to conclude that an ''SCI event'' has occurred. *See* 17 CFR 242.1002(b)(1).

affects *or has the potential to affect* its critical operations or services. The Board appreciates commenters' interest in harmonizing notice requirements. However, the Board notes that the interagency notification rule applies to banking organizations and bank service providers broadly, whereas Regulation HH applies to FMUs that have been designated as systemically important by the FSOC. The Board acknowledges that CIRCIA provides for after-the-fact reporting of incidents. The Board believes receiving notices of actual and likely incidents as soon as the designated FMU is aware of them is appropriate given the Board's supervisory role and the systemic importance of designated FMUs.

For the same reasons, the Board does not believe it is appropriate to limit notice to the Board with respect to unauthorized entries, or vulnerabilities that could allow unauthorized entry, to situations that could result in a serious detriment to participants or other relevant entities or to afford designated FMUs discretion to determine appropriate circumstances for notice based on the probability and severity of an event.

Similarly, the Board understands that activation of a business continuity plan does not mean an actual incident must have occurred. Activation does mean, however, that the probability of an event occurring that could adversely impact the designated FMU's continued operations was high enough to meet the threshold for the designated FMU to trigger its business continuity plan.[40] Accordingly, the Board believes a designated FMU should notify the Board when it activates its business continuity plan.

3. Incident Notification to Participants and Other Relevant Entities—Section 234.3(a)(17)(vi)(B)

(a) Summary of Comments

As noted above with respect to notices required to be made to the Board, one commenter noted it was judicious and sensible to require designated FMUs to immediately notify affected participants of material operational incidents. Two commenters requested clarification of the term ''immediately'' as used regarding notification of material operational incidents in proposed § 234.3(a)(17)(vi)(B)(*1*). One commenter suggested revising the proposed notification requirement in § 234.3(a)(17)(vi)(B)(*1*), for the same reasons outlined in their comments for proposed § 234.3(a)(17)(vi)(A)(*1*), by limiting it to actual disruptions or material degradations to a designated FMU's critical operations or services, or to the designated FMU's ability to fulfill its settlement obligations on time, that *could result in a serious detriment to participants or other relevant entities.* The commenter suggested that the addition of the italicized language would permit the designated FMU to comply with the regulatory requirements while liaising with supervisors to ensure the notification provided to participants and other entities meets supervisory expectations.

One commenter expressed concern that the requirements under proposed § 234.3(a)(17)(vi)(B)(*2*) could result in false alarms to third parties, give an impression of unreliability, or desensitize parties to notifications. The commenter proposed that § 234.3(a)(17)(vi)(B)(*2*) be amended to only require notification for actual incidents or actual unauthorized entries.

(b) Final Rule

The Board is adopting proposed § 234.3(a)(17)(vi)(B) with certain revisions to clarify the circumstances in which the Board expects a designated FMU to provide notice of material operational incidents to participants (including unaffected participants) and other relevant entities, consistent with the concept of ''responsible disclosure,'' and to respond to commenters' concerns that disclosure under proposed § 234.3(a)(17)(vi)(B) could result in false alarms to third parties, give an impression of unreliability, or desensitize parties to notifications.

With respect to § 234.3(a)(17)(vi)(B)(*2*), the Board believes there are scenarios where all participants and identified relevant entities should be informed of likely disruptions or vulnerabilities that could allow for unauthorized entry into the designated FMU's computer, network, electronic, technical, automated, or similar systems, even where no incident or unauthorized access happens. The Board recognizes, though, that notification of certain likely incidents or vulnerabilities may not be required. Under the final rule, a designated FMU should establish criteria and processes for timely communication and responsible disclosure that guide whether and when it is appropriate to notify in a responsible manner entities of a particular incident. For example, consistent with the concept of responsible disclosure, the Board recognizes that there might be risks to providing early disclosures under § 234.3(a)(17)(vi)(B)(*2*) to a broad audience regarding certain types of material operational issues. The Board would expect a designated FMU, in practicing responsible disclosure, to account for both the benefit of the information to be provided in a notification and the potential risk of disclosing that information. For example, if a designated FMU identifies a cyber vulnerability, the designated FMU might weigh the risk of disclosure as sufficiently great to delay notification under § 234.3(a)(17)(vi)(B)(*2*) or tailor the information provided under § 234.3(a)(17)(vi)(B)(*1*) or (*2*) to avoid exposing the designated FMU to a cyberattack. The Board also recognizes the risks of over-notification and of reporting false alarms to a broad audience. Notice under § 234.3(a)(17)(vi)(B)(*2*) of incidents that are resolved without disruption may provide little benefit to participants or identified relevant entities. In addition, a designated FMU that provides notification to the Board under the ''reasonable basis'' standard set forth in § 234.3(a)(17)(vi)(A) may subsequently determine there to have been a false alarm. Under such circumstances, a designated FMU could determine that broad disclosure under § 234.3(a)(17)(vi)(B)(*2*) is not appropriate. Consistent with concerns raised by one commenter, a designated FMU could incorporate consultation with its supervisors in the development of criteria and processes with respect to novel or complex incidents.

When designing its communication plan, the Board would expect a designated FMU to consider the timing, content, recipients, and method of notification for a range of potential material operational incidents. In determining the scope of disclosure for a particular incident, the Board would expect a designated FMU to consider factors such as the risk-mitigation benefits arising from early warning to the financial system, the safety and soundness of the designated FMU, and any financial stability implications of disclosure.

4. Examples of Material Operational Incidents

The following is a non-exhaustive list of operational incidents that the Board would consider to be material for purposes of the final rule.[41] The Board

[40] For example, if a designated FMU activates its business continuity plan in anticipation of an extreme weather event, the Board would expect to be notified. The Board should be made aware if the designated FMU anticipates non-business-as-usual actions or operations.

[41] The NPRM included a list of examples. The Board did not receive any specific comments on the

would expect examples 1–3 to trigger immediate notifications to the Board and to the designated FMU's affected participants (and notification in a timely manner to unaffected participants and other relevant entities identified in the designated FMU's plan for notification and communication of material operational incidents, as applicable).

(1) A failed system upgrade or change results in widespread user outages for participants and designated FMU employees.

(2) Large-scale distributed denial of service attacks that prevent the designated FMU from receiving its participants' payment instructions.

(3) A severe weather event or other natural disaster that causes significant damage to a designated FMU's production site and disrupts core payment, clearing, or settlement processes, necessitating failover to another site during the business day.

The Board would expect examples 4–7 to trigger immediate notification to the Board, but a designated FMU would determine when and whether to notify participants and other relevant entities based on the criteria in its notification and communication plan.

(4) A severe weather event or other natural disaster that causes significant damage to a designated FMU's production site and necessitates failover to another site during the business day, but the designated FMU's core payment, clearing, or settlement processes remain available to participants.

(5) Malware on a designated FMU's network that poses an imminent threat to its critical operations or services (such as its core payment, clearing, or settlement processes, or collateral management processes), or that may require the designated FMU to disengage any compromised products or information systems that support the designated FMU's critical operations and services from internet-based network connections.

(6) A ransom malware attack that encrypts a critical system or backup data.

(7) A zero-day vulnerability on software that the designated FMU uses and has determined, if exploited, could lead to a disruption to or material degradation of its critical operations or services.

### *E. Business Continuity Management and Planning*

Section 234.3(a)(17)(vi) of the current rule (under the proposal, renumbered as § 234.3(a)(17)(vii)) requires that a designated FMU have business continuity management that provides for rapid recovery and timely resumption of its critical operations and fulfillment of its obligations, including in the event of a wide-scale or major disruption.[42] Section 234.3(a)(17)(vii) of the current rule (under the proposal, renumbered § 234.3(a)(17)(viii)) elaborates on certain requirements for a designated FMU's business continuity plan. The Board proposed to amend current § 234.3(a)(17)(vii) to provide further detail in Regulation HH related to business continuity management and planning in order to promote robust risk management, reduce systemic risks, increase safety and soundness, and support the stability of the broader financial system.

Specifically, the Board proposed to amend current § 234.3(a)(17)(vii)(A) to update terminology related to required backup sites. The Board proposed to replace the references to a ''secondary site'' and ''primary site'' with a general reference to ''two sites providing for sufficient redundancy supporting critical operations and services'' that are located at a sufficient geographical distance from ''each other'' to have a distinct risk profile (collectively, ''two sites with distinct risk profiles'').

The Board did not propose substantive amendments to the requirements under current § 234.3(a)(17)(vii)(B) and (C) (renumbered as § 234.3(a)(17)(viii)(B) and (C)), which require a designated FMU's business continuity plan to be designed to enable recovery and resumption no later than two hours following disruptive events and completion of settlement by the end of the day of the disruption, even in case of extreme circumstances. The Board proposed a technical amendment to § 234.3(a)(17)(vii)(B) to clarify that the two-hour recovery time objective applies to critical operations and services.[43]

In § 234.3(a)(17)(viii)(D), the Board proposed to require that a designated FMU's business continuity plan set out criteria and processes that address the reconnection of a designated FMU to its participants and other entities following a disruption to the designated FMU's critical operations or services.

The Board proposed to separate current § 234.3(a)(17)(vii)(D) of Regulation HH, which requires the business continuity plan to be ''tested at least annually,'' into two requirements (renumbered as § 234.3(a)(17)(viii)(E) and (F)). In § 234.3(a)(17)(viii)(E), the Board proposed to maintain the requirement for at least annual testing and clarify that this requirement covers the designated FMU's business continuity arrangements, including the people, processes, and technologies of the two sites with distinct risk profiles.[44] The Board proposed to require a designated FMU's testing to demonstrate that the designated FMU is able to run live production at the two sites with distinct risk profiles; that its solutions for data recovery and data reconciliation enable it to meet its objectives to recover and resume operations two hours following a disruption and enable settlement by the end of the day of the disruption even in case of extreme circumstances, including if there is data loss or corruption; and that it has geographically dispersed staff who can effectively run the operations and manage the business of the designated FMU.

In § 234.3(a)(17)(viii)(F), the Board proposed to require a designated FMU to review its business continuity plans, pursuant to the general review requirements described in section III.C.1 above, at least annually, to: (1) incorporate lessons learned from actual and averted disruptions, and (2) update the scenarios considered and assumptions built into the plan in order to ensure responsiveness to the evolving risk environment and incorporate new and evolving sources of operational risk (*e.g.,* extreme cyber events).

#### 1. Two Sites Providing for Sufficient Redundancy—Section 234.3(a)(17)(viii)(A)

##### (a) Summary of Comments

The Board received no comments on proposed § 234.3(a)(17)(viii)(A).

##### (b) Final Rule

The Board is adopting § 234.3(a)(17)(viii)(A) as proposed. This amendment accommodates data center arrangements with multiple production sites, rather than reflecting only the traditional arrangement where one site is considered ''primary'' and another site is treated distinctly as a backup site. A designated FMU will still be required, however, to maintain a minimum of two locations that are sufficiently geographically distant from each other to have distinct risk profiles. Consistent with the Board's explanation when it adopted the current text of Regulation HH in 2014, the Board noted in the

examples. The Board has expanded on that list to provide further clarity.

[42] The Board proposed a technical revision to that section, as described in section III.G.2, *infra.*

[43] *See* section III.G.2, *infra.*

[44] These tests would be subject to the general testing requirements described in section III.C.1 above.

NPRM that it would consider sites to have ''distinct risk profiles'' if, for example, they are not located in areas that would be susceptible to the same severe weather event (*e.g.,* the same hurricane zone) or on the same earthquake fault line. These sites would likely also have distinct power and telecommunications providers and be operated by geographically dispersed staff.

2. Recovery and Resumption—Section 234.3(a)(17)(viii)(B) and (C)

(a) Summary of Comments

Two commenters suggested that the Board incorporate into the text of Regulation HH the Board's statement in the NPRM that the recovery time objectives set forth in § 234.3(a)(17)(vii)(B) and (C) (renumbered as § 234.3(a)(17)(viii)(B) and (C)) should not be interpreted as a requirement for a designated FMU to resume operations in a compromised or otherwise untrusted state.[45] One of these commenters expressed the concern that, absent clarification of the text of Regulation HH, a designated FMU could be required under Regulation HH to resume critical operations in an untrusted state in order to comply with the recovery time objectives.

(b) Final Rule

The Board is adopting this section as proposed, without substantive change from the previous version of the rule. Regulation HH requires a designated FMU to have a business continuity *plan* that is *designed to enable* the designated FMU to meet these objectives. The Board reiterates that the recovery time objectives should not be interpreted as a requirement for a designated FMU to resume operations in a compromised or otherwise untrusted state.

Since the Board established these requirements in Regulation HH, the two-hour recovery time objective has been a particular area of focus during bilateral discussions with Board-supervised designated FMUs, as well as in broader domestic and international fora, specifically in the context of extreme cyber events. At the center of those discussions is the balance between (i) timely recovery and resumption of critical operations and (ii) appropriate assurance that critical operations are restored to a trusted state. The Board continues to believe it is imperative to financial stability that a designated FMU be able to recover and resume its critical operations and services quickly after disruptive events, both physical and cyber, and to complete settlement by the end of the day of the disruption. In related discussions with Board-supervised designated FMUs, and supported by provisions in the CPMI–IOSCO Cyber Guidance, Board staff has emphasized that recovery time objectives are necessary and critical targets around which plans, systems, and processes should be designed.[46] However, these recovery time objectives should not be interpreted as a requirement for a designated FMU to resume operations in a compromised or otherwise untrusted state.

Threats to designated FMUs' operations continue to evolve, and the Board expects that a designated FMU will update on an ongoing basis the scenarios in its plan to reflect evolving threats. The Board also expects that a designated FMU will seek and implement solutions that are designed to enable it to meet its recovery and resumptions objectives. For many types of disruptive scenarios, technologies and methods already exist to enable a designated FMU to recover and resume operations within two hours of the disruption. For example, if an earthquake damages a designated FMU's infrastructure and disrupts operations at one data center, the designated FMU may continue to operate from or fail over to another location that is outside the earthquake radius.

The Board recognizes, however, that certain threats to designated FMUs' operations, as well as the technology to mitigate those threats, are continually evolving. In areas where threats and technology are still evolving, such as is the case for extreme cyberattacks (*e.g.,* where significant data loss or corruption occurs across its data centers), the Board recognizes that a designated FMU will need to take a holistic approach that integrates protective, detective, and containment measures with response, recovery, and resumption solutions. The Board continues to expect that a designated FMU's business continuity planning will be a dynamic process in which the designated FMU works on an ongoing basis to update its plan to recover and resume operations in light of these evolving threats. Federal Reserve supervisors will also continue to work with designated FMUs through the supervisory process as designated FMUs identify reasonable approaches to prepare for and recover from such attacks. As development of adequate solutions for extreme cyberattacks continues, designated FMUs should also plan for contingency scenarios in which planned recovery and resumption objectives cannot be achieved. Planning for such scenarios would be in accordance with national policies aimed at improving the cybersecurity posture of U.S. critical infrastructures.[47]

3. Reestablishment of Availability After a Disruption to the Designated FMU's Critical Operations or Services—Section 234.3(a)(17)(viii)(D)

(a) Summary of Comments

One commenter expressed support for the proposal's requirement that a designated FMU have plans in place regarding reconnection to its participants following a cybersecurity disruption. Another commenter indicated that the criteria and processes for reconnection should be risk-based to account for the fact that a reconnection process may not be necessary for all disruptions or that aspects of such a process may not be needed in all cases. Another commenter suggested removing the term ''reconnection'' because not all disruptions result in a disconnection, thus a reconnection may not be required. This commenter suggested revising proposed § 234.3(a)(17)(viii)(D) to use the phrase ''resumption of access'' rather than ''reconnection,'' and to specify that resumption of access to the designated FMU includes resumption of access to relevant functionalities. The commenter noted that, in a cyberattack scenario, in addition to disconnection, risk mitigants might include limiting or restricting a participant's access to the designated FMU or a particular functionality.

(b) Final Rule

The Board has amended the text of proposed § 234.3(a)(17)(viii)(D) to require a designated FMU's business continuity plan to set out criteria and processes by which the designated financial market utility will ''reestablish availability'' for ''affected'' participants and other entities following a disruption to the designated FMU's critical

[45] *See* 87 FR 60314, 60320 (Oct. 5, 2022).

[46] For example, paragraph 6.2.2 of the Cyber Guidance notes that the objectives for resuming operations set goals for, ultimately, the sound functioning of the financial system, which should be planned for and tested against. It further notes the criticality of the recovery and resumption objectives under Principle 17, Key Consideration 6 of the PFMI, while also acknowledging that financial market infrastructures should exercise judgment in effecting resumption so that risks to itself or its ecosystem do not thereby escalate. For additional details, see CPMI–IOSCO, *Guidance on Cyber Resilience for Financial Market Infrastructures* (June 2016) at section 6, *https://www.bis.org/cpmi/publ/d146.htm* (''Response and Recovery'').

[47] *See, e.g.,* Presidential Policy Directive/PPD–21, *Critical Infrastructure Security and Resilience* (Feb. 12, 2013), *https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.*

operations or services.[48] In the NPRM, the Board noted that it would consider a disruption to a designated FMU's critical operations or services broadly as a form of ''disconnection'' to external parties. However, some disruptions may not, as a technical matter, result in a designated FMU severing a participant's or other entity's connection to the designated FMU.

The Board believes that the term ''reestablish availability'' better captures the Board's expectations for designated FMUs. Proposed § 234.3(a)(17)(viii)(D) was intended to emphasize the importance of *ex ante* criteria and processes addressing when and how a designated FMU will make itself available to participants and other entities after a disruption causes the designated FMU's critical operations or services to become unavailable—regardless of whether there is a technical disconnection. This would include situations, as noted in the NPRM, in which a designated FMU deliberately takes itself offline such that participants cannot access its services (*e.g.,* if it experiences a major cyberattack that it needs to contain); it would also include situations where a designated FMU becomes unavailable due to another type of external event (*e.g.,* if its production site loses power due to a severe weather event in its region). In such situations, there may be a gap in availability, but not a disconnection by the designated FMU of participants or other entities from its services. The Board has also clarified that a designated FMU's criteria and processes should address resumption of availability to ''affected'' participants and other entities.

For the reasons discussed in section III.A, *supra,* the Board has not referred to a risk-based and proportionate approach in the final rule. Nevertheless, the Board recognizes that the way in which a designated FMU applies its criteria and processes for reestablishing availability may differ from one type of disruption to another. Some disruptions may be more straightforward and pose little risk to participants or other entities, while others may present greater risk of contagion. Given the current threat landscape and the ability for malware to spread, the Board believes it is crucial for a designated FMU to balance the need to quickly recover and resume its critical operations against the risk of contagion to its ecosystem should it resume operations in a compromised or otherwise untrusted state. For cyber incidents, it is particularly important for a designated FMU to be prepared to assure its participants, other connected entities, and regulator(s) that it has achieved an uncompromised and trusted state.[49] A designated FMU should consider establishing a phased approach to reestablishing availability, transaction testing with selected participants, and heightened monitoring for an appropriate period of time after reestablishing availability.

4. Business Continuity Testing and Review—Section 234.3(a)(17)(viii)(E) and (F)

(a) Summary of Comments

Two commenters noted that there may be circumstances in which recovery within two hours following disruptive events is not currently possible. One commenter expressed concern specifically with respect to § 234.3(a)(17)(viii)(E)(*2*), which proposed to require a designated FMU to demonstrate that its solutions for data recovery and reconciliation would enable it to meet its recovery and resumption objectives, even in case of extreme circumstances, including in the event of data loss or data corruption. That commenter encouraged the Board to amend proposed § 234.3(a)(17)(viii)(E)(*2*) to recognize the ever-evolving nature of cyber-threats and solutions to address them. Specifically, the commenter recommended that § 234.3(a)(17)(viii)(E)(*2*) be amended to require a designated FMU, in consultation with its supervisors, to identify reasonable approaches to prepare for and recover from extreme cyber-attacks.

The Board did not receive comments on the proposed requirements for business continuity testing and review in § 234.3(a)(17)(viii)(E)(*1*) or (*3*) or (a)(17)(viii)(F).

(b) Final Rule

The Board recognizes the ever-evolving nature of cyber threats and acknowledges that there are certain cyber scenarios which may result in extreme data loss or data corruption for which the designated FMU may not be able to demonstrate that its solutions for data recovery and data reconciliation enable it to meet the recovery and resumption objectives under § 234.3(a)(17)(viii)(B) and (C). The Board has therefore amended the final rule text in § 234.3(a)(17)(viii)(E)(*2*), and made conforming edits in § 234.3(a)(17)(viii)(E)(*1*) and (*3*), to clarify that a designated FMU's testing should assess the capability of its systems and the effectiveness of its procedures for data recovery and data reconciliation to meet the recovery and resumption objectives under § 234.3(a)(17)(viii)(B) and (C), even in case of extreme circumstances, including in the event of data loss or data corruption.

Designated FMUs should continue to plan for and test extreme scenarios from which they may need to recover, including wide-scale and major disruptions. Scenario testing should include functional testing of the designated FMU's ability to recover and resume settlement in the case of extreme cyber-based scenarios that cause data loss or data corruption. In some circumstances, a designated FMU may not be able to demonstrate that it can recover and resume operations within two hours, or complete settlement by end of day. The designated FMU should be able to demonstrate to supervisors, however, that (1) it is assessing the capability of its systems and effectiveness of its procedures against its recovery, resumption, and settlement objectives; and (2) it has an understanding of the circumstances in which it may not be able to recover and resume critical operations and services within two hours following disruptive events or complete settlement by the end of the day. The designated FMU should also be able to demonstrate that it is working to increase the capability of its systems and effectiveness of its procedures to be able to meet those objectives in the future. The Board reiterates that Federal Reserve supervisors will continue to work with designated FMUs through the supervisory process as designated FMUs identify reasonable approaches to prepare for and recover from extreme cyber-attacks.

[48] The NIST definitions of ''availability'' and ''disruption'' are consistent with the final rule. The NIST glossary, which can be found at *https://csrc.nist.gov/glossary,* defines ''availability'' as ''timely, reliable access to data and information services for authorized users'' and ''disruption'' as ''an unplanned event that causes an information system to be inoperable for a length of time (*e.g.,* minor or extended power outage, extended unavailable network, or equipment or facility damage or destruction).'' *https://csrc.nist.gov/glossary,* defines ''availability'' as ''timely, reliable access to data and information services for authorized users'' and ''disruption'' as ''an unplanned event that causes an information system to be inoperable for a length of time (*e.g.,* minor or extended power outage, extended unavailable network, or equipment or facility damage or destruction).''

[49] A designated FMU might consider leveraging third-party experts to verify its remediation efforts.

*F. Third-Party Risk Management*

The Board expects a designated FMU to conduct its activities—whether conducted directly by the designated FMU or through a service provider—in a safe and sound manner.[50] Accordingly, the Board proposed to establish third-party risk management requirements in § 234.3(a)(17)(ix). The Board proposed these requirements because of the importance of ensuring that a designated FMU's activities do not become less safe when they are outsourced to third parties and because of the importance of managing operational risk associated with third-party relationships, including ''supply chain risk.''[51]

Specifically, the Board proposed to add a definition of ''third party'' in § 234.2(n), and to add § 234.3(a)(17)(ix) regarding the management of risks associated with third-party relationships. In § 234.2(n), the Board proposed to define ''third party'' as ''any entity with which a designated FMU maintains a business arrangement, by contract or otherwise.''[52] For purposes of proposed § 234.3(a)(17)(ix), the Board noted that it would consider third-party relationships to include vendor relationships for products such as software and arrangements for any services that third parties perform for a designated FMU.

In § 234.3(a)(17)(ix), the Board proposed to require a designated FMU to have systems, policies, procedures, and controls that effectively identify, monitor, and manage risks associated with third-party relationships. Additionally, for any service that is performed for the designated FMU by a third party, a designated FMU's systems, policies, procedures, and controls would need to ensure that risks are identified, monitored, and managed to the same extent as if the designated FMU were performing the service itself.[53]

In § 234.3(a)(17)(ix)(A) and (B), the Board proposed specific requirements for three components of third-party risk management: risk assessments, information-sharing arrangements, and business continuity management and testing. In § 234.3(a)(17)(ix)(A), the Board proposed to require a designated FMU to regularly conduct risk assessments of its third-party relationships and establish, as appropriate, information-sharing arrangements with third parties. In § 234.3(a)(17)(ix)(B), the Board proposed to require a designated FMU to include third parties in its business continuity management and testing, as appropriate.[54]

1. Definition of Third-Party Risk; Identification, Monitoring, and Management of Risks Associated With Third-Party Relationships—Section 234.2(n); Section 234.3(a)(17)(ix)

(a) Summary of Comments

Two commenters supported the addition of the third-party risk management rule to Regulation HH, but one of these commenters suggested the rule incorporate concepts of proportionality and criticality. Two commenters expressed concern with the scope of the definition of ''third party.'' These commenters suggested narrowing the definition in a number of ways. One commenter suggested distinguishing between services the commenter considered ''outsourced'' and other third-party services. One commenter noted that the proposed definition may unintentionally capture entities with which a designated FMU has a business relationship, such as participants in a designated FMU and employees, but which it does not treat as traditional service-providing vendors. One commenter suggested that the ''third party'' definition should include only entities that could have a material impact on the designated FMU's designated activities.

One commenter suggested § 234.3(a)(17)(ix) be amended to permit the designated FMU to have risk-based systems, policies, procedures, and controls and to be flexible in managing third party risk. Another commenter explained that a designated FMU should be able to apply its most stringent risk management controls to third parties that provide services essential to performing the services for which the FMU was designated as systemically important. Both of these commenters also provided comments to the more specific requirements set forth in proposed § 234.3(a)(17)(ix)(A) and (B), which are addressed in sections III.F.2 and III.F.3, *infra.*

Finally, these commenters noted that the definition of third party would include central banks and other entities that may be unable or unwilling to establish formal information-sharing relationships or participate in a designated FMU's business continuity management and testing. Both commenters suggested excluding central banks from the definition, and one commenter recommended narrowing the definition by expressly excluding real-time gross settlement systems and their operators from the definition of ''third party.''

(b) Final Rule

After considering the comments received, the Board has made one modification to the definition of ''third party.'' Additionally, the Board is adopting as proposed the risk-management standards requirement set forth in the introductory portion of § 234.3(a)(17)(ix), but the Board has amended the specific requirements set forth in proposed § 234.3(a)(17)(ix)(A) and (B) to more expressly recognize that not all third parties present the same risk to a designated FMU.

As discussed in the NPRM, products and services provided by third parties can include a wide variety of arrangements, from heating, ventilation, and air conditioning (often referred to as HVAC) services that support the physical infrastructure of a designated

[50] The Board believes that this expectation is consistent with section 807(b) of the Dodd-Frank Act, which provides each Supervisory Agency of a designated FMU with authority to examine the provision of any service integral to the operation of the designated FMU for compliance with applicable law, rules, orders, and standards to the same extent as if the designated FMU were performing the service on its own premises. 12 U.S.C. 5466(b).

[51] Supply chain risk encompasses the potential for harm or compromise to a designated FMU that arises as a result of security risks from its third parties' subcontractors or suppliers, as well as the subcontractors' or suppliers' supply chains, and their products or services (including software that may be used by the third party or the designated FMU). This definition is consistent with NIST's definition of ''supply chain risk'' in the NIST computer-security incident handling guide. *See* NIST, *Computer Security Incident Handling Guide* (Special Publication 800–61, rev. 2), *https://nvlpubs.nist.gov/nistpubs/specialpublications/nist.sp.800-61r2.pdf.* The Board identified supply chain risk as a threat on which the Board is focused in its report on cybersecurity and financial system resilience. *See* Board of Governors of the Federal Reserve System, *Report to Congress: Cybersecurity and Financial System Resilience Report* (September 2021), *https://www.federalreserve.gov/publications/files/cybersecurity-report-202109.pdf.*

[52] This definition was consistent with the definition of ''third-party relationship'' in then-proposed interagency guidance for banking organizations on third-party relationships. *See* 86 FR 38182, 38186–87 (July 19, 2021). The Board explained in the NPRM that the Board viewed the requirements of proposed § 234.3(a)(17)(ix) as broadly consistent with the proposed interagency guidance. The Board, OCC, and FDIC have since adopted final *Interagency Guidance on Third-Party Relationships: Risk Management.* 88 FR 37920 (June 9, 2023). The Board continues to believe that the final amendments to Regulation HH remain broadly consistent with the final interagency guidance. In examining designated FMUs under Regulation HH, Board examiners will continue to reference guidance on third-party risk management.

[53] As noted in the NPRM, the Board believes that where a designated FMU outsources the provision of services to a third party, the designated FMU retains the responsibility for meeting the risk-management standards in Regulation HH.

[54] In the final rule, the Board has reorganized risk assessment, information sharing, and business continuity management and testing into separate paragraphs (a)(17)(ix)(A), (B), and (C) of § 234.3, respectively. The headings used in this **SUPPLEMENTARY INFORMATION** refer to these reorganized paragraphs.

FMU to technology platforms or financial risk management modeling that are essential to executing a designated FMU's payment, clearing, or settlement activities. The Board does not believe it is appropriate to narrow the definition of third party to vendor, outsourcing, or other types of arrangements for purposes of the Board's third-party risk-management standards. Doing so could result in third-party risks being overlooked. The Board is concerned that limitations to ''outsourced'' or ''traditional vendor'' activities could result in inconsistent treatment of third parties, depending on how a particular designated FMU decides to categorize various third-party relationships. Moreover, the Board has observed that operational risk, and in particular cyber risk, has the potential to arise from unexpected sources, which may not be considered outsourced or even directly related to a designated FMU's critical operations or services. Thus, the Board believes that a designated FMU's systems, policies, procedures, and controls should address third parties more broadly.

A broad definition of third party does not mean, however, that the Board expects a designated FMU to address all third parties in the same manner. Although the Board, for the reasons described in section III.A, *supra,* has not expressly referred to a risk-based and proportionate approach in the final rule, the Board believes that § 234.3(a)(17)(ix) is consistent with such an approach. As the Board stated in the NPRM, a designated FMU should adopt risk management practices that are commensurate with the level of risk posed by its third-party relationships, as identified through the risk assessments it conducts.

While the Board generally believes a broad definition of third party is appropriate, the Board has, in response to comments, clarified in the final rule that relationships between a designated FMU and its participants are not ''third-party'' relationships when the participant is acting in that capacity only.[55] If a participant maintains other relationships with a designated FMU—such as acting as a provider of pricing data, financial risk modeling services, liquidity, or asset custody services—the participant would be within the scope of the definition of ''third party'' as it relates to its other business arrangements with the designated FMU.[56]

2. Assessment of Third Party Risk—Section 234.3(a)(17)(ix)(A)

(a) Summary of Comments

As discussed in section III.F.1, commenters raised concerns about the scope of the definition of third party. As an alternative to definitional changes, one commenter suggested that the requirement to conduct risk assessments could apply broadly, but that specific information-sharing and business continuity testing requirements should apply only to third parties that provide critical services. Comments on the information-sharing and business continuity management and testing requirements are discussed in section III.F.3, *infra.*

(b) Final Rule

The Board is adopting the risk assessment requirement in § 234.3(a)(17)(ix)(A) substantially as proposed but has moved the information sharing requirement to § 234.3(a)(17)(ix)(B) (and, consequently, the business continuity management and testing requirement to § 234.3(a)(17)(ix)(C)). To assess risk levels of third parties and monitor any changes in these risk levels that may affect a designated FMU and its ecosystem, the Board expects the designated FMU to regularly conduct risk assessments for each third party with which it maintains a business relationship. The Board expects that a designated FMU could incorporate a risk-based approach to prioritizing and determining the frequency and scope of risk assessments.

In general, and as discussed in the NPRM, the Board expects a designated FMU to take a rigorous and comprehensive approach to identifying, monitoring, and managing risks associated with third-party relationships. To do this effectively, it would be prudent for the designated FMU to understand *ex ante* any risks associated with the third party, including details on the services or products the third party will provide and the security controls and business continuity planning that the third party has in place. Before entering into a third-party relationship, the designated FMU should have a plan in place to address how it will effectively identify, monitor, and manage the relationship and its associated risks, in order to ensure that the designated FMU can continue to meet the risk-management requirements in Regulation HH.

3. Information Sharing Arrangements and Business Continuity and Testing—Section 234.3(a)(17)(ix)(B) and (C)

(a) Summary of Comments

Two commenters raised concerns about the requirement to enter into information-sharing arrangements with third parties and include third parties in business continuity and testing, as appropriate. One of the commenters suggested that, in lieu of narrowing the proposed definition of ''third party,'' the Board could apply information-sharing and business continuity management and testing requirements only to third parties that provide critical services. That commenter also requested further clarification with respect to any specific expectations or relevant objectives in connection with information-sharing arrangements and business continuity management and testing.

The same commenters noted that a designated FMU may not have the negotiating power to require certain third parties to enter into information-sharing arrangements or participate in the designated FMU's business continuity management and testing.[57] One of the commenters also raised concerns that third parties outside the United States could have limitations on their ability to share information with a designated FMU. To address these types of concerns, one commenter suggested that a designated FMU could implement alternative risk mitigants. For example, if a telecommunication provider would not enter into an information-sharing arrangement, the commenter suggested that a designated FMU could have

[55] The Board also does not consider the relationship between a designated FMU and an employee to be a third-party relationship.

[56] The Board acknowledges that recent interagency guidance for banking organizations does not categorically exclude customer relationships from the scope of ''business arrangements'' within the scope of that guidance. 88 FR 37920, 37922 (June 9, 2023). In adopting the final interagency guidance, the agencies explained that some business relationships may incorporate elements or features of a customer relationship. Whereas banking organizations may enter into different types of arrangements, designated FMUs' arrangements with their participants are standardized and governed by a uniform set of terms applicable to each participant or class of participants, and risk management of participants is addressed in another section of Regulation HH. Specifically, § 234.3(a)(18) of Regulation HH requires a designated FMU to have objective, risk-based, and publicly disclosed criteria for participation; monitor compliance with its participation requirements on an ongoing basis; and have the authority to impose risk controls on a participant in situations where the designated FMU determines the participant poses heightened risk to the designated FMU. 12 CFR 234.3(a)(18).

[57] One commenter proposed that the Board require the Federal Reserve Banks to provide designated FMUs with necessary information for the designated FMU to perform its third-party risk management.

redundant or diverse telecommunication channels.

The Board received a comment outside the scope of the proposal. The commenter noted that several third parties provide services to multiple designated FMUs and foreign systemically important FMIs. The commenter suggested that the Board and its foreign counterparts arrange scenario exercises involving designated FMUs and foreign FMIs. The commenter also recommended that the Board evaluate whether to have direct or collective oversight over certain third parties.

(b) Final Rule

The Board is adopting § 234.3(a)(17)(ix)(B) and (C) with two substantive revisions in response to comments received. In addition, the Board has made structural changes to the rule text: the information-sharing requirement has been moved from proposed § 234.3(a)(17)(ix)(A) to § 234.3(a)(17)(ix)(B) and the business continuity management and testing requirement in proposed § 234.3(a)(17)(ix)(B) has been moved to new § 234.3(a)(17)(ix)(C).

First, the Board has amended the information-sharing and business continuity management and testing requirements to apply only with respect to third parties that provide services material to any of the designated FMU's critical operations or services. The Board believes that this limitation strikes an appropriate balance between effective risk management and the efficient use of resources by designated FMUs. A designated FMU should use the risk assessments conducted pursuant to final rule § 234.3(a)(17)(ix)(A) to inform its determinations of which third parties are in scope for purposes of § 234.3(a)(17)(ix)(B) and (C).

Second, the Board has amended the business continuity management and testing requirement to accommodate more clearly approaches to business continuity management and testing that do not include the participation of each third party in a designated FMU's testing. Specifically, the final rule provides that a designated FMU must ''address'' (rather than ''include'') in its business continuity management and testing, as appropriate, third parties that provide services material to any of the designated FMU's critical operations or services. The Board recognizes that there are effective approaches to testing that do not involve participation of a third party, such as planning for alternatives to be used in the event of a third party's unavailability. A designated FMU is expected to determine, through internal risk analysis, an appropriate way to address each covered third party, in business continuity management and testing, keeping in mind the overall requirement in § 234.3(a)(17)(ix) that the designated FMU effectively identify, monitor, and manage risks associated with third-party relationships.

The final rule, like the proposed rule, continues to apply an ''as appropriate'' qualification to the provisions related to information-sharing arrangements and business continuity management and testing. It does not set forth prescriptive requirements that a designated FMU must follow in all circumstances. The Board does not believe that prescriptive requirements would be appropriate, in light of different facts and circumstances a designated FMU may face with respect to each of its covered third parties. A designated FMU should consider what is appropriate in accordance with the risk-management standards articulated in the introductory portion of § 234.3(a)(17)(ix) and the risk assessments it conducts pursuant to § 234.3(a)(17)(ix)(A).

With respect to information-sharing arrangements, a designated FMU should conduct appropriate due diligence on third parties and ensure it obtains the information necessary to appropriately identify, monitor, and manage third-party risk. Information-sharing arrangements should include, where necessary, expectations related to when the designated FMU will be notified of material operational incidents or outages. They should also include, where appropriate, expectations with respect to information regarding the third party's information security controls, operational resilience objectives and capabilities, the third-party's arrangements with its own vendors, and changes in security controls at the third party. Consistent with a risk-based approach, a designated FMU should consider heightened requirements where there is higher risk. For example, with certain third parties that are essential to its critical operations and services, a designated FMU might require mandatory approval from the designated FMU before the service provider may outsource any material elements of its service to another party, in order to manage supply chain risks.

A designated FMU would generally be expected to make reasonable efforts to enter into contractual information-sharing arrangements, given the application of § 234.3(a)(17)(ix)(B) to third parties that provide services material to the designated FMU's critical operations or services. The Board, however, understands that there may be circumstances in which a designated FMU may not be able to negotiate a contractual information sharing arrangement with certain third parties or all of the designated FMU's desired terms. For example, utility operators such as electricity providers, as well as central banks or other operators of FMIs, may have particular needs for uniformity in how they interact with participants and customers.

In such situations, a designated FMU should consider whether it is appropriate to rely on non-contractual arrangements or other risk mitigants. In some cases, such as with central banks, the designated FMU may appropriately rely on informal information-sharing arrangements or, where available, other factors that may mitigate the risk associated with the lack of a contractual arrangement. For example, a designated FMU could consider the availability of public information about a third party or consider whether the designated FMU has sufficient contingency arrangements that would allow the designated FMU to continue to carry out its critical operations and services in a safe and sound manner in the absence of contractual information-sharing arrangements. A designated FMU might also consider the existence of backups, redundant services, or other means of managing third-party risk. If a designated FMU cannot with confidence ascertain and demonstrate that informal arrangements or other mitigants are sufficient, the designated FMU should consider whether it is appropriate to transition to an alternative third party, if available, or choose to keep a service in-house.

The Board expects that a designated FMU would evaluate the sufficiency of its business continuity arrangements with a third party in light of how the designated FMU addresses the third party in its business continuity management and testing. In some circumstances, a designated FMU may determine that it is appropriate for a third party to participate directly in the designated FMU's scenario exercises to ensure that the designated FMU can effectively manage any instances in which the third party experiences an incident causing disruption or material degradation to the designated FMU's critical operations or services. For example, where a cyberattack on a third party could impair the third party's ability to enable a designated FMU to fulfill its obligations on time, it may be necessary for the designated FMU to include the third party in scenario exercises to enable the designated FMU

to be prepared to react, such as by switching to a contingency plan. If a designated FMU determines that it is essential for a third party to participate in business continuity testing, the Board would, in line with the discussion above regarding information-sharing arrangements, generally expect the designated FMU to make reasonable efforts to require that participation by contract. It may be reasonable in some circumstances for a designated FMU to rely on non-contractual arrangements with third parties, such as central banks, to participate in the designated FMU's business continuity planning.

In other circumstances, a designated FMU may have contingencies in place such that participation by a particular third party in business continuity testing is not essential. If participation is not essential, a designated FMU should consider whether its information-sharing arrangements or other available sources of information afford the designated FMU with access to sufficient information to effectively address the third party in business continuity testing. The sufficiency of information may depend on the services provided by the third party and a designated FMU's ability to conduct critical operations and services safely and soundly in contingency scenarios without the third party. A designated FMU should consider the third party's business continuity planning in any risk assessment of the third party that the designated FMU completes, and, where appropriate, the designated FMU should include information about a third party's own business continuity planning in information-sharing arrangements it establishes with a third party.

### *G. Technical Revisions*

#### 1. Definition of Operational Risk

##### (a) Proposed Rule

In § 234.2(h), the Board proposed to add ''operational risk'' as a defined term in Regulation HH. The Board proposed to define this term as ''the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by the designated financial market utility.''

##### (b) Summary of Comments

The Board received one comment that supported the proposed definition of operational risk.

##### (c) Final Rule

The Board is adopting the definition of ''operational risk'' as proposed. This definition is consistent with the definition of operational risk in the PFMI and the Board's definition in part I of the *Federal Reserve Policy on Payment System Risk* (PSR policy).[58] In the supplementary information of its 2014 notice of proposed rulemaking, the Board had provided this definition of operational risk when it proposed amendments to Regulation HH based on the PFMI.[59]

#### 2. Definition of Critical Operations and Critical Services

##### (a) Proposed Rule

In § 234.2(d), the Board proposed to add ''critical operations'' and ''critical services'' as defined terms in Regulation HH, in order to streamline references to these terms. Under the proposal, these terms were defined as ''any operations or services that the designated financial market utility identifies under 12 CFR 234.3(a)(3)(iii)(A).''

##### (b) Summary of Comments

The Board received one comment on the definition of critical operations and critical services, which was supportive of the revision.

##### (c) Final Rule

The Board is adopting the definition of critical operations and critical services as proposed. Under § 234.3(a)(3)(iii)(A), a designated FMU must identify its critical operations and services related to payment, clearing, and settlement for purposes of developing its integrated plans for recovery and orderly wind-down. The Board's amendments to § 234.3(a)(17), related to review and testing, incident management and planning, and business continuity management planning, refer to a designated FMU's critical operations and/or services in multiple places. Amending Regulation HH to include definitions of ''critical operations'' and ''critical services'' clarifies that the critical operations or services that the designated FMU should consider under paragraph (a)(17) are the same set of critical operations and services that the designated FMU has identified under paragraph (a)(3).

#### 3. Cross-Reference to ''Other Entities'' Identified in § 234.3(a)(3) on Comprehensive Management of Risk

##### (a) Proposed Rule

The Board proposed to streamline and replace the reference to ''financial market utilities and trade repositories, if any'' in § 234.3(a)(17)(ii) with the phrase ''relevant entities such as those referenced in paragraph (a)(3)(ii).'' In connection with this, the Board proposed to include ''trade repositories'' in the list of entities listed under § 234.3(a)(3)(ii).[60]

##### (b) Summary of Comments

One commenter had no objection to the addition of the term ''trade repositories'' to § 234.3(a)(3)(ii), but suggested changing the term ''relevant entities'' as used in § 234.3(a)(17)(ii) to ''identified entities.'' The commenter noted that change would allow the word ''relevant'' to be used elsewhere in the rule when discussing the entities referenced in § 234.3(a)(17)(ii).

##### (c) Final Rule

The Board has adopted the proposed revisions to § 234.3(a)(3)(ii) and (a)(17)(ii) but has removed the word ''relevant'' from the latter revision. Upon review, the Board believes that the reference to entities listed in § 234.3(a)(3)(ii) is sufficiently clear without including a modifier like ''relevant'' or ''identified.'' The Board believes that, as adopted, § 234.3(a)(17)(ii) is consistent with the requirement under paragraph (a)(3)(ii) for the designated FMU to identify, measure, monitor, and manage the material risks that it poses due to interdependencies with other entities, such as other FMUs, settlement banks, liquidity providers, and service providers.

#### 4. Operational Capabilities To Ensure High Degree of Security and Operational Reliability

##### (a) Proposed Rule

Section 234.3(a)(17)(iii) requires a designated FMU to have ''policies and systems'' that are designed to achieve clearly defined objectives to ensure a high degree of security and operational reliability.

A designated FMU is implicitly required to have the operational

[58] Part I of the PSR policy sets out the Board's views, and related standards, regarding the management of risks in financial market infrastructures, including those operated by the Reserve Banks. The Board concurrently amended the risk-management standards in Regulation HH and revised part I of the PSR policy based on the PFMI in 2014. The PSR policy is available at *https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.*

[59] 79 FR 3666, 3683 (Jan. 22, 2014).

[60] Because of the differences in the definition for financial market infrastructure in the PFMI, which includes trade repositories, and the definition of FMU in the Dodd-Frank Act, which does not, the Board had previously inadvertently excluded the reference to ''trade repositories'' in § 234.3(a)(3)(ii).

capability to achieve these objectives. In § 234.3(a)(17)(iii), the Board proposed to make this requirement explicit by clarifying that a designated FMU must have ''operational capabilities''—in addition to the existing reference to ''policies and systems''—that are designed to achieve clearly defined objectives to ensure a high degree of security and operational reliability.

(b) Summary of Comments

One commenter suggested removing the reference to ''operational capabilities'' in proposed § 234.3(a)(17)(iii) and instead adding a reference to ''processes and controls,'' in addition to ''policies and systems.'' The commenter noted this drafting would better align with the terminology used throughout Regulation HH.

(c) Final Rule

Upon consideration of the comment, the Board has removed the term ''operational capabilities'' in proposed § 234.3(a)(17)(iii) and replaced it with ''procedures and controls.'' This change aligns the language in § 234.3(a)(17)(iii) with terminology used elsewhere in Regulation HH. Regulation HH frequently uses the term ''procedures and controls,'' and the Board believes the phrase achieves the suggested drafting consistency and the intended meaning.

The Board expects a designated FMU to establish clearly defined objectives to ensure a high degree of security and operational reliability; to have systems, procedures, and controls designed to achieve these objectives; and to have policies, such as benchmarks, in place for the designated FMU to evaluate its systems' performance against these objectives.

5. Identify, Monitor, and Manage Potential and Evolving Vulnerabilities and Threats

(a) Proposed Rule

Section 234.3(a)(17)(v) requires a designated FMU to have comprehensive physical, information, and cyber security policies, procedures, and controls ''that address'' potential and evolving vulnerabilities and threats. The Board proposed a technical change to clarify what it means to ''address'' potential and evolving vulnerabilities and threats. Specifically, the Board proposed to replace the phrase ''that address'' with the phrase ''that enable the designated financial market utility to identify, monitor, and manage'' potential and evolving vulnerabilities and threats.

(b) Summary of Comments

One commenter supported the proposed change. No other comments were received in response to this proposed revision of § 234.3(a)(17)(v).

(c) Final Rule

The Board is adopting the technical revision as proposed.

## IV. Administrative Law Matters

### *A. Regulatory Flexibility Act Analysis*

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available a final regulatory flexibility analysis describing the impact of the final rule on small entities.[61] However, a final regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) has adopted size standards for determining whether a particular entity is considered a ''small entity'' for purposes of the RFA. The Board believes that the most appropriate SBA size standard to apply in determining whether a designated FMU is a small entity is the SBA size standard for financial transactions processing, reserve, and clearinghouse activities. Under this standard, a designated FMU is considered a small entity if its annual receipts are less than $47 million.[62] The Board includes the assets of all domestic and foreign affiliates in determining whether to classify a designated FMU as a small entity.[63] For the reasons described below and under section 605(b) of the RFA, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities.[64]

In connection with the proposed rule, the Board stated that it did not believe that the proposal would have a significant economic impact on a substantial number of small entities. Nevertheless, the Board published and invited comment on an initial regulatory flexibility analysis of the proposal. No comments were received on the initial regulatory flexibility analysis.

The Board is finalizing amendments to Regulation HH that would affect the regulatory requirements that apply to designated FMUs other than derivatives clearing organizations registered with the CFTC and clearing agencies registered with the SEC. At present, the FSOC has designated eight FMUs as systemically important; two of these designated FMUs are subject to the Board's Regulation HH. The reasons and justification for the final rule are described above in more detail in this **SUPPLEMENTARY INFORMATION.**

The Board has considered whether to conduct a final regulatory flexibility analysis in connection with the final rule. However, the annual receipts of designated FMUs subject to this final rule exceed the $47 million threshold under which a designated FMU is considered a ''small entity'' under SBA regulations. Because the final rule is not likely to apply to any company with annual receipts of $47 million or less, it is not expected to apply to any small entity for purposes of the RFA. In light of the foregoing, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

### *B. Competitive Impact Analysis*

As a matter of policy, the Board conducts a competitive impact analysis in connection with any operational or legal changes that could have a substantial effect on payment system participants, even if competitive effects are not apparent on the face of the proposal. Pursuant to this policy, the Board assesses whether proposed changes ''would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services'' and whether any such adverse effect ''was due to legal differences or due to a dominant market position deriving from such legal differences.'' If, as a result of this analysis, the Board identifies an adverse effect on competition, the Board then assesses whether the associated benefits—such as improvements to payment system efficiency or integrity—can be achieved while minimizing the adverse effect on competition.[65]

Designated FMUs are subject to the supervisory framework established under Title VIII of the Dodd-Frank Act. The final rule amends current

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[61] 5 U.S.C. 601 *et seq.*

[62] 13 CFR 121.201 (subsector 522320). Alternatively, the SBA size standards for (1) securities and commodities exchanges; (2) trust, fiduciary, and custody activities; or (3) international, secondary market, and all other nondepository credit intermediation activities could also apply to certain designated FMUs; these size standards are currently the same as the size standard for financial transactions processing, reserve, and clearinghouse activities (*i.e.,* annual receipts of less than $47 million). *Id.* (subsectors 523210, 523991, and 522299).

[63] 13 CFR 121.103.

[64] 5 U.S.C. 605(b).

[65] *See Policies: The Federal Reserve in the Payments System* (issued 1984; revised 1990 and January 2001), *https://www.federalreserve.gov/paymentsystems/pfs_frpaysys.htm.*

Regulation HH operational risk-management standards for certain designated FMUs. At least one designated FMU that is currently subject to Regulation HH competes with the Fedwire®[66] Funds Service provided by the Reserve Banks.

Under the Federal Reserve Act, the Board has general supervisory authority over the Reserve Banks, including the Reserve Banks' provision of payment and settlement services. This general supervisory authority is more extensive in scope than the Board's authority over certain designated FMUs under Title VIII. In practice, Board oversight of the Reserve Banks goes beyond the typical supervisory framework for private-sector entities, including the framework provided by Title VIII. The Fedwire Funds Service and Fedwire Securities Service (collectively, Fedwire Services) are subject to the risk-management standards in part I of the PSR policy, including applicable principles from the PFMI as set forth in an appendix to the PSR policy. The Board is guided by its interpretation of the corresponding provisions of Regulation HH in its application of the risk management expectations in the PSR policy.[67]

One commenter expressed its appreciation for the Board's commitment to apply risk-management standards to the Fedwire Funds Service that are at least as stringent as those in Regulation HH, but asked the Board to amend the appendix to the PSR policy to more closely align with Regulation HH. The commenter also requested that the Board revise the PSR policy to include the Reserve Banks' National Settlement Service (NSS), along with the Fedwire Services, as a service subject to the appendix of the PSR policy.

The Board recognizes the critical role that the Fedwire Services play in the financial system and, as noted in the proposal, the Board remains committed to applying risk-management standards to the Fedwire Funds Service that are at least as stringent as the Regulation HH standards that are applied to designated FMUs that provide similar services. At the same time, however, the Board continues to believe that a different level of detail is required for Regulation HH than for part I of the PSR policy. Regulation HH is an enforceable rule applicable to designated FMUs other than those supervised by the CFTC or SEC, so additional detail provides greater clarity on the Board's expectations. The PSR policy, on the other hand, is a policy statement that provides guidance about (as relevant here) the Board's exercise of its other supervisory or regulatory authority over other financial market infrastructures (including those operated by the Reserve Banks) or their participants.

The Board continues to believe that the current approach to the appendix to the PSR policy is consistent with the purpose of the document and the Board's long-standing supervisory approach under the PSR policy. In light of the Federal Reserve's oversight framework for the Fedwire Services, the Board does not believe that the amendments to Regulation HH will have any direct and material adverse effect on the ability of other service providers to compete with the Reserve Banks.

Finally, the Board does not believe that the exclusion of NSS from the list of Federal Reserve services subject to the appendix of the PSR policy has a direct and material effect on the ability of other service providers to compete with the Reserve Banks. NSS provides services to a number of financial market infrastructures, but is not itself a competitor with other service providers, and in particular with any service providers to which Regulation HH applies.

*C. Paperwork Reduction Act Analysis*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, appendix A, section 1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. As noted in the NPRM, for purposes of the Paperwork Reduction Act, a ''collection of information'' involves 10 or more respondents. Any recordkeeping, disclosure, or reporting requirement that is contained in a rule of general applicability or that is addressed to all or a substantial majority of an industry is presumed to involve 10 or more respondents (5 CFR 1320.3(c), 1320.3(c)(4)). Regulation HH applies to fewer than 10 persons, and these persons do not represent all or a substantial majority of the participants in payment, clearing, and settlement systems. Additionally, Regulation HH is not a rule of general applicability. Therefore, no collections of information under the Paperwork Reduction Act are contained in the final rule. The Board did not receive any comments on this analysis.

**List of Subjects in 12 CFR Part 234**

Banks, Banking, Credit, Electronic funds transfers, Financial market utilities, Securities.

**Authority and Issuance**

For the reasons set forth in the preamble, the Board is amending part 234 of chapter II of title 12 of the Code of Federal Regulations as follows:

## PART 234—DESIGNATED FINANCIAL MARKET UTILITIES (REGULATION HH)

■ 1. The authority citation for part 234 continues to read as follows:

**Authority:** 12 U.S.C. 5461 *et seq.*

■ 2. Revise § 234.2 to read as follows:

**§ 234.2 Definitions.**

(a) *Backtest* means the *ex post* comparison of realized outcomes with margin model forecasts to analyze and monitor model performance and overall margin coverage.

(b) *Central counterparty* means an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

(c) *Central securities depository* means an entity that provides securities accounts and central safekeeping services.

(d) *Critical operations* and *critical services* refer to any operations or services that the designated financial market utility identifies under § 234.3(a)(3)(iii)(A).

(e) *Designated financial market utility* means a financial market utility that is currently designated by the Financial Stability Oversight Council under section 804 of the Dodd-Frank Act (12 U.S.C. 5463).

(f) *Financial market utility* has the same meaning as the term is defined in section 803(6) of the Dodd-Frank Act (12 U.S.C. 5462(6)).

(g) *Link* means, for purposes of § 234.3(a)(20), a set of contractual and operational arrangements between two or more central counterparties, central securities depositories, or securities settlement systems, or between one or more of these financial market utilities and one or more trade repositories, that connect them directly or indirectly, such as for the purposes of participating in settlement, cross margining, or expanding their services to additional instruments and participants.

(h) *Operational risk* means the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the

[66] Fedwire is a registered service mark of the Reserve Banks. A list of marks related to financial service products that are offered to financial institutions by the Reserve Banks is available at *FRBservices.org*.

[67] *See* section I.B.1 of the PSR policy.

reduction, deterioration, or breakdown of services provided by the designated financial market utility.

(i) *Orderly wind-down* means the actions of a designated financial market utility to effect the permanent cessation, sale, or transfer of one or more of its critical operations or services in a manner that would not increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

(j) *Recovery* means, for purposes of § 234.3(a)(3) and (15), the actions of a designated financial market utility, consistent with its rules, procedures, and other *ex ante* contractual arrangements, to address any uncovered loss, liquidity shortfall, or capital inadequacy, whether arising from participant default or other causes (such as business, operational, or other structural weaknesses), including actions to replenish any depleted prefunded financial resources and liquidity arrangements, as necessary to maintain the designated financial market utility's viability as a going concern and to continue its provision of critical services.

(k) *Securities settlement system* means an entity that enables securities to be transferred and settled by book entry and allows transfers of securities free of or against payment.

(l) *Stress test* means the estimation of credit or liquidity exposures that would result from the realization of potential stress scenarios, such as extreme price changes, multiple defaults, and changes in other valuation inputs and assumptions.

(m) *Supervisory Agency* has the same meaning as the term is defined in section 803(8) of the Dodd-Frank Act (12 U.S.C. 5462(8)).

(n) *Third party* means any entity, other than a participant of a designated financial market utility acting in that capacity, with which a designated financial market utility maintains a business arrangement, by contract or otherwise.

(o) *Trade repository* means an entity that maintains a centralized electronic record of transaction data, such as a swap data repository or a security-based swap data repository.

■ 3. In § 234.3:

■ a. Revise the section heading;

■ b. Add the words ''trade repositories,'' after the words ''such as other financial market utilities,'' in paragraph (a)(3)(ii);

■ c. Remove the word ''following'' and add in its place ''after'', in paragraph (a)(3)(iii)(G);

■ d. Revise paragraph (a)(17); and

■ e. Remove the word ''following'' and add in its place the words ''to reflect'', in paragraph (a)(23)(v).

The revisions read as follows:

**§ 234.3 Standards for designated financial market utilities.**

(a) * * *

(17) *Operational risk.* The designated financial market utility manages its operational risks by establishing a robust operational risk-management framework that is approved by the board of directors. In this regard, the designated financial market utility—

(i) Identifies the plausible sources of operational risk, both internal and external, and mitigates their impact through the use of appropriate systems, policies, procedures, and controls—including those specific systems, policies, procedures, or controls required pursuant to this paragraph (a)(17)—that are reviewed, audited, and tested periodically and after major changes such that—

(A) The designated financial market utility conducts tests—

(*1*) In accordance with a documented testing framework that addresses, at a minimum, scope, frequency, participation, interdependencies, and reporting; and

(*2*) That assess whether the designated financial market utility's systems, policies, procedures, or controls function as intended;

(B) The designated financial market utility reviews the design, implementation, and testing of affected and similar systems, policies, procedures, and controls, after material operational incidents, including the material operational incidents described in paragraph (a)(17)(vi)(A) of this section, or after changes to the environment in which the designated financial market utility operates that could significantly affect the plausible sources or mitigants of operational risk; and

(C) The designated financial market utility remediates as soon as possible, following established governance processes, deficiencies in systems, policies, procedures, or controls identified in the process of review or testing;

(ii) Identifies, monitors, and manages the risks its operations might pose to other entities such as those referenced in paragraph (a)(3)(ii) of this section;

(iii) Has systems, policies, procedures, and controls that are designed to achieve clearly defined objectives to ensure a high degree of security and operational reliability;

(iv) Has systems that have adequate, scalable capacity to handle increasing stress volumes and achieve the designated financial market utility's service-level objectives;

(v) Has comprehensive physical, information, and cyber security policies, procedures, and controls that enable the designated financial market utility to identify, monitor, and manage potential and evolving vulnerabilities and threats;

(vi) Has a documented framework for incident management that provides for the prompt detection, analysis, and escalation of an incident, appropriate procedures for addressing an incident, and incorporation of lessons learned following an incident. This framework includes a plan for notification and communication of material operational incidents to identified relevant entities that ensures the designated financial market utility—

(A) Immediately notifies the Board, in accordance with the process established by the Board, when the designated financial market utility activates its business continuity plan or has a reasonable basis to conclude that—

(*1*) There is an actual or likely disruption, or material degradation, to any critical operations or services, or to its ability to fulfill its obligations on time; or

(*2*) There is unauthorized entry or a vulnerability that could allow unauthorized entry into the designated financial market utility's computer, network, electronic, technical, automated, or similar systems that affects or has the potential to affect its critical operations or services; and

(B) Establishes criteria and processes providing for timely communication and responsible disclosure of material operational incidents to the designated financial market utility's participants and other relevant entities, such that—

(*1*) Affected participants are notified immediately of actual disruptions or material degradations to any critical operations or services, or to the designated financial market utility's ability to fulfill its obligations on time; and

(*2*) Participants and other relevant entities, as identified in the designated financial market utility's plan for notification and communication, are notified in a timely manner of material operational incidents described in paragraph (a)(17)(vi)(A) of this section, as appropriate, taking into account the risks and benefits of the disclosure to the designated financial market utility and such participants and other relevant entities;

(vii) Has business continuity management that provides for rapid recovery and timely resumption of critical operations and services and

fulfillment of its obligations, including in the event of a wide-scale disruption or a major disruption;

(viii) Has a business continuity plan that—

(A) Incorporates the use of two sites providing for sufficient redundancy supporting critical operations that are located at a sufficient geographical distance from each other to have a distinct risk profile;

(B) Is designed to enable critical systems, including information technology systems, to recover and resume critical operations and services no later than two hours following disruptive events;

(C) Is designed to enable it to complete settlement by the end of the day of the disruption, even in case of extreme circumstances;

(D) Sets out criteria and processes by which the designated financial market utility will reestablish availability for affected participants and other entities following a disruption to the designated financial market utility's critical operations or services;

(E) Provides for testing, pursuant to the requirements under paragraphs (a)(17)(i)(A) and (C) of this section, at least annually, of the designated financial market utility's business continuity arrangements, including the people, processes, and technologies of the sites required under paragraph (a)(17)(viii)(A) of this section, such that—

(*1*) The designated financial market utility can demonstrate that it can run live production at the sites required under paragraph (a)(17)(viii)(A) of this section;

(*2*) The designated financial market utility assesses the capability of its systems and effectiveness of its procedures for data recovery and data reconciliation to meet the recovery and resumption objectives under paragraphs (a)(17)(viii)(B) and (C) of this section, even in case of extreme circumstances, including in the event of data loss or data corruption; and

(*3*) The designated financial market utility can demonstrate that it has geographically dispersed staff who can effectively run the operations and manage the business of the designated financial market utility; and

(F) Is reviewed, pursuant to the requirements under paragraphs (a)(17)(i)(B) and (C) of this section, at least annually, in order to—

(*1*) Incorporate lessons learned from actual and averted disruptions; and

(*2*) Update scenarios and assumptions in order to ensure responsiveness to the evolving risk environment and incorporate new and evolving sources of operational risk; and

(ix) Has systems, policies, procedures, and controls that effectively identify, monitor, and manage risks associated with third-party relationships, and that ensure that, for any service that is performed for the designated financial market utility by a third party, risks are identified, monitored, and managed to the same extent as if the designated financial market utility were performing the service itself. In this regard, the designated financial market utility—

(A) Regularly conducts risk assessments of third parties;

(B) Establishes information-sharing arrangements, as appropriate, with third parties that provide services material to any of the designated financial market utility's critical operations or services; and

(C) Addresses in its business continuity management and testing, as appropriate, third parties that provide services material to any of the designated financial market utility's critical operations or services.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2024–05322 Filed 3–14–24; 8:45 am]

BILLING CODE 6210–01–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2023–2437; Special Conditions No. 25–858–SC]**

### Special Conditions: Gulfstream Aerospace Corporation Model GVIII–G700 and GVIII–G800 Series Airplanes; Flight Envelope Protection: Takeoff Stall Protection

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Gulfstream Aerospace Corporation (Gulfstream) Model GVIII–G700 and GVIII–G800 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is an envelope protection function to protect the airplane from over- and rapid-rotation on takeoff. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Effective March 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Troy Brown, Performance and Environment Unit, AIR–621A, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S Airport Rd., Wichita, KS 67209–2190; telephone and fax 405–666–1050; email *troy.a.brown@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 31, 2019, Gulfstream applied for an amendment to Type Certificate No. T00015AT to include the new Model GVIII–G700 and GVIII–G800 series airplanes. These airplanes, which will be derivatives of the Model GVI currently approved under Type Certificate No. T00015AT, are twin-engine, transport-category airplanes, with seating for 19 passengers, and a maximum take-off weight of 107,600 pounds (GVIII–G700) and 105,600 pounds (GVIII–G800).

#### Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Gulfstream must show that the Model GVIII–G700 and GVIII–G800 series airplanes meet the applicable provisions of the regulations listed in Type Certificate No. T00015AT, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions

would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes must comply with the exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with 14 CFR 11.38, and they become part of the type certification basis under § 21.101.

**Novel or Unusual Design Features**

The Gulfstream Model GVIII–G700 and GVIII–G800 airplanes will incorporate the following novel or unusual design feature:

An envelope protection function within the electronic flight control system (EFCS) to protect the airplane from over- and rapid-rotation on takeoff.

**Discussion**

The Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes are equipped with an envelope protection function within the EFCS that is designed to provide enhanced takeoff stall protection (TSP) function. This feature protects against excessive pitch rate and pitch attitude during takeoff using a limitation in the electronic flight controls. It is designed to provide conventional behavior using a normal takeoff technique, including ''performance'' takeoffs. The limit to pitch attitude will indirectly limit the angle of attack.

The TSP involves a control law update in the on-ground control mode only. The Model GVIII–G700 and GVIII–G800 series airplane's pitch control behavior, with regard to rotation rates and attitudes for normal takeoffs, will be similar to other Gulfstream airplanes equipped with side sticks; however, takeoffs with rapid rotation rates and over-rotation will be influenced by the TSP.

The current regulations in Subpart B of 14 CFR part 25 do not address envelope protections for electronic flight control systems as this technology is novel or unusual for transport category airplanes. These special conditions are specific to the GVIII–G700 and GVIII–G800 series airplanes. These conditions are necessary to ensure that the TSP function supports safe operation and does not interfere with required maneuvering in normal and emergency operations and in foreseeable atmospheric conditions.

The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**Discussion of Comments and Final Special Conditions**

The FAA issued Notice of Proposed Special Conditions No. 25–24–01–SC, for the GVIII–G700 and GVIII–G800 series airplanes. This Notice was published in the **Federal Register** on January 18, 2024 (89 FR 3364). The only comment the FAA received was from the applicant (Gulfstream).

Gulfstream requested that the FAA revise the third paragraph of the Discussion section, to better reflect the content and scope of the proposed special conditions. The FAA agrees with this comment as it aligns with proposed regulation text from the Flight Test Harmonization Working Group Phase 2 Rev A Final Report. The identified text has been revised in a manner consistent with Gulfstream's request.[1]

Gulfstream requested that the FAA remove certain text from the first paragraph of the Discussion section. The FAA finds that the referenced text is unnecessary for the Discussion and has removed it in these final special conditions.

Gulfstream requested that the FAA revise the text of the Special Conditions section (*i.e.,* the requirements) to align with the text of the Flight Test Harmonization Working Group Phase 2 Rev A Final Report.[2] The primary difference is that the proposed special conditions included terms applicable to the ''takeoff stall protection function,'' but the term in the Report, which Gulfstream requested to be used, is the more general ''envelope protection function.'' The FAA agrees with Gulfstream's request to make this change for consistency with the terminology in the Report; but notes that the design feature being addressed by these special conditions remains the same as proposed. The FAA has also added ''simultaneous'' to the beginning of paragraph (e) as a final conformance with the requested text of the Report.

[1] Specifically, the Discussion in Notice contained the following text: ''These special conditions are specific to the GVIII–700 and GVIII–G800 series airplanes. These conditions are necessary to ensure a smooth transition from normal flight to the TSP mode and adequate maneuver capability. These conditions also ensure that the structural limits of the airplane are not exceeded. Furthermore, failure of the TSP function must not create hazardous flight conditions.'' This text is replaced in these final special conditions with: ''These special conditions are specific to the Takeoff Stall Protection Function of the GVIII–G700 and GVIII–G800 series airplanes. These conditions are necessary to ensure that the TSP function supports safe operation and does not interfere with required maneuvering in normal and emergency operations and in foreseeable atmospheric conditions.''

[2] The Report is available at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/09%20-%20FTHWG_Final_Report_Phase_2_RevA__Apr_2017.pdf;* the requested text is at pages 43 and 221, and discussed beginning at page 238.

**Applicability**

As discussed above, these special conditions are applicable to the Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes. Should Gulfstream apply at a later date for a change to the type certificate to include another model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the Gulfstream Model GVIII–G700 and GVIII–G800 is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication.

**Conclusion**

This action affects only a certain novel or unusual design feature on Gulfstream Model GVIII–G700 and GVIII–G800 series of airplanes. It is not a rule of general applicability.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**Authority Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Gulfstream Model GVIII–G700 and GVIII–G800 series airplanes, and will be applied by the FAA to the extent necessary to certify the envelope protection function within the electronic flight control system (EFCS) that protects the airplane from over- and rapid-rotation on takeoff.

For airplanes that employ envelope protection functions:

(a) Envelope protection functions must not unduly limit the maneuvering capability of the airplane nor interfere with its ability to perform maneuvers

required for normal and emergency operations.

(b) Onset characteristics of each envelope protection function must be appropriate to the phase of flight and type of maneuver and must not conflict with the ability of the pilot to satisfactorily control the airplane flight path, speed, or attitude.

(c) Excursions of a limited flight parameter beyond its nominal design limit value due to dynamic maneuvering, airframe and system tolerances, and non-steady atmospheric conditions must not result in unsafe flight characteristics or conditions.

(d) Operation of envelope protection functions must not adversely affect aircraft control during expected levels of atmospheric disturbances, nor impede the application of recovery procedures in case of windshear.

(e) Simultaneous activation of envelope protection functions must not result in adverse coupling or adverse priority.

(f) In case of abnormal attitude or excursion of any flight parameters outside the protected boundaries, operation of envelope protection functions must not hinder airplane recovery.

Issued in Kansas City, Missouri, on March 12, 2024.

**James David Foltz,**

*Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.*

[FR Doc. 2024–05661 Filed 3–13–24; 11:15 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–1995; Project Identifier MCAI–2023–00905–T; Amendment 39–22682; AD 2024–04–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus SAS Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318, A319, A320, and A321 series airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective April 19, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 19, 2024.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1995; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material that is incorporated by reference at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1995.

**FOR FURTHER INFORMATION CONTACT:** Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5102; email *timothy.p.dowling@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Model A318–111, –112, –121, and –122; A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N; A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N; and A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. The NPRM published in the **Federal Register** on October 17, 2023 (88 FR 71506). The NPRM was prompted by AD 2023–0151, dated July 25, 2023 (EASA AD 2023–0151) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to require a task (limitation) related to the center wing box front spar stiffeners already in Airbus A318/A319/A320/A321 ALS Part 2 DT–ALI Revision 09 or A318/A319/A320/A321 ALS Part 2 DT–ALI Revision 09 Variation 9.2 that are required by EASA AD 2022–0085 and EASA AD 2023–0008 respectively (which correspond to FAA AD 2023–13–10, Amendment 39–22495 (88 FR 50005, August 1, 2023) (AD 2023–13–10)), and that incorporation of EASA AD 2023–0151 invalidates (terminates) prior instructions for that task. This AD therefore terminates the limitations for tasks identified in the service information referenced in EASA AD 2023–0151 only, as required by paragraph (o) of AD 2023–13–10.

The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1995.

### Discussion of Final Airworthiness Directive

### Comments

The FAA received a comment from United Airlines (UAL). The following presents the comment received on the NPRM and the FAA's response.

### Request To Allow Extensions to Certain Compliance Times

UAL requested that the AD allow extensions provided in an Airbus approved Airbus Statement of Airworthiness Compliance (ASAC), when it supports extensions to compliance time of specified ALS part 2 tasks, as an alternative method of compliance (AMOC). UAL noted that Airbus does not have the authority for Design Organization Approval signatures on ASACs, and that Airbus analysis and technical substantiations justifying the extensions provided in an ASAC provide an acceptable level of safety to ensure that the structural integrity of the aircraft is maintained.

The FAA does not agree since the FAA needs to review each individual extension request, which can then be supported through the AMOC process, provided sufficient justification is available. Sufficient justification, supported by an acceptable level of safety, is needed to grant such a request. In such situations, the operator should work with the FAA as early as possible. This AD has not been changed with regard to this request.

**Conclusion**

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

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed EASA AD 2023–0151, which specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. 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 1,680 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2024–04–03 Airbus SAS:** Amendment 39–22682; Docket No. FAA–2023–1995; Project Identifier MCAI–2023–00905–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective April 19, 2024.

**(b) Affected ADs**

This AD affects AD 2023–13–10, Amendment 39–22495 (88 FR 50005, August 1, 2023) (AD 2023–13–10).

**(c) Applicability**

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 12, 2023.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0151, dated July 25, 2023 (EASA AD 2023–0151).

**(h) Exceptions to EASA AD 2023–0151**

(1) This AD does not adopt the requirements specified in paragraph (1) and (2) of EASA AD 2023–0151.

(2) Where paragraph (3) of EASA AD 2023–0151 specifies ''Within 12 months after the effective date of this AD, revise the approved AMP,'' this AD requires replacing that text with ''Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable.''

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0151 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0151, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraph (4) of EASA AD 2023–0151.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0151.

**(i) Provisions for Alternative Actions and Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0151.

**(j) Terminating Action for Certain Tasks Required by AD 2023–13–10**

Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2023–13–10 for the tasks identified in the service information referenced in EASA AD 2023–0151 only.

**(k) Additional AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (l) 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 local flight standards district office/certificate holding district office.

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

**(l) Additional Information**

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 817–222–5102; email *timothy.p.dowling@faa.gov.*

**(m) Material Incorporated by Reference**

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0151, dated July 25, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0151, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

Issued on March 11, 2024.

**Victor Wicklund,**

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

[FR Doc. 2024–05491 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2024–0465; Project Identifier AD–2024–00139–E,R; Amendment 39–22702; AD 2024–05–51]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company Engines, and Various Restricted Category Rotorcraft

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) Model CT7–2E1, CT7–2F1, CT7–8A, CT7–8E, CT7–8F5 engines, and various restricted category helicopters with GE Model T700–GE–700,–701A, –701C, –701D/CC, –701D, –401, –401C, CT7–2D or CT7–2D1 engines installed. This AD was prompted by at least four reports of failures of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly within the last several months. This AD requires a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly for inadequate braze coverage, and repair or replacement of the power turbine drive shaft assembly if necessary. The FAA previously sent an emergency AD to all known U.S. owners and operators of these engines and helicopters and is now issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective April 1, 2024. Emergency AD 2024–05–51, issued on February 28, 2024, which contained the requirements of this amendment, was effective with actual notice.

The Director of the Federal Register approved the incorporation by reference of certain publications identified in this AD as of April 1, 2024.

The FAA must receive comments on this AD by April 29, 2024.

**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–2024–0465; 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, any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

- For service information that is incorporated by reference, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *ge.com.*
- You may view this service information that is incorporated by reference at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2024–0465.

**FOR FURTHER INFORMATION CONTACT:** Barbara Caufield, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7146; email: *barbara.caufield@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–2024–0465; Project Identifier AD–2024–00139–E,R'' 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 Barbara Caufield, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

### Background

On February 28, 2024, the FAA issued Emergency AD 2024–05–51 (also referred to as the emergency AD), which applies to certain GE Model CT7–2E1, CT7–2F1, CT7–8A, CT7–8E, CT7–8F5 engines, and various restricted category helicopters with GE Model T700–GE–700, –701A, –701C, –701D/CC, –701D, –401, –401C, CT7–2D or CT7–2D1 engines installed. The emergency AD requires a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly for inadequate braze coverage, and repair or replacement of the power turbine drive shaft assembly if necessary. The FAA sent the emergency AD to all known U.S. owners and operators of these engines and helicopters. This action was prompted by at least four reports of failures of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly within the last several months. This condition, if not addressed, could result in improper torque and engine speed indications, which in combination with specific phases of flight, could create an unacceptably high flight crew workload in maintaining control of the aircraft, and result in consequent loss of control of the aircraft.

### FAA's Determination

The FAA is issuing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

### Related Service Information Under 1 CFR Part 51

The FAA reviewed GE Alert Service Bulletin (ASB) CT7–2E1 S/B 72–A0034, dated February 26, 2024, and GE ASB CT7–8 S/B 72–A0118, Revision 01, dated February 26, 2024, which, among other actions, specify procedures for a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly for inadequate braze coverage. This service information also specifies repair or replacement of the power turbine drive shaft assembly if necessary. These documents are distinct since they apply to different engine models.

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

### Other Related Service Information

Since issuance of the emergency AD, Sikorsky Aircraft Corporation issued ASB 70–04–17, dated February 28, 2024. For the engines installed on restricted category helicopters, this ASB specifies procedures for a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly for inadequate braze coverage.

### AD Requirements

This AD requires a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly for inadequate braze coverage, and repair or replacement of the power turbine drive shaft assembly if necessary.

### Interim Action

The FAA considers this AD to be an interim action. The manufacturer is currently investigating the root cause of the unsafe condition identified in this AD. If final action is later identified, the FAA might consider further rulemaking.

### 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 required the immediate adoption of Emergency AD 2024–05–51, issued on February 28, 2024, to all known U.S. owners and operators of these engines and helicopters. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because failure of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly could result in improper torque and engine speed indications, which in combination with specific phases of flight, could create an unacceptably high flight crew workload in maintaining control of the aircraft, and result in consequent loss of control of the aircraft. Since this condition happens rapidly and without warning, the inspection and any necessary repair or replacement must be accomplished before further flight. Thus, the FAA has determined that the affected torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly must be inspected, and repaired or replaced if necessary, before further flight. These conditions still exist, therefore, 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 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 100 engines installed on aircraft 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 |
|---|---|---|---|---|
| Phase array ultrasonic inspection | 1 work-hours × $85 per hour = $85 | $0 | $85 | $8,500 |

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

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Repair or replacement of the power turbine drive shaft assembly. | 8 work-hours × $85 per hour = $680 | $50,000 | $50,680 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2024–05–51 General Electric Company Engines, and Various Restricted Category Rotorcraft:** Amendment 39–22702; Docket No. FAA–2024–0465; Project Identifier AD–2024–00139–E,R.

**(a) Effective Date**

The FAA issued Emergency Airworthiness Directive (AD) 2024–05–51, on February 28, 2024, and was sent directly to affected owners and operators. As a result of such actual notice, that AD was effective for those owners and operators on the date it was received. This AD contains the same requirements as that emergency AD and, for those who did not receive actual notice, is effective on April 1, 2024.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the following products:

(1) General Electric Company (GE) Model CT7–2E1, CT7–2F1, CT7–8A, CT7–8E, CT7–8F5 engines, with any power turbine (PT) drive shaft assembly part number 5123T91G01, 5123T91G02, and 5128T51G01 installed, and the following conditions:

(i) A PT drive shaft assembly with less than 100 hours-time since new (TSN) or 100 hours-time since replacement (TSR) of the torque reference tube, as applicable, as of the effective date of this AD; and

(ii) An engine serial number, PT module serial number, or PT shaft assembly serial number listed in GE Alert Service Bulletin (ASB) CT7–2E1 S/B 72–A0034, dated February 26, 2024 (CT7–2E1 S/B 72–A0034); or GE ASB CT7–8 S/B 72–A0118, Revision 01, dated February 26, 2024 (CT7–8 S/B 72–A0118, Revision 01).

(2) Restricted category helicopters specified in paragraphs (c)(2)(i) through (ix) of this AD, with GE Model T700–GE–700, –701A, –701C, –701D/CC, –701D, –401, –401C, CT7–2D or CT7–2D1 engines installed, with a PT drive shaft assembly that was installed in the engine after January 1, 2020 and has less than 100 hours-TSN or 100 hours-TSR, as applicable. PT drive shaft assemblies manufactured or repaired after January 1, 2024 are not affected by this AD.

(i) Model EH–60A helicopters; current type certificate holders include, but are not limited to, Delta Enterprise; Heliqwest International Inc.; Pickering Aviation, Inc.; and Sixtyhawk TC, LLC.

(ii) Model HH–60L helicopters; current type certificate holders include, but are not

limited to, Capitol Helicopters Inc.; Central Copters Inc.; and Sixtyhawk TC, LLC.

(iii) Model S–70 helicopters; current type certificate holders include, but are not limited to, Sikorsky Aircraft Corporation.

(iv) Model S–70A helicopters; current type certificate holders include, but are not limited to, Sikorsky Aircraft Corporation.

(v) Model S–70C helicopters; current type certificate holders include, but are not limited to, Sikorsky Aircraft Corporation.

(vi) Model S–70C(M) helicopters; current type certificate holders include, but are not limited to, Sikorsky Aircraft Corporation.

(vii) Model S–70C(M1) helicopters; current type certificate holders include, but are not limited to, Sikorsky Aircraft Corporation.

(viii) Model S–70M helicopters; current type certificate holders include, but are not limited to, Sikorsky Aircraft Corporation.

(ix) Model UH–60A helicopters; current type certificate holders include, but are not limited to, ACE Aeronautics LLC; Billings Flying Service, Inc; Blackhawk Mission Equipment; Capitol Helicopters Inc.; Carson Helicopters; Delta Enterprise; Heliqwest International Inc.; High Performance Helicopters Corp.; Northwest Rotorcraft, LLC; Pickering Aviation, Inc.; PJ Helicopters Inc; Reeder Flying Service Inc.; Sixtyhawk TC, LLC; Skydance Blackhawk Operations LLC; Timberline Helicopters, Inc.; and Unical Air Inc.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop); 7250, Turbine Section.

**(e) Unsafe Condition**

This AD was prompted by at least four reports of failures of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly within the last several months. The FAA is issuing this AD to prevent failure of the power turbine drive shaft reference torque tube magnetic insert braze joint. The unsafe condition, if not addressed, could result in improper torque and engine speed indications, which in combination with specific phases of flight, could create an unacceptably high flight crew workload in maintaining control of the aircraft, and result in consequent loss of control of the aircraft.

**(f) Compliance**

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

**(g) Required Actions**

(1) For GE Model CT7–2E1, CT7–2F1, CT7–8A, CT7–8E, CT7–8F5 engines: Before further flight, do a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly for inadequate braze coverage in accordance with the Accomplishment Instructions, paragraph 3.A.(2) of CT7–2E1 S/B 72–A0034, or CT7–8 S/B 72–A0118, Revision 01, as applicable.

(2) For engines installed on the restricted category aircraft specified in paragraphs (c)(2)(i) through (ix) of this AD: Before further flight, do a phase array ultrasonic inspection of the torque reference tube magnetic insert braze joint of the power turbine drive shaft assembly for inadequate braze coverage using a method approved by the Manager, AIR–520 Continued Operational Safety Branch, FAA.

(3) If during any inspection required by paragraphs (g)(1) or (2) of this AD, any braze coverage of the torque reference tube magnetic insert braze joint is found to be less than 42 percent, before further flight, repair or replace the power turbine drive shaft assembly.

**(h) Special Flight Permit**

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the phase array ultrasonic inspection can be performed, provided no passengers are onboard.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, 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) Additional Information**

For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7146; email: *barbara.caufield@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 the AD specifies otherwise.

(i) General Electric Company (GE) Alert Service Bulletin (ASB) CT7–2E1 S/B 72–A0034, dated February 26, 2024.

(ii) GE ASB CT7–8 S/B 72–A0118, Revision 01, dated February 26, 2024.

(3) For service information that is incorporated by reference, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *ge.com.*

(4) You may view this service information that is incorporated by reference at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on March 8, 2024.

**Victor Wicklund,**

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

[FR Doc. 2024–05547 Filed 3–12–24; 11:15 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–2231; Project Identifier MCAI–2022–01623–R; Amendment 39–22684; AD 2024–04–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Leonardo S.p.a. Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AB412 and AB412 EP helicopters. This AD was prompted by reports of cracks in the lateral mounts of the main transmission support case. This AD requires repetitive visual inspections and fluorescent penetrant inspections (FPI) and, depending on the results, corrective action, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective April 19, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 19, 2024.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2231; 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, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*

- For EASA material that is identified in this final rule, contact EASA, Konrad-

Adenauer-Ufer 3, 50668 Cologne, Germany; phone +49 221 8999 000; email *Ads@easa.europa.eu;* website *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*

• You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–2231.

*Other Related Service Information:* For Bell Helicopter service information identified in this final rule, contact Bell Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; phone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *bellflight.com/support/contact-support.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

**FOR FURTHER INFORMATION CONTACT:** Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0258, dated December 20, 2022 (EASA AD 2022–0258), to correct an unsafe condition on all Leonardo S.p.A. Model AB212, AB412, and AB412EP helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Leonardo S.p.a. Model AB412 and AB412 EP helicopters. The NPRM published in the **Federal Register** on December 6, 2023 (88 FR 84767). The NPRM was prompted by reports of cracks in the lateral mounts of the main transmission support case. Such cracking is usually caused by excessive corrosion of the surface under a washer and originates from a washer attachment screw threaded hole. Cracking can occur at the upper or lower surfaces of the lateral mount. The NPRM proposed to require repetitive visual inspections and FPI and, depending on the results, corrective action, as specified in EASA AD 2022–0258.

The FAA is issuing this AD to detect and address cracking of the main transmission support case. The unsafe condition, if not addressed, could result in the loss of load carrying capabilities of the main transmission and subsequent loss of control of the helicopter. See EASA AD 2022–0258 for additional background information.

## Discussion of Final Airworthiness Directive

### Comments

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

### Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for a minor editorial change, this AD is adopted as proposed in the NPRM. The change will not increase the economic burden on any operator.

## Related Service Information Under 1 CFR Part 51

EASA AD 2022–0258 requires repetitive visual inspections and FPIs of the main transmission support case and, depending on the findings, corrective action. Corrective actions include repairing or replacing the main transmission support case hardware including screws, washers, or case bushings, repairing the lateral mounts, or replacing the main transmission support case.

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

## Other Related Service Information

The FAA also reviewed Bell Helicopter Component Repair and Overhaul Manual (CR&O) BHT–412–CR&O Chapter 63, paragraphs 63–57 Transmission Main Support Case-Inspection and 63–58 Transmission Main Support Case-Repair, Revision 12, dated February 28, 2020. This service information specifies procedures for inspecting and repairing the main transmission support case.

## Differences Between This AD and the EASA AD

EASA AD 2022–0258 applies to Model AB212 helicopters, whereas this AD does not because that model is not FAA type-certificated.

The service information referenced in EASA AD 2022–0258 specifies contacting Product Support Engineering for possible repairs regarding corrosion or pitting in the case bushings that exceeds allowable limits, whereas this AD requires repair done in accordance with a method approved by the FAA, EASA, or Leonardo S.p.a. Helicopters' EASA Design Organization Approval.

Where EASA AD 2022–0258 requires performing an FPI, this AD requires that the FPI be performed by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

## Costs of Compliance

The FAA estimates that this AD affects 69 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Visually inspecting the main transmission support case takes approximately 2 work-hours for an estimated cost of $170 per helicopter and $11,730 for the U.S. fleet, per inspection cycle. Performing an FPI of the main transmission support case takes approximately 2 work-hours for an estimated cost of $170 per helicopter and $11,730 for the U.S. fleet, per inspection cycle.

The FAA has no way of determining the costs pertaining to necessary repairs that are required to be done. Replacing the transmission support case assembly hardware parts including screws, washers, and case bushings takes approximately 2 work-hours and parts cost up to $4,000 per helicopter for an estimated cost of up to $4,170 per helicopter. Replacing the main transmission support case takes approximately 47 work-hours and parts cost approximately $120,000 for an estimated cost of $123,995 per helicopter.

## Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds

necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

## Regulatory Findings

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### 39.13 [Amended]

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

**2024–04–05 Leonardo S.p.a.:** Amendment 39–22684; Docket No. FAA 2023–2231; Project Identifier MCAI–2022–01623–R.

### (a) Effective Date

This airworthiness directive (AD) is effective April 19, 2024.

### (b) Affected ADs

None.

### (c) Applicability

This AD applies to Leonardo S.p.a. Model AB412 and AB412 EP helicopters, certificated in any category.

### (d) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

### (e) Unsafe Condition

This AD was prompted by reports of cracks in the lateral mounts of the main transmission support case. The FAA is issuing this AD to detect and address cracking of the main transmission support case. The unsafe condition, if not addressed, could result in the loss of load carrying capabilities of the main transmission and subsequent loss of control of the helicopter.

### (f) Compliance

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

### (g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0258, dated December 20, 2022 (EASA AD 2022–0258).

### (h) Exceptions to EASA AD 2022–0258

(1) Where EASA AD 2022–0258 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the service information referenced in EASA AD 2022–0258 specifies contacting Product Support Engineering for possible repairs regarding corrosion or pitting in a case bushing that exceeds allowable limits, this AD requires repair done in accordance with a method approved by the Manager, International Validation Branch, FAA; or EASA; or Leonardo S.p.a. Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Where paragraphs (3) and (4) of EASA AD 2022–0258 require replacing a component, this AD requires removing the component from service.

(4) Where paragraph (5) of EASA AD 2022–0258 requires replacing the main transmission support case, this AD requires removing the main transmission support case assembly from service.

(5) Where paragraph (2) of EASA AD 2022–0258 requires accomplishing a fluorescent penetrant inspection (FPI) of the main transmission support case, this AD requires that FPI be accomplished by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

**Note 1 to paragraph (h)(5):** Advisory Circular 65–31B contains examples of FAA-acceptable Level II and Level III qualification standards criteria for inspection personnel doing nondestructive test inspections.

(6) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0258.

### (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, 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*.

(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 Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov*.

### (k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0258, dated December 20, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0258, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu*. You may find the EASA material on the EASA website *ad.easa.europa.eu*.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222 5110.

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

Issued on February 16, 2024.

**Victor Wicklund,**

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

[FR Doc. 2024–05478 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2023–2148; Project Identifier MCAI–2022–00706–R; Amendment 39–22680; AD 2024–04–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, MBB–BK 117 C–2, MBB–BK 117 D–2, and MBB–BK 117 D–3 helicopters. This AD was prompted by the determination that Instrument Flight Rules (IFR) screens obstruct the pilot's view. This AD requires removing certain part-numbered IFR screens, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective April 19, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 19, 2024.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2148; 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, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*

• For EASA material identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*

• You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–2148.

*Other Related Service Information:* For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or website *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

**FOR FURTHER INFORMATION CONTACT:** Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (303) 342–1080; email *william.mccully@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0097, dated June 1, 2022 (EASA AD 2022–0097), to correct an unsafe condition on Airbus Helicopters Deutschland GmbH Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3, EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, EC635 T3, MBB–BK117 C–2, MBB–BK117 D–2, MBB–BK117 D–3, and MBB–BK117 D–3m helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, MBB–BK 117 C–2, MBB–BK 117 D–2, and MBB–BK 117 D–3 helicopters. The NPRM published in the **Federal Register** on November 13, 2023 (88 FR 77536). The NPRM was prompted by the determination that IFR screens obstruct the pilot's views. These IFR screens may be used for IFR training. According to Airbus Helicopters, the IFR screens obstruct the pilot's view to the front and to the right. The NPRM proposed to require removing certain part-numbered IFR screens, as specified in EASA AD 2022–0097.

The FAA is issuing this AD to address the obstructed views, which could lead to reduced situational awareness of the pilot and subsequent mid-air collision. See EASA AD 2022–0097 for additional background information.

## Discussion of Final Airworthiness Directive

## Comments

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

## Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. This AD is adopted as proposed in the NPRM.

## Related Service Information Under 1 CFR Part 51

EASA AD 2022–0097 requires removing certain part-numbered IFR screens and prohibits installing them on any helicopter.

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

## Other Related Service Information

The FAA also reviewed Airbus Helicopters Alert Service Bulletin (ASB) EC135–25A–033, ASB EC135H–25A–007, ASB MBB–BK117 C–2–25A–022, and ASB MBB–BK117 D–2–25A–023, each Revision 0 and dated May 23, 2022, which specify procedures for removing the lower, pilot door, and upper IFR screens from the helicopter. This service information also specifies that the lower, pilot door, and upper IFR screens must not be installed on a helicopter and the respective maintenance manual task is invalid and must no longer be used.

## Differences Between This AD and the EASA AD

EASA AD 2022–0097 applies to Model EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, EC635 T3, and MBB–BK117 D–3m helicopters, whereas this AD does not because those model helicopters are not FAA type-certificated and are not included on the U.S. type certificate data sheet except where the U.S. type certificate data sheet explains that the Model EC635T2+ helicopter having serial number 0858 was converted from Model EC635T2+ to Model EC135T2+.

## Costs of Compliance

The FAA estimates that this AD affects 573 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Removing the IFR screens takes approximately 0.5 work-hour for an estimated cost of $43 per helicopter and up to $24,639 for the U.S. fleet.

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

## Regulatory Findings

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2024–04–01 Airbus Helicopters Deutschland GmbH (AHD):** Amendment 39–22680; Docket No. FAA–2023–2148; Project Identifier MCAI–2022–00706–R.

### (a) Effective Date

This airworthiness directive (AD) is effective April 19, 2024.

### (b) Affected ADs

None.

### (c) Applicability

This AD applies to all Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, MBB–BK 117 C–2, MBB–BK 117 D–2, and MBB–BK 117 D–3 helicopters, certificated in any category.

**Note 1 to paragraph (c):** Helicopters with an EC135P3H designation are Model EC135P3 helicopters, helicopters with an EC135T3H designation are Model EC135T3 helicopters, and helicopters with an MBB–BK117 C–2e designation are Model MBB–BK117 C–2 helicopters.

### (d) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

### (e) Unsafe Condition

This AD was prompted by the determination that Instrument Flight Rules (IFR) screens obstruct the pilot's views. The FAA is issuing this AD to address the obstructed views caused by the IFR screens. The unsafe condition, if not addressed, could result in reduced situational awareness of the pilot and subsequent mid-air collision.

### (f) Compliance

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

### (g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0097, dated June 1, 2022 (EASA AD 2022–0097).

### (h) Exceptions to EASA AD 2022–0097

(1) Where EASA AD 2022–0097 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0097.

### (i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0097 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

### (j) Alternative Methods of Compliance (AMOCs)

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

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

### (k) Related Information

For more information about this AD, contact Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (303) 342–1080; email *william.mccully@faa.gov.*

### (l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0097, dated June 1, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0097, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on February 12, 2024.

**Victor Wicklund,**

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

[FR Doc. 2024–05475 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2023–1801; Airspace Docket No. 23–AAL–33]**

**RIN 2120–AA66**

## Modification of Class E Airspace; Klawock Airport, Klawock, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Class E airspace extending upward from 700 feet above the surface and removes the

Class E airspace extending upward from 1,200 feet above the surface at Klawock Airport, Klawock, AK. Additionally, this action updates the administrative portion of the airport's existing Class E airspace legal description. These modifications support the safety and management of instrument flight rules (IFR) operations at the airport.

**DATES:** Effective date 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**FOR FURTHER INFORMATION CONTACT:**
Keith Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

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

## History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–1801 in the **Federal Register** (88 FR 67124; September 29, 2023) for the modification of Class E airspace at Klawock Airport, Klawock AK. Additionally the FAA published a supplemental notice of proposed rulemaking for Docket No. FAA–2023–1801 in the **Federal Register** (88 FR 87375; December 18, 2023), to correct the description of a proposed northeast extension of the Class E airspace at Klawock Airport, Klawock, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received in support of the action.

## Incorporation by Reference

Class E5 airspace areas are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

## The Rule

This action amends 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface and removing the Class E airspace extending upward from 1,200 feet above the surface at Klawock Airport, Klawock AK.

The Class E airspace extending upward from 700 feet above the surface at the airport within a 6.7-mile radius is reduced to a semicircle from the airport's 249° bearing clockwise to the 025° bearing, as operations are not authorized to the southeast of the airport and containment is not needed in that area.

In addition, an extension to the Class E airspace extending upward from 700 feet above the surface is added to the northeast to be within 3 miles northwest and 3.3 miles southeast of the airport's 043° bearing extending to 9 miles northeast of the airport to more appropriately contain departing IFR operations until reaching 1,200 feet above the surface and arriving IFR operations below 1,500 feet above the surface when executing the CAALM TWO Area Navigation (RNAV) Departure Procedure or the RNAV Global Positioning System (GPS) Runway (RWY) 20 and RNAV (GPS) M RWY 20 approaches.

Moreover, the southwest procedure turn area is removed, as it is no longer needed. In its place, a southwest extension to the Class E airspace extending upward from 700 feet above the surface is added to be within 3.3 miles southeast and 3 miles northwest of the airport's 223° bearing extending to 14.6 miles southwest of the airport. This extension better contains departing IFR operations between the surface and 1,200 feet while executing the TURTY FOUR RNAV departure and arriving IFR operations below 1,500 feet above the surface while executing the RNAV (GPS) A, RNAV (GPS) M RWY 02, RNAV (GPS) Y RWY 2, or the RNAV (GPS) Z RWY 2 approaches.

Furthermore, the Klawock Class E airspace beginning at 1,200 feet above the surface is removed as it is redundant.

Finally, the FAA is modifying the airport's legal description. The Klawock nondirectional beacon/distance measuring equipment navigational aid was decommissioned in 2017, and reference to it is removed.

## Regulatory Notices and Analyses

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

## Environmental Review

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR part 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

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

* * * * *

**AAL AK E5 Klawock, AK [Amended]**

Klawock Airport, AK

(Lat. 55°34′45.2″ N, long. 133°04′33.6″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the airport from the 249° bearing clockwise to the 025° bearing, within 3 miles northwest and 3.3 miles southeast of the 043° bearing extending from the airport to 9 miles northeast, and within 3.3 miles southeast and 3 miles northwest of the 223° bearing extending from the airport to 14.6 miles southwest.

* * * * *

Issued in Des Moines, Washington, on February 11, 2024.

**B.G. Chew,**

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

[FR Doc. 2024–05512 Filed 3–14–24; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 740, 742, and 744**

**[Docket No. 240202–0036]**

**RIN 0694–AJ34**

## Revisions To Export, Reexport, and Transfer (In-Country) Controls for Nicaragua Under the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security (BIS), Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, BIS amends the Export Administration Regulations (EAR) to apply more restrictive treatment to exports and reexports to, and transfers (in-country) within, Nicaragua of items subject to the EAR. This action is consistent with the State Department's addition of Nicaragua to the list of countries that are subject to a U.S. arms embargo under the International Traffic in Arms Regulations (ITAR). To reflect this changed status under the ITAR, BIS adds Nicaragua to Country Group D:5. BIS's amendments also address concerns regarding the Nicaraguan Government's commission of human rights abuses against citizens and civil society groups, as well as the regime's ongoing military and security cooperation with Russia. Specifically, BIS is moving Nicaragua from Country Group B to Country Group D, a more restrictive country grouping, applying a stringent licensing policy for items controlled for national security reasons, and making the country subject to 'military end use' and 'military end user' restrictions. This rule advances the U.S. Government's efforts to restrict the availability of items subject to the EAR to Nicaragua's military and security services. Additionally, consistent with BIS's authorities under the Export Control Reform Act of 2018, this rule demonstrates a commitment to using export controls to protect human rights and promote democracy.

**DATES:** This rule is effective March 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Anthony Christino III, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, by email at *Foreign.Policy@bis.doc.gov,* or by phone at 202–482–4252.

**SUPPLEMENTARY INFORMATION:**

**Background**

To address ongoing foreign policy and national security concerns raised by the actions of the Nicaraguan Government under the leadership of President Daniel Ortega, including by Nicaraguan military and security services, BIS is issuing this final rule that would subject the country to more restrictive treatment under the Export Administration Regulations (EAR), 15 CFR parts 730 through 774.

In particular, this rule makes regulatory changes that reflect the U.S. Government's opposition to the trade of arms with Nicaragua and its government consistent with the State Department's March 15, 2024, addition of Nicaragua to § 126.1(p) of the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120 through 130, thereby imposing restrictions (with limited exceptions) on the export of defense articles and defense services destined for or originating in the country.

Additionally, BIS's action addresses the Nicaraguan Government's ongoing dismantling of democratic institutions and attacks on civil society. Since 2018, President Ortega's regime has targeted democratic movements supported by students and middle-class professionals and sought to curb religious expression, including by the Roman Catholic church. In many instances, the government crackdowns have been aided and abetted by the Nicaragua National Police (NNP), the government's primary law enforcement entity, and the Nicaraguan judiciary. The NNP has been responsible for using live ammunition against peaceful protesters and participating in death squads, as well as carrying out extrajudicial killings, disappearances, and kidnappings. As documented by Amnesty International, during a period of several months starting in July 2018, the NNP and other pro-government forces conducted ''Operation Clean Up,'' an operation in which they deployed lethal force against protesters resulting in hundreds of deaths and injuries. On March 5, 2020, the U.S. Department of the Treasury's Office of Foreign Assets Control designated the NNP and three NNP commissioners, Juan Antonio Valle Valle, Luis Alberto Perez Olivas, and Justo Pastor Urbina, as Specially Designated Nationals. *See https://home.treasury.gov/news/press-releases/sm930.* On March 28, 2023, BIS amended the EAR by adding the NNP to the Entity List (88 FR 18983; March 30, 2023).

BIS is also taking this regulatory action to address national security and foreign policy concerns arising out of

Nicaragua's deepening military and security ties with Russia. Since 2016, Russia has supplied Nicaragua with military equipment and technology that provides surveillance capabilities, including satellite monitoring of telecommunications. In June 2022, the two countries renewed a decade-long training agreement for Russian forces. The Ortega regime has also formally supported Russia in connection with its February 2022 invasion of Ukraine in various international fora, including an October 2022 vote in support of Russia before the United Nations General Assembly.

**Changes Made by This Rule**

Consistent with the foreign policy and national security concerns detailed above, in this rule, BIS is making four sets of changes to the EAR that will subject Nicaragua to more stringent export, reexport, and transfer (in-country) controls involving items that are subject to the EAR. First, BIS is adding Nicaragua to Country Group D:5 (U.S. Arms Embargoed Countries) in supplement no. 1 to part 740 of the EAR. This amendment is made to conform with the State Department's amendment that added the country to § 126.1 (Prohibited exports, imports, and sales to or from certain countries) under paragraph (p). March 15, 2024.

Second, BIS is moving Nicaragua from Country Group B to Country Group D:1 (*see* supp. no. 1 to part 740), a grouping of countries that raise national security concerns.

Third, Nicaragua is being added to the countries subject to a stringent licensing policy set forth in § 742.4 (national security controls) in connection with the risk of diversion to defined military end uses and end users. Finally, this rule makes the country subject to the 'military end use' and 'military end user' restrictions in § 744.21.

Existing licensing requirements and related review policies not revised by this rule continue to apply to items subject to the EAR that are destined for Nicaragua. For example, items controlled for reasons identified in supplement no. 1 to part 738 (Commerce Country Chart) by ''Xs'' in Columns CB1, CB2, NP1, NS1, NS2, MT1, RS1, RS2, FC1, CC1 and CC3 remain subject to the existing controls under the EAR. In particular, BIS will continue to review for national security and foreign policy (including human rights) concerns items controlled for regional stability to Nicaragua as set forth in the ''RS1'' column on the Commerce Country Chart (*see* § 742.6(b)(1)(i)). It will also continue to review items controlled for Crime Control reasons pursuant to the human rights-related standard set forth in § 742.7(b)(1). Additionally, pursuant to § 742.7(b)(2), BIS will continue to review items destined for Nicaragua that are controlled for all reasons apart from short supply under the human rights-related standard set forth in paragraph (b)(1).

**Impact of the EAR Amendments**

*Country Group Related Changes*

Country Group D:5

As a result of its placement in Country Group D:5, Nicaragua will be subject to additional restrictions in the EAR, including on *de minimis* U.S. content, license exception availability, and licensing policy for certain items. For example, license applications for the export or reexport of items classified under 9x515 or ''600 series'' Export Control Classification Numbers (ECCNs) to countries in Country Group D:5 are reviewed consistent with the policies in § 126.1 of the ITAR, as provided in paragraph (b)(1)(ii) of § 742.4 of the EAR.

This rule also removes a reference to an outdated State Department website that is currently listed in the footnote to Country Group D:5 (Note to Country Group D:5). As amended, the note directs the public to § 126.1 of the ITAR and to **Federal Register** notices regarding U.S. arms embargoes.

Country Group D:1

As a result of its placement in Country Group D:1, Nicaragua will be subject to more restrictive treatment under certain part 744 end use controls (*see, e.g.,* § 744.3(a) (restrictions on exports, reexports, or in-country transfers of certain rocket systems and unmanned aerial vehicles). Additionally, pursuant to § 744.7, restrictions on certain exports and reexports to vessels and aircraft located in Nicaraguan ports or registered in Nicaragua will apply. The restrictions on the export, reexport, and transfer (in-country) of certain microprocessors and associated software and technology for defined military end uses and end users in Country Group D:1 pursuant to § 744.17 will now apply to Nicaragua. Additionally, consistent with its placement in Country Group D:1, Nicaragua will be subject to two foreign direct product (FDP) rules set forth in § 734.9 that apply to exports from abroad, reexports, and transfers (in-country) of foreign-produced direct products of U.S.-origin technology and software, specifically, a National Security FDP rule and a '600 series' FDP rule. *See* § 734.9(b)(2) and (d)(2).

Removing Nicaragua from Country Group B and placing it in Country Group D:1 also makes certain license exceptions unavailable. The license exceptions made unavailable in full are: Shipments of limited value (LVS) (§ 740.3); License Exception Shipments to Country Group B countries (GBS) (§ 740.4); and Technology and software under restriction (TSR) (§ 740.6). Certain provisions in additional license exceptions that are available to Country Group B countries are restricted to Country Group D:1.

**Restrictive National Security-Related Review Policy**

As a result of this rule, a restrictive licensing policy will apply to license applications involving the export, reexport, and transfer (in-country) to Nicaragua of items listed on the CCL and controlled for national security reasons (NS items). Specifically, such applications will now be subject to the licensing policy in § 742.4(b)(7), which specifies that applications involving NS items will be reviewed to determine whether there is a risk of diversion to a defined military end use or end user (*see* § 744.21(f) and (g)). Applications determined to be for civil end users or for civil end uses will be subject to a general policy of approval. Applications to export, reexport, or transfer (in-country) items that would make a material contribution to the ''development,'' ''production,'' maintenance, repair, or operation of weapons systems, subsystems, and assemblies, such as those described in supplement no. 7 to part 742 (major weapons systems) will be subject to a presumption of denial.

**New Military End Use and Military End User Controls**

Finally, this rule adds Nicaragua to the countries that are subject to the 'military end use' and 'military end user' restrictions set forth in § 744.21. As amended by this rule, pursuant to § 744.21(a)(1), a license is required for the export, reexport, or transfer (in-country) of any item subject to the EAR that is listed in supplement no. 2 to part 744 to Burma, Cambodia, the People's Republic of China, Venezuela, or Nicaragua if there is ''knowledge'' (*see* § 772.1 of the EAR) that such item is intended, entirely or in part, for a 'military end use' or ''military end user' as defined in § 744.21(f) or (g), respectively. As a conforming change, this rule adds a country heading for Nicaragua in supplement no. 7 to part 744 ('Military End-User' (MEU) List) but does not add any entities to the MEU List under this new country heading.

**Saving Clause**

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on March 15, 2024, pursuant to actual orders for exports, reexports and transfers (in-country) to a foreign destination may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported, reexported or transferred (in-country) before April 15, 2024. Any such items not actually exported, reexported or transferred in-country) before midnight, on April 15, 2024, require a license in accordance with this final rule.

**Export Administration Regulations**

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852. ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

**Rulemaking Requirements**

1. This final rule has been determined to be significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0088, *Simple Network Application Process and Multipurpose Application Form.* This collection includes, among other things, license applications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 36,689 hours. BIS expects an increase of 588 burden hours for this collection. This collection is currently under a 60-day **Federal Register** notice for public comment (88 FR 85586) published on December 8, 2023. These additional burden hours will be added during this renewal process.

3. This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. Because neither the Administrative Procedure Act nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no Final Regulatory Flexibility Analysis is required and none was prepared.

**List of Subjects**

*15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 742*

Exports, Terrorism.

*15 CFR Part 744*

Exports, Reexports and recordkeeping requirements, Terrorism.

Accordingly, the Export Administration Regulations (15 CFR parts 740, 742, and 744) are amended as follows:

## PART 740—LICENSE EXCEPTIONS

■ 1. The authority citation for part 740 continues to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. Supplement no. 1 to part 740 is amended by:

■ a. In the Country Group B table, removing ''Nicaragua''; and

■ b. In the Country Group D table, adding an entry for ''Nicaragua'' in alphabetical order and revising footnote 1 to the table.

The addition and revision read as follows:

**Supplement No. 1 to Part 740—Country Groups**

* * * * *

COUNTRY GROUP D

| Country | [D: 1] National security | [D: 2] Nuclear | [D: 3] Chemical & biological | [D: 4] Missile technology | [D: 5] U.S. arms embargoed countries [1] |
|---|---|---|---|---|---|
| * * * * * * * | | | | | |
| Nicaragua | X | | | | X |
| * * * * * * * | | | | | |

[1] **Note to Country Group D:5:** Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the **Federal Register**. The list of arms embargoed destinations in this table is drawn from 22 CFR 126.1 and State Department **Federal Register** notices related to arms embargoes and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this table and the countries identified by the State Department as subject to a U.S. arms embargo (in the **Federal Register**), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

* * * * *

## PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 3. The authority citation for part 742 continues to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 4. Amend § 742.4 by revising the first sentence of paragraph (b)(7)(i) to read as follows:

### § 742.4 National security.

* * * * *

(b) * * *

(7)(i) For Burma, Cambodia, the People's Republic of China (PRC), Nicaragua, and Venezuela, all applications will be reviewed to determine the risk of diversion to a military end user or military end use. * * *

* * * * *

## PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 5. The authority citation for part 744 continues to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023).

■ 6. Amend § 744.21 by revising paragraphs (a), (b) introductory text, (b)(1), and (e)(3) to read as follows:

### § 744.21 Restrictions on certain 'military end uses' or 'military end users'.

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL) (supplement no. 1 to part 774 of the EAR), you may not export, reexport, or transfer (in-country):

(1) Any item subject to the EAR listed in supplement no. 2 to this part without a license if, at the time of the export, reexport, or transfer (in-country), you have ''knowledge,'' as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for a 'military end use,' as defined in paragraph (f) of this section, in Burma, Cambodia, the People's Republic of China (China), Nicaragua, or Venezuela, or a Burmese, Cambodian, Chinese, Nicaraguan, or Venezuelan 'military end user,' as defined in paragraph (g) of this section, wherever located. 'Military end users' located outside of Burma, Cambodia, China, Nicaragua, or Venezuela are limited to entities identified on the 'Military End-User' (MEU) List under supplement no. 7 to this part.

(2) Any item subject to the EAR without a license if, at the time of the export, reexport, or transfer (in-country), you have ''knowledge,'' as defined in § 772.1 of the EAR that the item is intended, entirely or in part, for a 'military end use,' as defined in paragraph (f) of this section, in Belarus or Russia, or a Belarusian or Russian 'military end user,' as defined in paragraph (g) of this section, wherever located. Belarusian or Russian 'military end users' located outside of Belarus or Russia are limited to entities identified on the Entity List under supplement no. 4 to this part with a footnote 3 designation.

**Note 1 to paragraphs (a)(1) and (2):** An entity anywhere in the world, including in Burma, Cambodia, China, Nicaragua, or Venezuela, may be listed on the Entity List as a Belarusian or Russian 'military end user' with a footnote 3 designation. If the entity is not a Belarusian or Russian 'military end user,' but has otherwise been identified by the End User Review Committee (ERC) as a 'military end user,' that entity may be identified under the 'Military End-User' (MEU) List under supplement no. 7 to this part. As noted in paragraph (a)(1) of this section, exporters, reexporters, and transferors, even in the absence of any such notification, are not excused from compliance with the license requirements of this paragraph (a) for all entities in Burma, Cambodia, China, Nicaragua, or Venezuela to determine whether the entity is a 'military end user' for purposes of paragraph (g) of this section because supplement no. 7 is not an exhaustive listing of 'military end users' in those countries. As noted in paragraph (a)(2) of this section, exporters, reexporters, and transferors, even in the absence of any such notification, are not excused from compliance with the license requirements of this paragraph (a) for all entities in Belarus or Russia to determine whether the entity is a 'military end user' for purposes of paragraph (g) of this section because supplement no. 4 under this part is not an exhaustive listing of 'military end users' in those countries.

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notification published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military end use' in Belarus, Burma, Cambodia, China, Nicaragua, the Russian Federation, or Venezuela, or for a Belarusian, Burmese, Cambodian, Chinese, Nicaraguan, Russian, or Venezuelan 'military end user,' wherever located. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(1) *'Military End-User' (MEU) List.* BIS may inform and provide notice to the public that certain entities are subject to the additional prohibition described under this paragraph (b) following a determination by the End-User Review Committee (ERC) that a specific entity is a 'military end user' pursuant to this section and therefore any exports, reexports, or transfers (in-country) to that entity represent an unacceptable risk of use in or diversion to a 'military end use' in Belarus, Burma, Cambodia, China, Nicaragua, the Russian Federation, or Venezuela, or for a Belarusian, Burmese, Cambodian, Chinese, Nicaraguan, Russian, or Venezuelan 'military end user,' wherever located. Such Burmese, Cambodian, Chinese, Nicaraguan, or Venezuelan 'military end users' may be added to supplement no. 7 to this part (MEU List). Such Belarusian or Russian 'military end users' may also be added to supplement no. 4 to this part (Entity List) and will be listed with a footnote 3 designation. License requirements for listed MEU are described in paragraph (b)(1)(ii) of this section. The listing of entities under supplement no. 7 or 4 to this part is not an exhaustive listing of 'military end users' for purposes of this section, except for 'military end users' of a country identified in this section (Belarus, Burma, Cambodia, China, Nicaragua, the Russian Federation, or Venezuela) not located in that same country. As specified in paragraphs (a)(1) and (2) of this section, 'military

end users' of a country identified in this section not located in that same country are exhaustively listed on either the Entity List with a footnote 3 designation or on the MEU List under supplement no. 7 this part. Exporters, reexporters, and transferors are responsible for determining whether transactions with entities not listed on supplement no. 7 or 4 to this part are subject to a license requirement under paragraph (a) of this section. The process in this paragraph (b)(1) for placing entities on the MEU List and Entity List is only one method BIS may use to inform exporters, reexporters, and transferors of license requirements under this section.

(i) *End-User Review Committee (ERC).* The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the MEU List and Entity List. Decisions by the ERC for purposes of the MEU List and Entity List will be made following the procedures identified in this section and in supplement no. 5 to this part (Procedures for End-User Review Committee Entity List and 'Military End User' (MEU) List Decisions).

(ii) *License requirement for parties to the transaction.* Consistent with paragraph (a) of this section, a license is required for the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement no. 2 to this part when an entity that is listed on the MEU List as a Burmese, Cambodian, Chinese, Nicaraguan, or Venezuelan 'military end user' is a party to the transaction as described in § 748.5(c) through (f) of the EAR. Consistent with paragraph (a) of this section, a license is required for the export, reexport, or transfer (in-country) of any item subject to the EAR when a Belarusian or Russian 'military end user' that is listed on the Entity List pursuant to this section is a party to the transaction as described in § 748.5(c) through (f) of the EAR.

* * * * *

(e) * * *

(3) Applications for items requiring a license for any reason that are destined for a 'military end use' in Belarus, Burma, Cambodia, China, Nicaragua, the Russian Federation, or Venezuela or for a Belarusian, Burmese, Cambodian, Chinese, Nicaraguan, Russian, or Venezuelan 'military end user,' wherever located, also will be subject to the review policy stated in paragraph (e)(1) of this section.

* * * * *

■ 7. Supplement no. 7 to part 744 is amended in the table by adding in alphabetical order an entry for ''Nicaragua'' to read as follows:

**Supplement No. 7 to Part 744—'Military End-User' (Meu) List**

* * * * *

| Country | Entity | Federal Register citation |
|---|---|---|
| * * * | * | * |
| NICARAGUA ..... | [Reserved] | [Reserved]. |
| * * * | * | * |

**Thea D. Rozman Kendler,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2024–05696 Filed 3–14–24; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 152

**[Docket No. FDA–2020–N–1690]**

**RIN 0910–AI17**

## Frozen Cherry Pie; Revocation of a Standard of Identity and a Standard of Quality

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA or we) is revoking the standard of identity and the standard of quality for frozen cherry pie. This action, in part, responds to a citizen petition submitted by the American Bakers Association (ABA). We conclude that these standards are no longer necessary to promote honesty and fair dealing in the interest of consumers. Revocation of the standards of identity and quality for frozen cherry pie will provide greater flexibility in the product's manufacture, consistent with comparable, nonstandardized foods available in the marketplace.

**DATES:** This rule is effective April 15, 2024.

**ADDRESSES:** For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

**FOR FURTHER INFORMATION CONTACT:** Rumana Yasmeen, Office of Nutrition and Food Labeling (HFS–820), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371; or Alexandra Beliveau, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

**SUPPLEMENTARY INFORMATION:**

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### I. Executive Summary

*A. Purpose of the Final Rule*

The final rule revokes the standards of identity and quality for frozen cherry pie. This action, in part, responds to a citizen petition submitted by the ABA. We conclude that the standards of identity and quality for frozen cherry pie are no longer necessary to promote honesty and fair dealing in the interest of consumers. Revoking these standards will provide greater flexibility in the product's manufacture, consistent with comparable, nonstandardized foods available in the marketplace.

*B. Summary of the Major Provisions of the Final Rule*

The final rule revokes the standards of identity and quality for frozen cherry pie.

*C. Legal Authority*

We are issuing the final rule to revoke the standards of identity and quality for frozen cherry pie consistent with our authority under the Federal Food, Drug, and Cosmetic Act (FD&C Act), which directs the Secretary of Health and Human Services (Secretary) to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, quality, or fill of container whenever, in the Secretary's judgment, such action will promote honesty and fair dealing in the interest of consumers.

*D. Costs and Benefits*

The final rule affects manufacturers of frozen cherry pie and does not require firms within the frozen cherry pie industry to change their manufacturing practices. Our analyses of current food manufacturing practices and the petition to revoke the standards indicate that revoking the standards of identity and quality could provide benefits in terms of additional flexibility and the opportunity for innovation to manufacturers. Therefore, we conclude that the final rule to revoke the standards for frozen cherry pie will provide social benefits at no cost to the respective industries.

**II. Background**

*A. Need for the Regulation/History of This Rulemaking*

Section 401 of the FD&C Act (21 U.S.C. 341) directs the Secretary to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, quality, or fill of container whenever, in the Secretary's judgment, such action will promote honesty and fair dealing in the interest of consumers. The purpose of these standards is to protect consumers against economic adulteration and reflect consumers' expectations about food.

We proposed the standards of identity and quality for frozen cherry pie in the **Federal Register** of November 1, 1967 (32 FR 15116) and finalized them in the **Federal Register** of February 23, 1971 (36 FR 3364); the requirements were codified at 21 CFR 28.1 (''Frozen cherry pie; identity; label statement of optional ingredients'') and 21 CFR 28.2 (''Frozen cherry pie; quality; label statement of substandard quality''). We later amended the standards of identity and quality in the **Federal Register** of June 13, 1973 (38 FR 15504), by removing minimum frozen cherry pie weight requirements, aligning the definition of blemished cherries with that in the U.S. Department of Agriculture's (USDA's) U.S. Standards for Grades of Frozen Red Tart Pitted Cherries, and adding clarifying language. We renumbered the two sections in the **Federal Register** of March 15, 1977 (42 FR 14302 at 14449) and combined them into § 152.126 (21 CFR 152.126), with the new section covering both the standards of identity and quality.

We received a citizen petition from ABA asking us, in part, to revoke the frozen cherry pie standards of identity and quality (Citizen Petition from the American Bakers Association, dated August 18, 2005, Docket No. FDA–2005–P–0435 (''petition'')). Among other things, the petition stated that there is no basis for singling out frozen cherry pie for the imposition of standards of identity and quality (petition at page 10). The petition observed that there are no standards of identity and quality for any other types of frozen fruit pies, or for any non-frozen fruit pies, including those filled with cherries (id.). The petition further asserted that nonstandardized fruit pies have been sold throughout the country for many years without any evidence of public confusion (id.).

In the **Federal Register** of December 18, 2020 (85 FR 82395), we issued a proposed rule to revoke the standards of identity and quality for frozen cherry pie, which, in part, responded to the petitioner's request. We tentatively concluded that the frozen cherry pie standards of identity and quality were no longer needed to promote honesty and fair dealing in the interest of consumers consistent with section 401 of the FD&C Act (85 FR 82395 at 82396). The preamble to the proposed rule also noted that the proposed revocation is consistent with section 6 of Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), which requires Agencies to periodically conduct retrospective analyses of existing regulations to identify those ''that might be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them'' accordingly (85 FR 82395 at 82397). Consequently, we proposed to revoke part 152 (21 CFR part 152) (''Fruit pies'') in its entirety because the standards for frozen cherry pie are the only standards in part 152.

We stated that we were unaware of any evidence suggesting that consumers have different expectations for unbaked, frozen cherry pies than for other cherry pies (85 FR 82395 at 82396). At the same time, no other cherry pies are subject to a standard of identity or a standard of quality, and we stated that we were unaware of any evidence indicating that such standards are necessary to promote honesty and fair dealing in the interest of consumers or to ensure that those cherry pies meet consumer expectations (id.). Similarly, other fruit pies are not subject to standards of identity or quality, and we stated that we were unaware of any evidence indicating that such standards are necessary to promote honesty and fair dealing in the interest of consumers or to ensure that the pies meet consumer expectations (id.).

We also tentatively concluded that the prohibition of artificial sweeteners in § 152.126(a)(2) (21 CFR 152.126(a)(2)) does not promote honesty and fair dealing in the interest of consumers (85 FR 82395 at 82397). Baked, frozen cherry pie and baked, non-frozen cherry pie may be made with artificial sweeteners to produce reduced-sugar varieties to accommodate consumer preferences and dietary restrictions. Other types of fruit pies are manufactured with artificial sweeteners to produce reduced-sugar varieties. These varieties appear to cater to consumer preferences and needs, and we stated that we were unaware of any evidence that these varieties create confusion or circumvent consumer expectations (id.).

*B. Summary of Comments to the Proposed Rule*

The proposed rule provided a 90-day comment period. We received over 60 comments to the proposed rule, and each comment discussed one or more issues. Trade associations, consumer advocacy organizations, individuals, academia, and industry submitted comments. Some comments appeared to have been submitted as part of a university exercise or assignment.

The comments discussed, among other things, the need for standards of identity and quality for frozen cherry pie. Some comments supported our proposed revocation, but others opposed it, expressing concerns that the revocation could reduce product quality or impact public health.

**III. Legal Authority**

We are issuing this final rule to revoke the standards of identity and quality for frozen cherry pie consistent with our authority under section 401 of the FD&C Act, which directs the Secretary to issue regulations fixing and establishing for any food a reasonable definition and standard of identity,

quality, or fill of container whenever, in the Secretary's judgment, such action will promote honesty and fair dealing in the interest of consumers.

## IV. Comments on the Proposed Rule and FDA Response

### *A. Introduction*

We describe and respond to the comments in sections B through F of this section. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

### *B. Description of General Comments*

(Comment 1) In general, most comments opposed the revocation of the frozen cherry pie standards of identity and quality. A majority of comments opposed revoking the standards because of general quality, safety, and public health concerns, without any supporting evidence. The comments asserted that revoking the standards would lower, or remove, the requirements for frozen cherry pie, would not benefit or protect consumers, and would provide frozen cherry pie manufacturers too much flexibility in the manufacture of frozen cherry pie.

(Response 1) We disagree that removing the standards of identity and quality for frozen cherry pie will result in lower protection for consumers. While there will no longer be a standard of quality that prescribes a required weight for the fruit content of frozen cherry pie or a standard of identity specifying requirements for products labeled as frozen cherry pie, other safeguards exist under the FD&C Act to prevent adulterated and misbranded frozen cherry pie products. For example, under section 403(a) of the FD&C Act (21 U.S.C. 343(a)), manufacturers must ensure that all labeling is truthful and not misleading.

Many foods are nonstandardized foods, and they must be labeled with and sold under common or usual names that have been established by common usage. See 21 U.S.C. 343(i)(1) and § 102.5(d) (21 CFR 102.5(d)). As a nonstandardized food, frozen cherry pie must be labeled with its common or usual name, ''frozen cherry pie,'' which is still in common usage. The final rule recategorizes unbaked, frozen cherry pie as a nonstandardized food, like baked, non-frozen and baked, frozen cherry pies, as well as frozen and non-frozen fruit pies of other varieties. We are unaware of any evidence to suggest aligning unbaked, frozen cherry pie with baked, non-frozen cherry pies, baked, frozen cherry pies, as well as frozen and non-frozen fruit pies of other varieties as a nonstandardized food would create confusion or circumvent consumer expectations. Revoking these standards will provide greater flexibility in the product's manufacture while leaving other requirements under the FD&C Act, such as product quality, ingredient safety, and labeling, in place, consistent with comparable, nonstandardized foods available in the marketplace. For example, revoking the standards will allow for new varieties of frozen cherry pies that cater to consumer preferences and needs, such as those lower in added sugars. We conclude that the standards of identity and quality for frozen cherry pie are no longer necessary to promote honesty and fair dealing in the interest of consumers.

(Comment 2) Some comments supported revoking the standards of identity and quality for frozen cherry pie. In general, the comments agreed that the standards of identity and quality are no longer needed to promote honesty and fair dealing in the interest of consumers, and revoking the standards would:

- Provide benefits in terms of additional flexibility to the manufacturers of frozen cherry pie products; and
- Promote innovation and the introduction of new unbaked, frozen cherry pie products, providing benefits to both consumers and industry.

(Response 2) We agree with these comments. The final rule revokes the standards of identity and quality for frozen cherry pie.

(Comment 3) One comment provided a neutral summary of the frozen cherry pie proposed rule but did not raise any issues or concerns for us to address.

(Response 3) We generally agree with the comment's summary of the proposed rule. We conclude that the standards of identity and quality for frozen cherry pie are no longer necessary to promote honesty and fair dealing in the interest of consumers. The final rule revokes the standards of identity and quality for frozen cherry pie.

### *C. Comments Related to Labeling of Frozen Cherry Pie*

(Comment 4) Some comments contended that, upon revocation, consumers would not know what ingredients have been added to frozen cherry pies. A couple comments interpreted the proposed rule as eliminating labeling requirements, stating that if the standards are revoked, there would be no labeling requirements. One comment stated that labeling requirements are not stringent enough for consumers to receive honest information from manufacturers as to what a product is. Other comments stated that consumers deserve to know and should be confident and able to trust that unbaked, frozen cherry pies contain a significant or adequate amount of cherries. Another comment, while supportive of the revocation of the standards, stated concern about improperly labeled food products in various settings.

(Response 4) Although we are revoking the standards of identity and quality for frozen cherry pie, labeling requirements will continue to apply to these products. While standards of identity are typically established under the common or usual name of the food (see 21 U.S.C. 341), a standard of identity does not need to be established for a food to be labeled with and sold under its common or usual name. Most foods are nonstandardized foods, which must be labeled with and sold under common or usual names that have been established by common usage. See 21 U.S.C. 343(i)(1) and § 102.5(d). The use of a common or usual name allows consumers to identify more efficiently the type of nonstandardized food product they find in the store. Revocation of the frozen cherry pie standards of identity and quality will eliminate requirements related to the content and production of frozen cherry pie, and frozen cherry pie will become a nonstandardized food. As a nonstandardized food, frozen cherry pie must be labeled with its common or usual name, ''frozen cherry pie,'' which is still in common usage (see 21 U.S.C. 343(i)(1)). Thus, products with the name frozen cherry pie will continue to be available to consumers.

Manufacturers must also comply with identity labeling requirements, which require that a food in package form bear a statement of the identity of the product on the principal display panel (§ 101.3 (21 CFR 101.3)), and ingredient labeling requirements, which state that ingredients must be listed by their common or usual name, in descending order of predominance by weight unless

ingredients are present in amounts of 2 percent or less by weight, in which case they can be listed at the end of the ingredient statement following an appropriate quantifying statement (§ 101.4 (21 CFR 101.4)). Therefore, consumers will have information available to them about the ingredients in the frozen cherry pies they purchase, as well as other product information.

As for the comment about the labeling of food products in different settings, different food labeling requirements exist, depending on whether the food product is, for example, a packaged food sold at a grocery store or a prepared food at a restaurant or cafeteria (see 21 CFR part 101). In the case of noncompliance with our regulations, FDA may take enforcement actions, as appropriate.

(Comment 5) One comment noted that there is no need to revoke the standards of identity and quality because manufacturers can already make frozen cherry pie products that do not conform to the standards and can simply identify on the label that the product falls below the standard of quality.

(Response 5) It is true that manufacturers could produce a frozen cherry pie product not conforming to the standard of quality (*e.g.,* using fewer cherries than prescribed by the standard of quality) and label the product with a general statement of substandard quality. However, the fact that such products could legally be made and marketed does not justify keeping the current standards of identity and quality if they are no longer serving their purpose. We no longer believe that the standards of quality and identity are necessary to promote honesty and fair dealing in the interest of consumers or to ensure that frozen cherry pies meet consumer expectations, and, therefore, we are revoking the standards of identity and quality for frozen cherry pie.

*D. Comments Related to Quality of Frozen Cherry Pie*

(Comment 6) Several comments expressed concern that revoking the standards for frozen cherry pie may compromise the quality of product and that FDA has a duty to maintain minimum standards of quality. A few comments stressed the importance of retaining the standards to maintain food quality standards and freshness.

(Response 6) Manufacturers must comply with Federal statutes and regulations to ensure a quality product. For example, quite apart from whether a food product is subject to a standard of quality or standard of identity, food products, including raw materials and ingredients, must comply with the quality control operations requirements set forth in current good manufacturing practices (CGMP) (see generally 21 CFR part 117) and are also required to bear truthful and non-misleading labeling, including a listing of their ingredients. We are unaware of, and the comments did not provide, any specific quality concerns for other varieties of unbaked, frozen fruit pies that are currently on the market. Nor did the comments provide support for the concern that revoking the standards for frozen cherry pie may compromise the quality of the product. Similarly, the comments did not describe how revoking the standards would affect the freshness of the product. As a general matter, the standard of quality for frozen cherry pie did not have a requirement for freshness, and we note that the standard of identity allowed for the use of fresh, frozen, and canned cherries in frozen cherry pies. If the comments are referring to freshness in terms of quality of the ingredients, we note that, under the FD&C Act, a food is adulterated if it consists in whole or in part of a filthy, putrid, or decomposed substance or is otherwise unfit for food. See 21 U.S.C. 342(a)(3).

(Comment 7) A few comments asserted that, in the absence of a standard of quality, manufacturers would be free to use subpar or substandard ingredients in their frozen cherry pie products in order to cut costs. Some comments expressed concern that the revocation of the standards for frozen cherry pie would allow manufacturers to add an unlimited number of blemished cherries, lower-quality cherries, or rotten cherries to their pies, or alternatively, that manufacturers would use fewer cherries, any amount or type of cherry, or no real cherries at all in frozen cherry pies. Several comments stated that cherry pie should be required to have cherries or that the standards should require more cherries. Other comments suggested that FDA should require manufacturers to label that a food contains numerous blemished cherries or to otherwise hold industry accountable to ensure that the cherries used are not spoiled. One comment suggested that revocation of the standards might even benefit consumers who are looking to make conscious purchases that mitigate food waste by purchasing a frozen cherry pie using blemished cherries.

(Response 7) We are unaware of any evidence that suggests revocation of the standards of identity and quality of frozen cherry pie may result in manufacturers adding subpar or substandard ingredients. In addition, other safeguards exist to ensure the quality of the food supply. A food is deemed to be adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food. See 21 U.S.C. 342(a)(3). Therefore, a food would be adulterated if it used rotten, spoiled, or otherwise unfit cherries. We also note that any food, including raw materials and ingredients, must comply with the quality control operations requirements set forth in CGMPs (21 CFR 117.80(b)).

As explained in the preamble to the proposed rule, frozen cherry pie is the only fruit pie, either frozen or non-frozen, that is currently subject to a standard of identity or quality (85 FR 82395 at 82396). We are unaware of any evidence suggesting that consumers have different expectations for unbaked, frozen cherry pies than for other fruit pies. We are also unaware of any evidence indicating that such standards are necessary to ensure that frozen cherry pie products continue to be produced with the characteristics consumers expect. FDA disagrees that revocation of the standards may result in having unbaked, frozen cherry pies in the marketplace with fewer cherries. As shown by widespread consumer acceptance of the variety of non-standardized fruit pies in the marketplace, such products meet consumer expectations and demands. Additionally, under the FD&C Act, manufacturers must ensure that all labeling is truthful and not misleading; otherwise, it is deemed misbranded (21 U.S.C. 343(a)). Therefore, a product marketed as frozen cherry pie that does not contain any cherries, would be misbranded. See 21 U.S.C. 343(a) and (b).

Manufacturers also must comply with identity labeling requirements, which require that a food in package form be labeled with its common or usual name, or in the absence thereof, a statement of identity that accurately describes the food on the principal display panel (§ 101.3). If a product is offered for sale under the name of another food (*e.g.,* a frozen cherry pie that does not contain cherries), it would be misbranded under 21 U.S.C. 343(b).

Regarding the comment stating that manufacturers will now be able to use any type of cherry, we note that neither the existing standard of identity nor the existing standard of quality for frozen cherry pie specified the variety of cherry to be used; however, the standard of identity did allow for fresh, frozen, or canned cherries to be used. Consumers will be able to continue to purchase

products that align with their tastes and preferences.

(Comment 8) Some comments stated that revoking the standards would allow manufacturers to use unknown additives and fillers to make frozen cherry pies less expensive to produce.

(Response 8) In the absence of a standard of identity, manufacturers will have the flexibility to use different ingredients than those previously allowed to produce products that meet consumer expectations for frozen cherry pie. However, those different ingredients must still be lawful. Manufacturers must comply with ingredient labeling requirements (§ 101.4), as well as food and color additive regulations, which require additives to meet the safety standard of reasonable certainty of no harm under its intended conditions of use (21 CFR 70.3 and § 170.3 (21 CFR 170.3)). Consumers can also look at the product labeling to see the ingredients in frozen cherry pies and can purchase based on their preferences. Removing the standard of identity for frozen cherry pie will allow manufacturers to make products with different ingredients than those allowed under the prior standard of identity, but those products must still comply with the FD&C Act and implementing regulations. We conclude that the standards of identity and quality for frozen cherry pie are no longer necessary to promote honesty and fair dealing in the interest of consumers, and we are revoking the standards of identity and quality for frozen cherry pie.

*E. Comments Related to Safety of Frozen Cherry Pie*

(Comment 9) Some comments expressed concern over the potential use of unsafe ingredients or dangerous substitutes by manufacturers if we revoked the standards. Some comments stated that revoking the standards would allow manufacturers to use cheaper ingredients, such as artificial sweeteners, that the comments claimed pose serious health risks to consumers. One comment stated that FDA should conduct a comprehensive safety re-assessment of specific artificial sweeteners before encouraging reformulation with them. A few comments supported the revocation on the grounds that it would allow marketing of low-sugar varieties that some consumers may desire and classified artificial sweeteners as acceptable, sometimes desirable, and healthier than the current sweeteners used. Many comments expressed concerns about not knowing whether future frozen cherry pie products would meet any safety standards.

(Response 9) Our regulations, at 21 CFR 70.42 and 170.20, require evidence that each color or food additive used in food, such as an artificial sweetener, is safe at its intended level of use before it may be added to foods. All food additives or ingredients are required to undergo a premarket approval process unless the substance is generally recognized as safe (GRAS) or was approved for use by FDA or USDA prior to the food additive amendments of the FD&C Act (21 U.S.C. 321) (see also 21 CFR parts 170, 171, 130, and 181). Our regulations in § 170.30 (21 CFR 170.30) require that a GRAS determination based on scientific procedures be made by experts qualified by scientific training and experience to evaluate its safety, who have concluded, based on publicly available information, that the substance is safe under the conditions of its intended use. Both substances approved for use as a food additive and those determined to be GRAS must meet the safety standard of reasonable certainty of no harm under its intended conditions of use (§§ 170.3 and 170.30). A prior sanction for a food substance exists only for a specific use(s) in food for which there was explicit approval by FDA or USDA prior to September 6, 1958 (21 CFR 181.5(a)). All known prior sanctions are listed in our regulations, and any such regulation is subject to amendment to impose whatever limitations or conditions are necessary for the safe use of the ingredient (21 CFR 181.5(b)).

Furthermore, all FDA-approved food additives are subject to ongoing safety review. If new evidence indicates that a food ingredient in use may be unsafe, we may prohibit its use or conduct further studies to determine if the use can still be considered safe (21 CFR 180.1). We also note that, under the FD&C Act, a food is adulterated if it bears or contains a naturally occurring poisonous or deleterious substance that may render it injurious to health (21 U.S.C. 342).

As for the comments concerning the safety of artificial sweeteners, we disagree that we should conduct a comprehensive safety reassessment on specific artificial sweeteners before revoking the standards. Our regulations require that only safe and suitable ingredients are used in food production (21 CFR 130.3). An artificial sweetener is regulated as a food additive unless its use as a sweetener is GRAS. FDA-approved artificial sweeteners, as well as those that are GRAS, are safe for the general population. We also disagree with the assertion that we are encouraging reformulation with artificial sweeteners. As a result of revoking the standards, manufacturers will simply have greater flexibility and the opportunity for greater product innovation, consistent with what is currently allowed for other fruit pies. Revocation of the standards of identity and quality will permit the use of artificial sweeteners in frozen cherry pies, thus allowing reduced-sugar frozen cherry pie varieties to be sold in the marketplace under the same common or usual name of frozen cherry pie. We have seen no evidence of dishonesty, confusion, or the use of low-quality ingredients in other nonstandardized fruit pies, and we have no reason to believe that frozen cherry pies would be treated any differently. Therefore, we are revoking the standards of identity and quality for frozen cherry pie.

*F. Miscellaneous Comments*

(Comment 10) A few comments suggested a revision of the standard, instead of a revocation. One comment stated that the requirement to have at least a minimum of 25 percent cherries relative to the pie's weight should not be repealed in order for consumers to know that a frozen cherry pie is made with real cherries. In an effort to prevent substitution of fillers, one comment proposed to eliminate the requirements for sieving and percent blemished fruit but retain the requirement for a minimum of 25 percent fruit, and another comment said we should remove regulations that require certain inspection processes for pies but keep in place the regulations requiring 25 percent minimum cherries and no greater than 15 percent blemished cherries.

(Response 10) We do not see a need for any such modification of the existing standards. As stated in the proposed rule, frozen cherry pie is the only fruit pie, either frozen or non-frozen, that is subject to standards of identity and quality (85 FR 82395 at 82396). Other fruit pies, including baked frozen cherry pie and baked non-frozen cherry pie, are not standardized, and these foods appear to meet consumer expectations in the absence of established definitions and standards. There appears to be no need to treat frozen cherry pie differently from other fruit pies available in the marketplace. Therefore, we have concluded that the frozen cherry pie standards of identity and quality are no longer needed to promote honesty and fair dealing in the interest of consumers or to ensure that those cherry pies meet consumer expectations. Revocation of the standards will provide greater flexibility

and allow for innovation in product manufacture, consistent with comparable, nonstandardized foods available in the marketplace.

(Comment 11) Some comments questioned why there are not standards for other types of fruit pies besides frozen cherry pie and stated that the standards of identity and quality for frozen cherry pie should not be revoked but rather extended to other fruit pies available in the marketplace. One comment questioned why FDA fails to place more regulations, restrictions, and standards on other pies and food items on the American market.

(Response 11) Section 401 of the FD&C Act directs the Secretary to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, quality, or fill of container whenever, in the Secretary's judgment, such action will promote honesty and fair dealing in the interest of consumers. The purpose of these standards is to protect consumers against economic adulteration and reflect consumers' expectations about food. Regarding other types of fruit pies, we are unaware of any evidence, and the comments provided no evidence, indicating that such standards are necessary to promote honesty and fair dealing in the interest of consumers or to ensure that the pies meet consumer expectations. Most fruit pies available in the marketplace, including baked cherry pies (both frozen and non-frozen varieties), are nonstandardized foods that are labeled with and sold under common or usual names. These foods appear to meet consumer expectations in the absence of established definitions and standards. Thus, we simply do not see a need to extend or to create standards of identity for other fruit pies in the marketplace that are currently regulated as nonstandardized foods.

We have the authority to issue regulations fixing and establishing for any food a reasonable definition and standard of identity, quality, or fill of container whenever, in the Secretary's judgment, such action will promote honesty and fair dealing in the interest of consumers, and we will continue to use this authority as needed to protect consumers.

(Comment 12) One comment stated that it is not clear if revoking the standards of identity and quality for frozen cherry pie would benefit consumers. The comment noted a lack of consumer calls asking for a greater variety of frozen cherry pie products and a lack of complaints about frozen cherry pies having too many cherries. The comment added that frozen cherry pie manufacturers could sell reduced-sugar frozen cherry pie products while the standards of identity and quality existed, and therefore, the standards did not create a barrier to marketing or selling reduced sugar varieties.

(Response 12) Standards of identity and quality are established to promote honesty and fair dealing in the interest of consumers. Standards protect consumers against economic adulteration and reflect consumers' expectations about food. Many fruit pies have been in the marketplace as nonstandardized foods for many years, and non-cherry fruit pies, either frozen or unfrozen, are not subject to the requirements of any standard. Unbaked, frozen cherry pie is the only fruit pie that is subject to standards of identity or quality. While these standards did not mandate that a certain amount of sugar be used in product formulation and, therefore, manufacturers could already sell reduced-sugar frozen cherry pie products, the standard of identity prohibited the use of artificial sweeteners (see § 152.126(a)(2)). Revocation of the standards of identity and quality for frozen cherry pie will not only provide greater flexibility in the product's manufacture (*e.g.,* by allowing the use of artificial sweeteners to lower the sugar content of frozen cherry pies), but revocation of the standards will also align frozen cherry pies with other comparable fruit pies available in the marketplace. We conclude that standards of identity and quality for frozen cherry pie are no longer needed to promote honesty and fair dealing in the interest of consumers. Therefore, we are revoking the standards of identity and quality for frozen cherry pie.

(Comment 13) One comment stated that the proposed rule was the result of a food industry association's petition and not a petition from consumers, and FDA should reject industry attempts to revoke consumer protections.

(Response 13) We disagree that FDA should reject the petition that requested the revocation of the standards because it was from a food industry association and not from consumers. We evaluate all citizen petitions that meet the requirements of our citizen petition regulation at 21 CFR 10.30. After considering the petition and related information, including comments to the proposed rule, we conclude that the standards of identity and quality for frozen cherry pie are no longer needed to promote honesty and fair dealing in the interest of consumers consistent with section 401 of the FD&C Act, and we are revoking the standards of identity and quality for frozen cherry pie.

(Comment 14) One comment stated that this proposal is a poor expenditure of FDA's resources. This comment urged FDA to direct its efforts to priorities that align with the goals of FDA's Nutrition Innovation Strategy by, for example, allowing the use of sodium substitutes such as potassium chloride across standardized foods.

(Response 14) Since FDA first announced its Nutrition Innovation Strategy in 2018, we have shifted our efforts to a general national nutrition strategy. We are prioritizing our nutrition initiatives to ensure people in the United States have greater access to healthier foods and nutrition information that everyone can use to identify healthier choices more easily. The key elements of this strategy are sodium reduction, maternal and infant health and nutrition, labeling and claims, consumer education, and innovation support. FDA is continuing to update its standards of identity program with the goal of maintaining the basic nature and essential characteristics of standardized foods while permitting flexibility with respect to their composition. In the **Federal Register** of April 10, 2023 (88 FR 21148), we published a proposed rule entitled ''Use of Salt Substitutes To Reduce the Sodium Content in Standardized Foods,'' which, if finalized, would amend FDA standard of identity regulations that specify salt (sodium chloride) as a required or optional ingredient to permit the use of salt substitutes in standardized foods, to reduce the sodium content. This action represents an example of a recent initiative under our general national nutrition strategy, and, if finalized, it would help support a healthier food supply by providing flexibility to facilitate industry innovation in the production of standardized foods lower in sodium while maintaining the basic nature and essential characteristics of the foods.

We have the authority to issue regulations establishing standards of identity and quality to promote honesty and fair dealing in the interest of consumers (21 U.S.C. 341). Standards of identity and quality are intended to protect consumers against economic adulteration, maintain the integrity of food, and reflect consumers' expectations about the food. We will continue to prioritize our efforts as time and resources permit. While our general national nutrition strategy is just one of many priorities for FDA, we have many other projects that we simultaneously work on to carry out our work. For example, Executive Order 13563, ''Improving Regulation and Regulatory

Review'' (January 18, 2011), requires Agencies to periodically conduct retrospective analyses of existing regulations to identify those that might be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them accordingly. In this case, we conclude that standards of identity and quality for frozen cherry pie are no longer needed to promote honesty and fair dealing in the interest of consumers. Therefore, we are revoking the standards of identity and quality for frozen cherry pie.

(Comment 15) One comment urged FDA to review and identify what factors have changed since the promulgation of the initial rule creating standards of identity and quality for frozen cherry pie, to the extent that evidence remains available to us. The comment also stated that we should explain our reasons for eliminating this specific standard, as distinguished from other identity standards that we would preserve.

(Response 15) In the **Federal Register** of February 23, 1971 (36 FR 3364), FDA finalized the standards of identity and quality for frozen cherry pie. We concluded at that time that the standards would promote honesty and fair dealing in the interest of consumers, and we noted that abuse had been recognized by certain members of the frozen food industry. Around the same time, the President signed into law the Fair Packaging and Labeling Act (Pub. L. 89–755), which is designed to prevent unfair or deceptive packaging and labeling of many household consumer commodities, including food (15 U.S.C. 1452). These and other regulatory changes, including mandatory ingredient labeling, have led to a different environment than that which existed when the standards were established.

Consistent with FDA priorities on nutrition initiatives and Executive Order 13563, ''Improving Regulation and Regulatory Review'' (January 18, 2011), we will continue to evaluate the necessity of different standards, as appropriate, and may propose changes in the future if we determine a standard is no longer needed to promote honesty and fair dealing in the interest of consumers.

(Comment 16) Some comments mentioned that revocation of the standards of quality and identity would further contribute to the health disparities experienced among lower-income Americans. The comments state that access to quality foods should not be a luxury that only some can afford.

(Response 16) The standards of identity and quality for frozen cherry pie were established to promote honesty and fair dealing in the interest of consumers. Standards of identity do not ensure access to a food nor do they address the price(s) of a standardized food. Standards of identity also do not address consumer health disparity issues. Matters pertaining to access to food, food prices, and health disparities between different populations are outside the scope of this rulemaking.

(Comment 17) One comment mentioned that frozen cherry pie should have to maintain, at a minimum, the standards for frozen foods during transport and storage.

(Response 17) Frozen food product must follow our CGMPs (21 CFR 117.80) and risk-based preventive controls (21 CFR 117.206) among other regulations. The final rule does not impact the other statutory requirements or regulations that food manufacturers must follow.

(Comment 18) One comment stated that revocation of the standards of identity and quality will allow manufacturers to substitute cherries with yams.

(Response 18) A product labeled as cherry pie, but containing yams rather than cherries, would be misbranded under 21 U.S.C. 343(a)(1) because the labeling would be false or misleading. Additionally, section 301(a) of the FD&C Act (21 U.S.C. 331(a)) prohibits the introduction or delivery for introduction into interstate commerce any food that is misbranded.

## V. Effective Date

This rule is effective 30 days after the date of publication in the **Federal Register**.

## VI. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801, Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866, 13563, and 14094 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are ''significant'' under Executive Order 12866 Section 3(f)(1) (as amended by Executive Order 14094) if they ''have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.'' OIRA has determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 Section 3(f)(1).

Because this rule is not likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act, OIRA has determined that this rule does not fall within the scope of 5 U.S.C. 804(2).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we conclude that this rule would not generate significant compliance costs, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. This final rule will not result in an expenditure in any year that meets or exceeds this amount.

The final rule would not require firms within the frozen cherry pie industry to change their manufacturing practices. Our analysis of current food manufacturing practices and the petition to revoke the standards indicate that revoking the standards of identity and quality could provide benefits in terms of additional flexibility to manufacturers of frozen cherry pie products. We also conclude that these standards are obsolete because the requirements are not necessary to ensure that frozen cherry pie meets consumers' expectations about the food, and in some respect, place restrictions on the food that are inconsistent with consumers' expectations. Revocation of the standards would allow additional flexibility for, and the opportunity for

innovation regarding, frozen cherry pie, providing benefits to both consumers and industry. Therefore, we conclude that the final rule to revoke the standards for frozen cherry pie would provide social benefits at little to no cost to the respective industries (table 1).

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF FINAL RULE

| Category | Primary estimate | Low estimate | High estimate | Units | | | Notes |
|---|---|---|---|---|---|---|---|
| | | | | Year dollars | Discount rate (%) | Period covered | |
| **Benefits:** | | | | | | | |
| Annualized Monetized $millions/year | $0 | $0 | $0 | 2023 | 7<br>3 | | |
| Annualized Quantified | .................. | .................. | .................. | .................. | 7<br>3 | | |
| Qualitative | Benefits to manufacturers would be from additional flexibility and the opportunity for innovation regarding frozen cherry pie products. | | | | | | |
| **Costs:** | | | | | | | |
| Annualized Monetized $millions/year | 0 | 0 | 0 | 2023 | 7<br>3 | | |
| Annualized Quantified | .................. | .................. | .................. | .................. | 7<br>3 | | |
| Qualitative | | | | | | | |
| **Transfers:** | | | | | | | |
| Federal Annualized Monetized $millions/year | .................. | .................. | .................. | .................. | 7<br>3 | | |
| From/To | From: | | | To: | | | |
| Other Annualized Monetized $millions/year | .................. | .................. | .................. | .................. | 7<br>3 | | |
| From/To | From: | | | To: | | | |
| **Effects:**<br>State, Local or Tribal Government:<br>Small Business:<br>Wages:<br>Growth: | | | | | | | |

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 1) and at *https://www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria.*

## VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VIII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## X. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive order and, consequently, a tribal summary impact statement is not required.

## XI. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.* Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. FDA, ''Regulatory Impact Analysis: Frozen Cherry Pie; Revocation of a Standard of Identity and a Standard of Quality (Final Rule).'' Available at: *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

## List of Subjects in 21 CFR Part 152

Bakery products, Food grades and standards, Frozen foods, Fruits.

## PART 152—[REMOVED]

■ Therefore, for the reasons discussed in the preamble, under the Federal Food, Drug and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the Food and Drug Administration removes 21 CFR part 152.

Dated: February 27, 2024.

**Robert M. Califf,**

*Commissioner of Food and Drugs.*

[FR Doc. 2024–04598 Filed 3–14–24; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 807 and 814

**[Docket No. FDA–2024–N–1052]**

# Medical Devices; Technical Amendments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is amending certain medical device regulations to update a citation for information collection and conform the regulatory provisions to the Federal Food, Drug, and Cosmetics Act (FD&C Act). The rule does not impose any new requirements on affected parties. This action is editorial in nature to correct errors and to ensure accuracy and clarity in the Agency's regulations.

**DATES:** This rule is March 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Madhusoodana Nambiar, Office of Policy, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 5519, Silver Spring, MD 20993–0002, 301–796–5837.

**SUPPLEMENTARY INFORMATION:**

### I. Background

As a part of this technical amendment, FDA is making changes to 21 CFR parts 807 and 814 to update a citation for information collection and to conform the regulatory provisions to the FD&C Act to ensure accuracy and clarity in the Agency's medical device regulations. The changes published in this notice are nonsubstantive and editorial in nature.

On December 29, 2022, Congress enacted the Food and Drug Omnibus Reform Act of 2022, Title III of Division FF of the Consolidated Appropriations Act, 2023 (FDORA) (Pub. L. 117–328), which added and amended various sections of the FD&C Act. Section 3308 of FDORA added section 515C of the FD&C Act (21 U.S.C. 360e–4). Section 515C provides FDA with express authority to approve or clear predetermined change control plans (PCCPs) for devices requiring premarket approval applications (PMAs) under section 515 of the FD&C Act (21 U.S.C. 360e) or premarket notification under section 510(k) of the FD&C Act (510(k)) (21 U.S.C. 360). Under section 515C manufacturers will not need to submit PMAs, including a supplemental application, or a new 510(k) as long as the change is consistent with a PCCP approved or cleared by FDA.

### II. Description of the Technical Amendments

We are amending 21 CFR 807.81(b) and 814.39(b) to include predetermined change control plans cleared or approved, respectively, under 515C consistent with the statutory language in section 515C of the FD&C Act. The regulation, 21 CFR 807.87(m), is being revised to make a nonsubstantive editorial change to remove the incorrect information collection requirement citation. The rule does not impose any new regulatory requirements on affected parties. The amendments are editorial in nature and should not be construed as modifying any substantive standards or requirements.

### III. Notice and Public Comment

Publication of this document constitutes final action under the Administrative Procedure Act (APA) (5 U.S.C. 553). Section 553 of the APA generally exempts ''rules of agency organization, procedure, or practice'' from proposed rulemaking (*i.e.,* notice and comment rulemaking (5 U.S.C. 553(b)(A)). Rules are also exempt when an agency finds ''good cause'' that notice and comment rulemaking procedures would be ''impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(B)).

FDA has determined that this rulemaking meets the APA's notice and comment exemption requirements under 5 U.S.C. 553(b)(3)(B). All the revisions in this rule are technical or nonsubstantive changes. Some of these revisions update the language in certain regulations to be consistent with the FD&C Act. The balance of these revisions updates an incorrect citation for information collection. Such technical, nonsubstantive changes are ''a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94 (D.C. Cir. 2012) (quotation marks and citation omitted). FDA accordingly for good cause finds that notice and public procedure thereon are unnecessary for these amendments.

The APA allows an effective date less than 30 days after publication as ''provided by the agency for good cause found and published with the rule'' (5 U.S.C. 553(d)(3)). An effective date 30 or more days from the date of publication is unnecessary in this case because the amendments do not impose any new regulatory requirements on affected parties, and affected parties do not need time to ''adjust to the new regulation'' before the rule takes effect. *Am. Federation of Government Emp., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981). Therefore, FDA finds good cause for the amendments to become effective on the date of publication of this action.

### List of Subjects

*21 CFR Part 807*

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 814*

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 807 and 814 are amended as follows:

## PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

■ 1. The authority citation for part 807 is revised to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 360, 360c, 360e, 360e–4, 360i, 360j, 360bbb–8b, 371, 374, 379k–1, 381, 393; 42 U.S.C. 264, 271.

■ 2. In § 807.81, revise paragraph (b)(1) to read as follows:

### § 807.81 When a premarket notification submission is required.

* * * * *

(b)(1) A premarket notification under this subpart is not required for a device for which:

(i) A premarket approval application under section 515 of the act, or for which a petition to reclassify under

section 513(f)(2) of the act, is pending before the Food and Drug Administration, or

(ii) There is a predetermined change control plan (PCCP) cleared under section 515C of the act, provided that the change is consistent with the PCCP.

* * * * *

**§ 807.87 [Amended]**

■ 3. Amend § 807.87 by removing the phrase ''(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0281)'' that appears after paragraph (m).

## PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 4. The authority citation for part 814 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 353, 360, 360c–360j, 360bbb–8b, 371, 372, 373, 374, 375, 379, 379e, 379k–1, 381.

■ 5. In § 814.39, revise paragraph (b) to read as follows:

**§ 814.39 PMA supplements.**

* * * * *

(b) An applicant may make a change in a device after FDA's approval of a PMA for the device without submitting a PMA supplement if the change does not affect the device's safety or effectiveness and the change is reported to FDA in post approval periodic reports required as a condition to approval of the device, *e.g.,* an editorial change in labeling which does not affect the safety or effectiveness of the device, or if the change is consistent with a predetermined change control plan (PCCP) approved under section 515C of the act.

* * * * *

Dated: March 11, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–05473 Filed 3–14–24; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1308

**[Docket No. DEA–1245]**

## Schedules of Controlled Substances: Placement of 2-Methyl AP–237 in Schedule I

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Final amendment; final order.

**SUMMARY:** With the issuance of this final order, the Administrator of the Drug Enforcement Administration is permanently placing 1-(2-methyl-4-(3-phenylprop-2-en-1-yl)piperazin-1-yl)butan-1-one (commonly known as 2-methyl AP–237), including its optical and geometric isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, in schedule I of the Controlled Substances Act. This scheduling action discharges the United States' obligations under the Single Convention on Narcotic Drugs (1961). This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research or conduct instructional activities with, or possess), or propose to handle 2-methyl AP–237.

**DATES:** Effective April 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

**SUPPLEMENTARY INFORMATION:**

### Legal Authority

The United States is a party to the 1961 United Nations Single Convention on Narcotic Drugs, March 30, 1961, 18 U.S.T. 1407, 570 U.N.T.S. 151 (Single Convention), as amended by the 1972 Protocol. Article 3, paragraph 7 of the Single Convention requires that if the Commission on Narcotic Drugs (Commission) adds a substance to one of the schedules of such Convention, and the United States receives notification of such scheduling decision from the Secretary-General of the United Nations (Secretary-General), the United States, as a signatory Member State, is obligated to control the substance under its national drug control legislation. Under 21 U.S.C. 811(d)(1) of the Controlled Substances Act (CSA), if control of a substance is required ''by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970,'' the Attorney General must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by 21 U.S.C. 811(a) or 812(b), and without regard to the procedures prescribed by 21 U.S.C. 811(a) and (b). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (Administrator of DEA or Administrator). 28 CFR 0.100.

### Background

In a letter dated November 24, 2022, the Director-General of the World Health Organization recommended to the Secretary-General of the United Nations that 2-methyl AP–237 be placed in Schedule I of the Single Convention, as this substance has an opioid mechanism of action and similarity to drugs that are controlled in Schedule I of the Single Convention (*i.e.,* 2-methyl AP–237 is similar to drugs such as isotonitazene) and has dependence and abuse potential. On May 17, 2023, the United States Government was informed by the Secretariat of the United Nations, by letter, that during its 66th session in March 2023, the Commission voted to place 2-methyl AP–237 in Schedule I of the Single Convention (CND Mar/66/1).

### 2-Methyl AP–237

2-Methyl AP–237 has a pharmacological profile similar to other classical opioids such as fentanyl (schedule II), morphine (schedule II) and heroin (schedule I), which act as mu-opioid receptor agonists. Because of the pharmacological similarities of 2-methyl AP–237 to the aforementioned opioids, 2-methyl AP–237 presents a high risk of abuse and has negatively affected users and communities. According to the DEA Toxicology Testing Program (DEA TOX) [1] and a recent publication,[2] the abuse of 2-methyl AP–237 has been associated with at least seven fatalities in the United States between February 2020 and July 2023. The identification of this substance in post-mortem cases is a serious concern to public safety.

In June 2019, 2-methyl AP–237 emerged on the United States illicit drug market as evidenced by its identification in drug seizures.[3] Law enforcement

[1] The DEA Toxicology Testing Program (DEA TOX) was initiated in response to the ongoing novel synthetic drug abuse epidemic. This program provides toxicology data on synthetic drugs from biological samples that may not be routinely identified, which are generated from drug overdose victims. Data queried on 8/7/2023.

[2] Fogarty, MF, Vandeputte, MM, Krotulski, AJ, Walton, SE, Stove, CP, and Logan, BK (2022). Toxicological and pharmacological characterization of novel cinnamylpiperazine synthetic opioids in humans and in vitro including 2-methyl AP–237 and AP–238. Archives of Toxicology 96:1701–1710.

[3] NFLIS represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive

Continued

reports demonstrate that 2-methyl AP–237 is being illicitly distributed and abused. The illicit use and distribution of this substance is similar to that of heroin (schedule I) and prescription opioid analgesics. According to the National Forensic Laboratory Information System (NFLIS-Drug) database, which collects drug identification results from drug cases submitted to and analyzed by Federal, State, and local forensic laboratories, there have been 92 reports of 2-methyl AP–237 in the United States since 2019 (data queried July 17, 2023).

DEA is not aware of any claims or any medical or scientific literature suggesting that 2-methyl AP–237 has a currently accepted medical use in treatment in the United States. In addition, the Assistant Secretary for Health of the U.S. Department of Health and Human Services, by a letter to DEA dated December 22, 2022, stated that there are no investigational new drug applications or approved new drug applications for 2-methyl AP–237 in the United States; hence, there are no legitimate channels for this substance as a marketed drug product in the United States. Because 2-methyl AP–237 is not formulated or available for clinical use as an approved medicinal product, all current use of this substance by individuals is based on their own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer such a drug.

Therefore, consistent with 21 U.S.C. 811(d)(1), DEA concludes that 2-methyl AP–237 has no currently accepted medical use in treatment in the United States [4] and is most appropriately placed in schedule I of the CSA. Because control is required under the Single Convention, DEA will not be initiating regular rulemaking proceedings to permanently schedule 2-methyl AP–237 pursuant to 21 U.S.C. 811(a).

## Conclusion

In order to meet the United States' obligations under the Single Convention and because 2-methyl AP–237 has no currently accepted medical use in treatment in the United States, the Administrator has determined that 2-methyl AP–237, including its optical and geometric isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, should be placed in schedule I of the CSA.

## Requirements for Handling

Upon the effective date of the final order contained in this document, 2-methyl AP–237 will be permanently subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture of, distribution of, importation of, exportation of, engagement in research or conduct of instructional activities with, and possession of, schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research or conducts instructional activities with, or possesses), or who desires to handle, 2-methyl AP–237 must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of this substance in a manner not authorized by the CSA is unlawful and those in possession of any quantity of this substance may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* 2-Methyl AP–237 must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, state, local, and tribal laws.

3. *Security.* 2-Methyl AP–237 is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling 2-methyl AP–237 must comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and packaging.* All labels, labeling, and packaging for commercial containers of 2-methyl AP–237 must comply with 21 U.S.C. 825, and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture 2-methyl AP–237 in accordance with a quota assigned pursuant to 21 U.S.C. 826, and in accordance with 21 CFR part 1303.

6. *Inventory.* Any person registered with DEA to handle 2-methyl AP–237 must have an initial inventory of all stocks of controlled substances (including this substance) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including 2-methyl AP–237) on hand every two years pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* DEA registrants must maintain records and submit reports with respect to 2-methyl AP–237 pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1301.74(b) and (c), 1301.76(b), and 1307.11 and parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding 2-methyl AP–237 to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* All DEA registrants who distribute 2-methyl AP–237 must comply with the order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of 2-methyl AP–237 must comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving 2-methyl AP–237 not authorized by, or in violation of the CSA, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

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information system that includes data from forensic laboratories that handle the nation's drug analysis cases. NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is currently 98.5 percent. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV; 76 FR 77330, 77332, December 12, 2011. NFLIS data was queried on July 17, 2023. Reports to NFLIS-Drug are still pending for 2023.

[4] Although, as discussed above, there is no evidence suggesting that 2-methyl AP–237 has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by the Food and Drug Administration, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499 (Mar 26,1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics* v. *Drug Enforcement Admin.,* 15 F.3d 1131, 1135 (D.C. Cir. 1994).

**Regulatory Analyses**

*Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) and 14094 (Modernizing Regulatory Review)*

This action is not a significant regulatory action as defined by Executive Order (E.O.) 12866 (Regulatory Planning and Review), section 3(f), as amended by E.O. 14094, section 1(b), and the principles reaffirmed in E.O. 13563 (Improving Regulation and Regulatory Review); and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

*Executive Order 12988, Civil Justice Reform*

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

*Executive Order 13132, Federalism*

This action does not have federalism implications warranting the application of E.O. 13132. This action does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications warranting the application of E.O. 13175. The action does not 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.

*Administrative Procedure Act*

The CSA provides for an expedited scheduling action where control is required by the United States' obligations under international treaties, conventions, or protocols. 21 U.S.C. 811(d)(1). If control is required pursuant to such international treaty, convention, or protocol, the Attorney General, as delegated to the Administrator, must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, and ''without regard to'' the findings and rulemaking procedures otherwise required for scheduling actions in 21 U.S.C. 811(a) and (b). *Id.*

In accordance with 21 U.S.C. 811(d)(1), scheduling actions for drugs that are required to be controlled by the United States' obligations under international treaties, conventions, or protocols in effect on October 27, 1970, shall be issued by order (as opposed to scheduling by rule pursuant to 21 U.S.C. 811(a)). Therefore, DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this scheduling action.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or any other law. As explained above, the CSA exempts this final order from notice and comment. Consequently, the RFA does not apply to this action.

*Paperwork Reduction Act of 1995*

This order would modify an existing collection of information requirement under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521. Pursuant to section 3507(d) of the PRA of 1995 (44 U.S.C. 3507(d)), DEA is adding new reporting and recordkeeping requirements for 1117–0003. This order also involves existing collection 1117–0004, but would not modify the existing collection of information requirement under the PRA. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Copies of existing information collections approved by OMB may be obtained at *http://www.reginfo.gov/public/do/PRAMain.*

*Unfunded Mandates Reform Act of 1995*

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year * * *.'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

*Congressional Review Act*

This order is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, DEA is submitting reports under the CRA to both Houses of Congress and to the Comptroller General.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:

■ a. Redesignate paragraphs (b)(59) through (b)(103) as follows:

| Old paragraph | New paragraph |
|---|---|
| (b)(59) through (103) | (b)(60) through (104). |

■ b. Add new paragraph (b)(59).

The addition reads as follows:

**§ 1308.11 Schedule I.**

* * * * *

(b) * * *

* * * * * * *

(59) 2-Methyl AP–237 (1-(2-methyl-4-(3-phenylprop-2-en-1-yl)piperazin-1-yl)butan-1-one) ........ 9664

* * * * * * *

* * * * *

**Signing Authority**

This document of the Drug Enforcement Administration was signed on March 8, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for

publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**Heather Achbach,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2024–05543 Filed 3–14–24; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF STATE

### 22 CFR Part 126

**[Public Notice: 12306]**

**RIN 1400–AF80**

### International Traffic in Arms Regulations: Addition to List of Proscribed Countries

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to add Nicaragua in the list of countries for which it is the policy of the United States to deny licenses or other approvals for exports and imports of defense services and defense articles, except as otherwise provided.

**DATES:** The rule is effective on March 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Maria Tatarska, Foreign Affairs Officer, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (771) 205–7671; email *DDTCCustomerService@state.gov* ATTN: Regulatory Change, ITAR Section 126.1: Nicaragua.

**SUPPLEMENTARY INFORMATION:** Due to growing concerns regarding Nicaragua's continuing dismantling of democratic institutions, attacks on civil society, and increased security cooperation with Russia, to include support of Russia's full-scale invasion of Ukraine, the Under Secretary of State for Arms Control and International Security has determined that it is in the best interests of U.S. national security and foreign policy to restrict, with certain exceptions, the export and import of defense articles and defense services destined for or originating in Nicaragua. This policy reflects the U.S. government's opposition to the trade of arms with Nicaragua and its authoritarian government dominated by President Daniel Ortega Saavedra and his wife, Vice President Rosario Murillo Zambrana. Pursuant to this determination, the Department is adding Nicaragua to ITAR § 126.1 in paragraph (p). The policy of denial toward Nicaragua applies to licenses or other approvals for exports and imports of defense articles or defense services, except that a license or other approval may be issued on a case-by-case basis for non-lethal military equipment intended solely for humanitarian assistance, to include natural disaster relief. Further, in accordance with ITAR § 129.7, no broker, as described in ITAR § 129.2, may engage in or make a proposal to engage in brokering activities subject to the ITAR that involve Nicaragua without obtaining the approval of the Directorate of Defense Trade Controls. Consistent with ITAR § 129.7(d), the Department of State will apply the same policy of denial to such requests.

**Regulatory Analysis and Notices**

*Administrative Procedure Act*

This rulemaking is exempt from the rulemaking requirements of section 553 of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as a military or foreign affairs function of the United States.

*Regulatory Flexibility Act*

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

*Unfunded Mandates Reform Act of 1995*

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

*Congressional Review Act*

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. 804.

*Executive Orders 12372 and 13132*

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

*Executive Orders 12866, 13563, and 14094*

Executive Order 12866, as amended by Executive Orders 13563 and 14094, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). As a result of this change, certain exemptions to licensing requirements will not be available for exports, reexports, retransfers, and temporary imports destined for or originating in Nicaragua. However, a license or other approval may be issued on a case-by-case basis for non-lethal military equipment intended solely for humanitarian assistance, to include natural disaster relief. Because the scope of this rule does not impose significant additional regulatory requirements or obligations, the Department believes costs associated with this rule will be minimal. This rule has been designated a ''significant regulatory action'' by the Office and Information and Regulatory Affairs under Executive Order 12866.

*Executive Order 12988*

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

*Executive Order 13175*

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

*Paperwork Reduction Act*

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

**List of Subjects in 22 CFR Part 126**

Arms and munitions, Exports.

For the reasons set forth above, title 22, chapter I, subchapter M, part 126 is amended as follows:

## PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

**Authority:** 22 U.S.C. 287c, 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2780, 2791, 2797; Sec. 1225, Pub. L. 108–375, 118 Stat. 2091; Sec. 7045, Pub. L. 112–74, 125 Stat.

1232; Sec. 1250A, Pub. L 116–92, 133 Stat. 1665; Sec. 205, Pub. L. 116–94, 133 Stat. 3052; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 2. Amend § 126.1 by revising table 2 to paragraph (d)(2) and adding paragraph (p) to read as follows:

**§ 126.1 Prohibited exports, imports, and sales to or from certain countries.**

* * * * *

(d) * * *

(2) * * *

TABLE 2 TO PARAGRAPH (d)(2)

| Country | Country specific paragraph location |
|---|---|
| Afghanistan | See also paragraph (g) of this section. |
| Central African Republic | See also paragraph (u) of this section. |
| Cyprus | See also paragraph (r) of this section. |
| Democratic Republic of Congo | See also paragraph (i) of this section. |
| Ethiopia | See also paragraph (n) of this section. |
| Eritrea | See also paragraph (h) of this section. |
| Haiti | See also paragraph (j) of this section. |
| Iraq | See also paragraph (f) of this section. |
| Lebanon | See also paragraph (t) of this section. |
| Libya | See also paragraph (k) of this section. |
| Nicaragua | See also paragraph (p) of this section. |
| Russia | See also paragraph (l) of this section. |
| Somalia | See also paragraph (m) of this section. |
| South Sudan | See also paragraph (w) of this section. |
| Sudan | See also paragraph (v) of this section. |
| Zimbabwe | See also paragraph (s) of this section. |

* * * * *

(p) *Nicaragua.* It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles or defense services, destined for or originating in Nicaragua, except that a license or other approval may be issued, on a case-by-case basis, for non-lethal military equipment intended solely for humanitarian assistance, to include natural disaster relief.

* * * * *

**Bonnie D. Jenkins,**

*Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 2024–05695 Filed 3–14–24; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 9

**[Docket No. TTB–2023–0004; T.D. TTB–191; Ref: Notice No. 223]**

**RIN 1513–AC97**

# Establishment of the Contra Costa Viticultural Area and Modification of the San Francisco Bay and Central Coast Viticultural Areas

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 167,146-acre ''Contra Costa'' American viticultural area in Contra Costa County, California. Additionally, TTB is expanding the boundaries of the established San Francisco Bay and Central Coast viticultural areas to avoid a partial overlap with the Contra Costa viticultural area and instead encompass the entire Contra Costa AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective April 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

## Background on Viticultural Areas

### TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administration and enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

### Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an

approval nor an endorsement by TTB of the wine produced in that area.

### Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

### Petition To Establish the Contra Costa AVA and To Expand the Boundaries of the San Francisco Bay and Central Coast AVAs

TTB received a petition on behalf of the Contra Costa Winegrowers Association proposing to establish the ''Contra Costa'' AVA and expand the boundaries of the established San Francisco Bay (27 CFR 9.157) and Central Coast (27 CFR 9.75) AVAs. The proposed Contra Costa AVA is within Contra Costa County, California. The proposed AVA covers approximately 167,146 acres and currently contains at least 60 commercial vineyards covering a total of approximately 1,700 acres, as well as at least 14 wineries. According to the petition, the distinguishing features of the proposed AVA are its topography and climate.

The proposed Contra Costa AVA consists of relatively flat terrain interrupted in places by rolling hills. All elevations within the proposed AVA are below 1,000 feet, and most elevations are below 100 feet. Over 71 percent of the slope angles within the proposed AVA are less than 5 percent, but along the western and southern boundary and in the ridgeline that runs north-south between Concord and Bay Point, slope angles can reach 30 percent. The petition states that cool, heavy marine air stays at lower elevations, leading to diurnal cooling that can cause differences in grape development, the timing of harvest, and sugar accumulation and acidity in the grapes when compared to the same varietals grown at higher elevations.

East of the proposed AVA, the terrain is generally flat as one moves into the California Delta and the San Joaquin Valley. To the south and west of the proposed AVA, the terrain becomes steeper, with slope angles generally exceeding 20 percent and commonly above 30 percent. Elevations to the west and south of the proposed AVA are also generally higher than within the proposed AVA, exceeding 1,300 feet in the region to the west and reaching 3,849 feet at the summit of Mt. Diablo to the south of the proposed AVA.

The petition also includes climate data in the form of growing degree day (GDD) accumulations [1] and average annual precipitation amounts. Within the proposed Contra Costa AVA, annual GDD accumulations between 2014 and 2019 ranged from 3,008 to 4,275, indicating a generally warm climate. The petition states that the proposed AVA's climate is suitable for growing a variety of grapes, including Zinfandel, petite sirah, mourvedre, chardonnay, and cabernet sauvignon.

To the northeast of the proposed AVA, at Jersey Island, GDD accumulations from 2014 to 2019 were similar to those found in the proposed AVA, but the petitioner chose to exclude this region from the proposed AVA because of its mucky soils that are unlikely to support viticulture. To the south, in Walnut Creek, GDD accumulations were also similar to those within the proposed AVA, although the petitioner excluded this region from the proposed AVA because it is a largely residential area that is not suited for commercial viticulture. Farther south, in Byron, GDD accumulations were significantly higher than those within the proposed AVA. To the east, within the San Joaquin Valley, GDD accumulations were generally warmer than within the proposed AVA, as the marine influence decreases as one moves farther inland. West of the proposed AVA, as one moves closer to San Francisco Bay and the Pacific Ocean, GDD accumulations were lower than within the proposed AVA.

Within the proposed Contra Costa AVA, annual precipitation amounts from 2013 to 2018 ranged from a low of 232 millimeters (mm) to a high of 565 mm. During the same time period, annual precipitation amounts to the west and southwest of the proposed AVA were generally higher, ranging from a low of 374 mm to a high of 1,712 mm. Although the petition included precipitation data for regions to the northeast, east, and southeast of the proposed AVA, TTB excluded the data from the proposed rule document because the data was collected from a period of two years or less and therefore TTB was unable to determine whether precipitation was a distinguishing feature of the proposed AVA in relation to those regions.

### Modification of the San Francisco Bay AVA Boundary

The San Francisco Bay AVA was established by T.D. ATF–407 on January 20, 1999 (64 FR 3015). T.D. ATF–407 describes the distinguishing feature of the San Francisco Bay AVA as ''a marine climate which is heavily influenced by the proximity of the San Francisco Bay and the Pacific Ocean.'' T.D. ATF–407 also notes that the eastern boundary of the AVA was chosen, in part, as a way of separating the AVA from the drier, warmer inland region of the Central Valley, which lacks a strong marine influence. Only the western portion of the proposed Contra Costa AVA lies within the existing San Francisco Bay AVA. To eliminate the partial overlap, the petitioner also proposed expanding the boundary of the San Francisco Bay AVA to encompass the entire Contra Costa AVA. The proposed expansion would increase the size of the San Francisco Bay AVA by approximately 109,955 acres. The proposed Contra Costa AVA shares some of the characteristics of the larger established AVA. For example, similar to other locations in the San Francisco Bay AVA, information provided in the petition to establish the Contra Costa AVA showed that the proposed AVA is

[1] *See* Albert J. Winkler *et al.*, General Viticulture (Berkeley: University of California Press), pp. 61–64 (1974). In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

affected by cool, moist air from the Pacific Ocean and the San Francisco Bay. The proposed AVA is also generally cooler and wetter than the inland region to the east. However, the proposed Contra Costa AVA has some characteristics that distinguish it from the larger San Francisco Bay AVA. For instance, although the proposed Contra Costa AVA is influenced by marine air from the San Francisco Bay, the proposed AVA is not adjacent to San Francisco Bay, the air travelling through Suisun Bay instead. Additionally, while T.D. ATF–407 describes the San Francisco Bay AVA as having a cool Mediterranean climate classification, the proposed Contra Costa AVA also includes regions with a warm Mediterranean climate classification.

**Modification of the Central Coast AVA Boundary**

The petition also proposes to expand the boundary of the established Central Coast AVA. The Central Coast AVA was established by T.D. ATF–216 on October 24, 1985 (50 FR 43128). T.D. ATF–216 describes the Central Coast AVA as a region between the Pacific Ocean and the Coast Ranges of California. The Central Coast AVA has a climate that is greatly affected by the marine influence, with the region to the east of the AVA having a more arid climate.

Only the western portion of the proposed Contra Costa AVA lies within the existing Central Coast AVA. To eliminate the partial overlap, the petitioner also proposed modifying the boundary of the Central Coast AVA to encompass the entire Contra Costa AVA. The proposed modification would increase the size of the Central Coast AVA by approximately 109,955 acres. Information provided in the petition to establish the Contra Costa AVA showed that the proposed Contra Costa AVA shares some of the characteristics of the larger established AVA. For example, similar to other locations in the Central Coast AVA, the proposed AVA is affected by cool, moist air from the Pacific Ocean, which enters the region from San Francisco Bay via Suisun Bay. The proposed AVA is also generally cooler and wetter than the region to the east. However, the proposed Contra Costa AVA has some characteristics that distinguish it from the larger Central Coast AVA. For instance, being a smaller region, the proposed AVA has less topographic variety than the Central Coast AVA. Additionally, being adjacent to the shoreline of Suisun Bay, the proposed AVA is more directly exposed to cool marine air than other regions of the Central Coast AVA, such as the Paso Robles AVA (27 CFR 9.84), which is farther inland and, according to T.D. ATF–216, receives its marine air via the Salinas River, which empties into Monterey Bay.

**Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 223 in the **Federal Register** on March 29, 2023 (88 FR 18471), proposing to establish the Contra Costa AVA and expand the boundaries of the San Francisco Bay and Central Coast AVAs. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The notice also compared the distinguishing features of the proposed viticultural area to the surrounding areas. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area, and for a comparison of the distinguishing features of the proposed viticultural area to the surrounding areas, see Notice No. 223.

In Notice No. 223, TTB solicited comments on the accuracy of the name, boundary, distinguishing features, and other required information submitted in support of the petition. In addition, TTB solicited comments on the proposed modifications of the established Central Coast and San Francisco Bay AVAs and whether the evidence presented in the proposed Contra Costa AVA petition sufficiently supported the modifications. The comment period for Notice No. 223 closed on May 30, 2023. In response to Notice No. 223, TTB received seven comments. Commenters include local wine industry members, the Contra Costa Winegrowers Association, the Downtown Brentwood Coalition, the mayor of the city of Brentwood, and the original petitioner. All seven comments support the establishment of the proposed Contra Costa AVA. None of the comments specifically addressed the proposed expansion of the San Francisco Bay or Central Coast AVAs.

Additionally, the comment from the petitioner (comment 1) clarified that Viano Vineyards is within both the proposed Contra Costa AVA and the unmodified Central Coast AVA. The petitioner states that TTB's description of Viano Vineyards on page 18476 of the proposed rule document made it seem as if the vineyard was not within the unmodified boundary of the Central Coast AVA. TTB agrees with the commenter that Viano Vineyards is within both the proposed Contra Costa AVA and the unmodified Central Coast AVA boundary. Comment 2 also noted that the second page of Exhibit I to the petition, which is marked as a list of members of the Contra Costa Winegrowers Association, includes persons who are members of the Lamorinda AVA association, not the Contra Costa Winegrowers Association. Exhibit I is not a TTB document, but TTB notes that winegrowers associations may accept members from neighboring regions outside of the particular AVA, and that members listed in the exhibit may be members of both associations. Because TTB did not receive any additional clarification from the petitioner regarding this exhibit, TTB is not amending the exhibit in the docket.

**TTB Determination**

After careful review of the petition and of the comments received in response to Notice No. 223, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 167,146-acre Contra Costa AVA and the expansion of the boundaries of the San Francisco Bay and Central Coast AVAs. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the ''Contra Costa'' AVA in Contra Costa County, California.

Furthermore, TTB expands the boundaries of the San Francisco Bay and Central Coast AVAs to entirely encompass the Contra Costa AVA, after finding that the evidence provided by the petitioner shows that the features of the expansion areas described in Notice No. 223 are consistent with the features of the established AVAs. These changes are effective April 15, 2024.

**Boundary Description**

See the narrative boundary description of the Contra Costa AVA and the expanded boundaries of the San Francisco Bay and Central Coast AVAs in the regulatory text published at the end of this final rule.

**Maps**

The petitioner provided the required maps, and they are listed below in the regulatory text. The Contra Costa AVA boundary and the expanded San Francisco Bay and Central Coast AVA boundaries may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

**Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a

wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Contra Costa AVA, its name, ''Contra Costa,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name ''Contra Costa'' in a brand name, including a trademark, or in another label reference to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin. The establishment of the AVA will not affect the use of ''Contra Costa County'' as a county appellation of origin on wine labels.

The establishment of the Contra Costa AVA will allow vintners to use ''Contra Costa'' as an AVA appellation of origin for wines made primarily from grapes grown within the Contra Costa AVA if the wines meet the eligibility requirements for the appellation. The expansion of the Central Coast and San Francisco Bay AVAs will also allow vintners to use ''Central Coast,'' ''San Francisco Bay,'' or both, as appellations of origin for wines made primarily from grapes grown anywhere in the Contra Costa AVA if the wines meet the eligibility requirements for the appellation.

Bottlers who wish to label their wines with ''Contra Costa'' as an AVA appellation of origin must obtain a new Certificate of Label Approval (COLA) for the label, even if the currently approved label already contains another AVA appellation of origin. Please do not submit COLA requests to TTB before the effective date shown in the DATES section of this document, or your request will be rejected.

**Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

**Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866, as amended. Therefore, no regulatory assessment is required.

**List of Subjects in 27 CFR Part 9**

Wine.

**The Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

■ 2. Amend § 9.75 by:

■ a. Removing the word ''and'' at the end of paragraph (b)(42);

■ b. Removing the ''.'' at the end of paragraph (b)(43) and adding a '';'' in its place;

■ c. Adding paragraphs (b)(44) through (55);

■ d. Revising paragraphs (c)(4) through (c)(6);

■ e. Redesignating paragraphs (c)(7) through (c)(43) as paragraphs (c)(23) through (c)(59); and

■ f. Adding new paragraphs (c)(7) through (c)(22).

The revisions and additions read as follows:

**§ 9.75 Central Coast.**

* * * * *

(b) * * *

(44) Benicia, California, scale 1:24,000, dated 2018;

(45) Vine Hill, California, scale 1:24,000, dated 2018;

(46) Honker Bay, California, scale 1:24,000, dated 2018;

(47) Antioch North, California, scale 1:24,000, dated 2018;

(48) Jersey Island, California, scale 1:24,000, dated 2018;

(49) Bouldin Island, California, scale 1:24,000, dated 2018;

(50) Woodward Island, California, scale 1:24,000, dated 2018;

(51) Clifton Court Forebay, California, scale 1:24,000, dated 2018;

(52) Byron Hot Springs, California, scale 1:24,000, dated 2018;

(53) Tassajara, California, scale 1:24,000, dated 2018;

(54) Antioch South, California, scale 1:24,000, dated 2018; and

(55) Clayton, California, scale 1:24,000, dated 2018.

(c) * * *

(4) From this point, the boundary proceeds east along the shoreline of Alameda County and Contra Costa County across the Richmond, San Quentin, Mare Island, Benicia (2018 edition), Vine Hill (2018 edition), Honker Bay (2018 edition), and Antioch North maps and onto the Jersey Island map to the intersection of the shoreline with Bethel Island Road.

(5) Proceed southeast in a straight line 0.7 mile to the intersection of Wells Road and Sandmound Road.

(6) Proceed northeast in a straight line 2.7 miles, crossing onto the Bouldin Island map, to the northernmost point of Holland Tract Road.

(7) Proceed south 1.9 miles along Holland Tract Road, crossing onto the Woodward Island map, to the road's intersection with the 10-foot elevation contour.

(8) Proceed south-southeast in a straight line 4.1 miles to the intersection of Orwood Road and the Mokelumne Aqueduct.

(9) Proceed south-southwest 5.5 miles, crossing onto the Clifton Court Forebay map, to the stream gauging station on Italian Slough, just west of Widdows Island and the shared Contra Costa-San Joaquin County line.

(10) Proceed due west in a straight line to the western shore of Italian Slough, then proceed southwesterly along the shore of Italian Slough to its confluence with Brushy Creek.

(11) Proceed westerly along Brushy Creek, crossing onto the Byron Hot Springs (2018 edition) map and continuing southwesterly along the creek to its intersection with Vasco Road.

(12) Proceed northwest in a straight line 4.3 miles to the intersection of Kellogg Creek and Walnut Boulevard.

(13) Proceed west-southwest in a straight line 2.9 miles, crossing onto the Tassajara (2018 edition) map, to the intersection of Marsh Creek and Miwok Trail.

(14) Proceed northwesterly along Marsh Creek 2.4 miles, crossing onto the Antioch South map, to the creek's intersection with Deer Valley Road.

(15) Proceed northerly along Deer Valley Road 3.1 miles to its intersection with Chadbourne Road.

(16) Proceed northwest in a straight line 0.6 mile to the southwestern terminus of Tour Way.

(17) Proceed northwest in a straight line 3 miles to the intersection of Oil Canyon Trail, Stewartville Trail, and Chadbourne Road.

(18) Proceed northeasterly along the Stewartville Trail 1.9 miles to its intersection with the Contra Loma Trail.

(19) Proceed northwest in a straight line 2.5 miles to the intersection of Somersville Road and Donlan Boulevard.

(20) Proceed west-southwest in a straight line 2.5 miles, crossing onto the Clayton (2018 edition) map, to the intersection of Nortonville Road and Kirker Pass Road.

(21) Proceed southwesterly along Kirker Pass Road approximately 2.5 miles to its intersection with Hess Road.

(22) Proceed southeasterly in a straight line to the 3,849-foot summit of Mt. Diablo.

* * * * *

■ 3. Amend § 9.157 by:

■ a. Removing the word ''and'' at the end of paragraph (b)(46);

■ b. Removing the ''.'' at the end of paragraph (b)(47) and adding a '';'' in its place;

■ c. Adding paragraphs (b)(48) through (b)(58);

■ d. Revising paragraphs (c)(22) through (c)(24);

■ e. Redesignating paragraphs (c)(25) through (c)(44) as paragraphs (c)(40) through (c)(59); and

■ f. Adding new paragraphs (c)(25) through (c)(39).

The additions and revisions read as follows:

**§ 9.157 San Francisco Bay.**

* * * * *

(b) * * *

(48) Clayton, California, scale 1:24,000, 2018;

(49) Antioch South, California, scale 1:24,000, 2018;

(50) Tassajara, California, scale 1:24,000, 2018;

(51) Byron Hot Springs, California, scale 1:24,000, 2018;

(52) Clifton Court Forebay, California, scale 1:24,000, 2018;

(53) Woodward Island, California, scale 1:24,000; 2018;

(54) Bouldin Island, California, scale 1:24,000, 2018;

(55) Jersey Island, California, scale 1:24,000, 2018;

(56) Antioch North, California, scale 1:24,000, 2018;

(57) Honker Bay, California, scale 1:24,000, 2018; and

(58) Vine Hill, California, scale 1:24,000, 2018.

(c) * * *

(22) Then proceed in a northwesterly direction in a straight line to the intersection of Kirker Pass Road and Hess Road on the Clayton (2018 edition) map.

(23) Proceed northeasterly along Kirker Pass Road to its intersection with Nortonville Road.

(24) Proceed east-northeast in a straight line for 2.5 miles, crossing onto the Antioch South map, to the intersection of Somersville Road and Donlan Boulevard.

(25) Proceed southeasterly in a straight line for 2.5 miles to the intersection of the Stewartville Trail and the Contra Loma Trail.

(26) Proceed southwesterly along Stewartville Trail for 1.9 miles to the intersection of Oil Canyon Trail, Stewartville Trail, and Chadbourne Road.

(27) Proceed southeast in a straight line for 3 miles to the southern terminus of Tour Way.

(28) Proceed southeast in a straight line for 0.6 miles to the intersection of Chadbourne Road and Deer Valley Road.

(29) Proceed southerly along Deer Valley Road for 3.1 miles to its intersection with Marsh Creek.

(30) Proceed southeasterly along Marsh Creek for 2.4 miles, crossing onto the Tassajara (2018 edition) map, to the creek's intersection with Miwok Trail.

(31) Proceed north-northeast in a straight line for 2.9 miles, crossing onto the Byron Hot Springs (2018 edition) map, to the intersection of Kellogg Creek and Walnut Boulevard.

(32) Proceed southeast in a straight line for 4.3 miles to the intersection of Brushy Creek and Vasco Road.

(33) Proceed northeasterly along Brushy Creek, crossing onto the Clifton Court Forebay map, to the confluence of Brushy Creek with the western shore of Italian Slough to a point due west of the stream gauging station on Italian Slough, just west of Widdows Island and the shared Contra Costa-San Joaquin County line.

(34) Proceed due east to the stream gauging station, then proceed northeast for 5.5 miles, crossing onto the Woodward Island map, to the intersection of the Mokelumne Aqueduct and Orwood Road.

(35) Proceed north-northwest in a straight line for 4.1 miles to the intersection of Holland Tract Road and the 10-foot elevation contour.

(36) Proceed north for 1.9 miles along Holland Tract Road, crossing onto the Bouldin Island map, and continuing to the northernmost point of Holland Tract Road.

(37) Proceed southeast in a straight line for 2.7 miles, crossing onto the Jersey Island map, to the intersection of Wells Road and Sandmound Road.

(38) Proceed northwest in a straight line for 0.7 mile to the intersection of Bethel Island Road and the shoreline of Dutch Slough Road.

(39) Proceed westerly along the shoreline of Dutch Slough and Big Break, crossing onto the Antioch North map, and continuing westerly along the shoreline of New York Slough, crossing onto the Honker Bay (2018 edition) map, and continuing westerly along the shoreline and onto the Vine Hill (2018 edition) map to the intersection of the shoreline and Interstate 680 at the Benicia-Martinez Bridge.

* * * * *

■ 4. Add § 9.291 to read as follows:

**§ 9.291 Contra Costa.**

(a) *Name.* The name of the viticultural area described in this section is ''Contra Costa''. For purposes of part 4 of this chapter, ''Contra Costa'' is a term of viticultural significance.

(b) *Approved maps.* The 15 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Contra Costa viticultural area are titled:

(1) Antioch North, California, 2018;

(2) Antioch South, California, 2018;

(3) Benicia, California, 2018;

(4) Bouldin Island, California, 2018;

(5) Briones Valley, California, 2018;

(6) Byron Hot Springs, California, 2018;

(7) Clayton, California, 2018;

(8) Clifton Court Forebay, California, 2018;

(9) Jersey Island, California, 2018;

(10) Honker Bay, California, 2018;

(11) Tassajara, California, 2018;

(12) Vine Hill, California, 2018;

(13) Walnut Creek, California, 1995;

(14) Walnut Creek, California, 2018; and

(15) Woodward Island, California, 2018.

(c) *Boundary.* The Contra Costa viticultural area is located in Contra Costa County, California. The boundary of the Contra Costa viticultural area is as described as follows:

(1) The beginning point is on the Bouldin Island map at the northernmost point of Holland Tract Road. From the beginning point, proceed south 1.9 miles along Holland Tract Road, crossing onto the Woodward Island map, to the intersection of the road with the 10-foot elevation contour; then

(2) Proceed south-southeast in a straight line 4.1 miles to the intersection of Orwood Road and the Mokelumne Aqueduct; then

(3) Proceed south-southwest in a straight line 5.5 miles, crossing onto the Clifton Court Forebay map, to the stream gauging station on Italian Slough, just west of the Widdows Island and the shared Contra Costa–San Joaquin County line; then

(4) Proceed due west in a straight line to the western shore of Italian Slough, then proceed southwesterly along the western shore Italian Slough to its confluence with Brushy Creek; then

(5) Proceed westerly along Brushy Creek, crossing onto the Byron Hot Springs map and continuing southwesterly along the creek to its intersection with Vasco Road; then

(6) Proceed northwest in a straight line 4.3 miles to the intersection of Kellogg Creek and Walnut Boulevard; then

(7) Proceed west-southwest in a straight line 2.9 miles, crossing onto the Tassajara map, to the intersection of Marsh Creek and Miwok Trail; then

(8) Proceed northwesterly along Marsh Creek 2.4 miles, crossing onto the Antioch South map, to the creek's intersection with Deer Valley Road; then

(9) Proceed northerly along Deer Valley Road 3.1 miles to its intersection with Chadbourne Road; then

(10) Proceed northwest in a straight line 0.6 mile to the southwestern terminus of Tour Way; then

(11) Proceed northwest in a straight line 3 miles to the intersection of Oil Canyon Trail, Stewartville Trail, and Chadbourne Road; then

(12) Proceed northeasterly along Stewartville Trail 1.9 miles to its intersection with the Contra Loma Trail; then

(13) Proceed northwest in a straight line 2.5 miles to the intersection of Somersville Road and Donlan Boulevard; then

(14) Proceed west-southwest in a straight line 2.5 miles, crossing onto the Clayton map, to the intersection of Nortonville Road and Kirker Pass Road; then

(15) Proceed southwesterly along Kirker Pass Road 5 miles to its intersection with Alberta Way; then

(16) Proceed southwest in a straight line 1.5 miles to the intersection of Buckeye Trail, Blue Oak Trail, and Lime Ridge Trail; then

(17) Proceed south-southeast in a straight line 2.6 miles to the intersection of Arroyo Cerro Del and the 400-foot elevation contour just east of North Gate Road; then

(18) Proceed northwest in a straight line 2.5 miles, crossing onto the Walnut Creek map (2018 edition), to the intersection of Brodia Way and La Casa Via; then

(19) Proceed west-northwest in a straight line, crossing onto the Walnut Creek (1995 edition) map, and continue 3.1 miles on the 1995 edition map to the marked 781-foot peak south of the shared Lafayette-Walnut Creek corporate boundary line and north of an unnamed light-duty road known locally as Peaceful Lane; then

(20) Proceed northwest in a straight line 1.7 miles to the 833-foot peak marked ''Hump 2''; then

(21) Proceed north-northwest 0.5 mile to the water tank (known locally as the Withers Reservoir) at the end of an unnamed light-duty road known locally as Kim Road, in the Cañada del Hambre y Las Bolsas Land Grant; then

(22) Proceed northwest in a straight line 3 miles, crossing onto the Briones Valley map, to the intersection of Alhambra Creek Road and Alhambra Valley Road; then

(23) Proceed northwest in a straight line 4.1 miles, crossing onto the Benicia map, to the intersection of Highway 4 and Cummings Skyway; then

(24) Proceed north-northwest in a straight line 1.8 miles to the intersection of Carquinez Scenic Drive and an unnamed road known locally as Canyon Lake Drive; then

(25) Proceed northeasterly in a straight line 0.6 mile to the marked post office in Port Costa; then

(26) Proceed southeast in a straight line 0.9 mile to the first unnamed road that crosses the railroad tracks and intersects with the shoreline at Little Bull Valley; then

(27) Proceed easterly along the shoreline approximately 38.3 miles, crossing over the Vine Hill, Honker Bay, and Antioch North maps and onto the Jersey Island map to Bethel Island Road; then

(28) Proceed southeast in a straight line 0.7 mile to the intersection of Wells Road and Sandmound Boulevard; then

(29) Proceed northeast in a straight line 2.7 miles, crossing onto the Bouldin Island map and returning to the beginning point.

Signed: March 8, 2024.

**Mary G. Ryan,**

*Administrator.*

Approved: March 8, 2024.

**Aviva R. Aron-Dine,**

*Acting Assistant Secretary for Tax Policy.*

[FR Doc. 2024–05476 Filed 3–14–24; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2023–0904]**

**RIN 1625–AA11**

## Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending and updating its safety zone regulations for annual events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This action is necessary to update the current list of recurring safety zones with revisions, additional events, and removal of events that no longer take place in the Sector Ohio Valley. When these safety zones are enforced, certain restrictions are placed on marine traffic in specified areas.

**DATES:** This rule is effective on March 15, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0904 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 Petty Officer Dalton Johnson, Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5347, email *Dalton.A.Johnson@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

AOR Area of Responsibility
COTP Captain of the Port Sector Ohio Valley
CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background Information and Regulatory History

The Captain of Port Sector Ohio Valley (COTP) is amending 33 CFR 165.801 to update the table of annual fireworks displays and other events in Coast Guard Sector Ohio Valley Area of Responsibility (AOR). These events

include air shows, fireworks displays, and other events requiring a safety zone.

On January 23, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update'' (89 FR 4221). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to those recurring safety zones. During the comment period that ended on February 22, 2024, no comments were received.

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

## 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 Coast Guard is amending and updating the safety zones under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within the Sector Ohio Valley AOR. These events include fireworks displays, air shows, and festivals. The current list in 33 CFR 165.801 requires changes to provide new information on existing safety zones and to include new safety zones expected to recur annually or biannually. Issuing individual regulations for each new safety zone, amendment of existing safety zones creates unnecessary administrative costs and burdens. This rulemaking reduces administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring safety zones. Based on the nature of these events, large numbers of participants and spectators, and event locations, the COTP has determined that the events listed in this rule could pose a risk to participants or waterways users if the normal vessel traffic were to interfere with the events. Possible hazards include risks of injury or death from near or actual contact among participant vessels and spectators or mariners traversing through the regulated area. This purpose of this rule is to ensure the safety of all waterway users, including event participants and spectators, during the scheduled events.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 23, 2024. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule amends and updates part 165 of 33 CFR by revising the current table for Sector Ohio Valley, and by adding three new recurring safety zones and amending two safety zones as described in the NPRM. Vessels intending to transit the designated waterway through the safety zone will only be allowed to transit the area when the COTP, or designated representative, has deemed it safe to do so or at the completion of the event.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule 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 zones. These safety zones are limited in size and duration, and are usually positioned away from high vessel traffic areas. Moreover, the Coast Guard would issue a Broadcast Notices to Mariners, Local Notices to Mariners, and Marine Safety Information Broadcasts to inform the community of these safety zones.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.801, revise and republish table 1 to read as follows:

**§ 165.801 Annual Fireworks displays and other events in the Eighth Coast Guard District recurring safety zones.**

* * * * *

TABLE 1 TO § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES

| Date | Sponsor/name | Sector Ohio Valley location | Safety zone |
|---|---|---|---|
| 1. 3 days—Third or Fourth weekend in April. | Henderson Breakfast Lions Club Tri-Fest. | Henderson, KY | Ohio River, Miles 802.5–805.5 (Kentucky). |
| 2. 2 days—Third Friday and Saturday in April. | Thunder Over Louisville | Louisville, KY | Ohio River, Mile 597.0–604.0 (Kentucky). |
| 3. Multiple days—April through November. | Pittsburgh Pirates Season Fireworks | Pittsburgh, PA | Allegheny River, Miles 0.2–0.9 (Pennsylvania). |
| 4. Multiple days—April through November. | Cincinnati Reds Season Fireworks | Cincinnati, OH | Ohio River, Miles 470.1–470.4; extending 500 ft. from the State of Ohio shoreline (Ohio). |
| 5. Multiple days—April through November. | Pittsburgh Riverhounds Season Fireworks. | Pittsburgh, PA | Monongahela River, Miles 0.22–0.77 (Pennsylvania). |
| 6. 1 day—First week in May | Belterra Park Gaming Fireworks | Cincinnati, OH | Ohio River, Miles 460.0–462.0 (Ohio). |
| 7. 1 day—Recurring one weekend in May and June, and on July 4th. | Live on the Levee Fireworks (Previously Live on the Levee Memorial Day fireworks). | Charleston, WV | Kanawha River, Mile 58.1–59.1 (West Virginia). |
| 8. 1 day—Saturday before Memorial Day. | Venture Outdoors Festival | Pittsburgh, PA | Allegheny River, Miles 0.0–0.25; Monongahela River, Miles 0.0–0.25 (Pennsylvania). |
| 9. 1 day—Saturday before Memorial Day. | Ironton-Lawrence County Memorial Day Fireworks. | Ironton, OH | Ohio River, Mile 328 (West Virginia). |
| 10. 1 day—First Sunday in June | West Virginia Symphony Orchestra/Symphony Sunday. | Charleston, WV | Kanawha River, Miles 59.5–60.5 (West Virginia). |
| 11. 3 days in June | CMA Festival | Nashville, TN | Cumberland River, Miles 190.7–191.1 extending 100 feet from the left descending bank (Tennessee). |
| 12. 1 day in June | Cumberland River Compact/Nashville Splash Bash. | Nashville, TN | Cumberland River, Miles 189.7–192.1 (Tennessee). |
| 13. 2 days—A weekend in June | Rice's Landing Riverfest | Rice's Landing, PA | Monongahela River, Miles 68.0–68.8 (Pennsylvania). |
| 14. 2 days—Second Friday and Saturday in June. | City of Newport, KY/Italianfest | Newport, KY | Ohio River, Miles 468.6–471.0 (Kentucky and Ohio). |
| 15. 1 day in June | Friends of the Festival, Inc./Riverbend Festival Fireworks. | Chattanooga, TN | Tennessee River, Miles 462.7–465.2 (Tennessee). |
| 16. 1 day in June | Junteenth/Black Complex of Louisville. | Louisville, KY | Ohio River, Miles 603.5–604.5. |
| 17. 1 day in June | CMA Festival Fireworks | Nashville, TN | Cumberland River 190–191 (Tennessee). |

TABLE 1 TO § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

| Date | Sponsor/name | Sector Ohio Valley location | Safety zone |
|---|---|---|---|
| 18. 1 day—Second or Third week of June. | TriState Pottery Festival Fireworks | East Liverpool, OH | Ohio River, Miles 42.5–45.0 (Ohio). |
| 19. 3 days—One of the last three weekends in June. | Hadi Shrine/Evansville Freedom Festival Air Show. | Evansville, IN | Ohio River, Miles 790.0–796.0 (Indiana). |
| 20. One weekend in June | Alzheimer's Water Lantern Festival/IC Care. | Wheeling, WV | Ohio River Mile 90.3–91.8. |
| 21. 1 day—Last weekend in June or first weekend in July. | Riverview Park Independence Festival. | Louisville, KY | Ohio River, Miles 617.5–620.5 (Kentucky). |
| 22. 1 day—Last weekend in June or First weekend in July. | City of Point Pleasant/Point Pleasant Sternwheel Fireworks. | Point Pleasant, WV | Ohio River, Miles 265.2–266.2, Kanawha River Miles 0.0–0.5 (West Virginia). |
| 23. 1 day—Last weekend in June or first weekend in July. | City of Aurora/Aurora Riverfront Beautification-Red, White, and Boom. | Aurora, IN | Ohio River, Mile 496.7; 1,400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky). |
| 24. 1 day—Last week of June or first week of July. | PUSH Beaver County/Beaver County Boom. | Beaver, PA | Ohio River, Miles 25.2–25.6 (Pennsylvania). |
| 25. 1 day—Last weekend in June or first week in July. | Evansville Freedom Celebration/4th of July Fireworks. | Evansville, IN | Ohio River, Miles 790.0–796.0 (Indiana). |
| 26. 1 day—Last week in June or First week in July. | Rising Sun Fireworks | Rising Sun, IN | Ohio River, Miles 506.0–507.0 (Indiana). |
| 27. 1 day—Weekend before the 4th of July. | Kentucky Dam Marine/Kentucky Dam Marina Fireworks. | Gilbertsville, KY | 350 foot radius, from the fireworks launch site, on the entrance jetties at Kentucky Dam Marina, on the Tennessee River at Mile Marker 23 (Kentucky). |
| 28. 1 day—First or Second weekend in July. | Rivesville Firework Show | Rivesville, WV | Monongahela River, Miles 122–124 (West Virginia). |
| 29. 1 day in July | Clarksville Independence Day Fireworks. | Ashland City, TN | Cumberland River, Miles 127–129 (Tennessee). |
| 30. 1 day in July | Gallatin Marina Fireworks | Gallatin, TN | Cumberland River, Miles 236.5–237.5 (Tennessee). |
| 31. 1 day in July | Town of Cumberland City/Lighting up the Cumberlands. | Cumberland City, TN | Cumberland River, Miles 103.0–105.5 (Tennessee). |
| 32. 1 day in July | Chattanooga Presents/Pops on the River. | Chattanooga, TN | Tennessee River, Miles 462.7–465.2 (Tennessee). |
| 33. 1 day in July | Randy Boyd/Independence Celebration Fireworks Display. | Knoxville, TN | Tennessee River, Miles 625.0–628.0 (Tennessee). |
| 34. 1 day—July 3rd | Moors Resort and Marina/Kentucky Lake Big Bang. | Gilbertsville, KY | 600 foot radius, from the fireworks launch site, on the entrance jetty to Moors Resort and Marina, on the Tennessee River at mile marker 30.5. (Kentucky). |
| 35. 1 day—3rd or 4th of July | City of Paducah, KY | Paducah, KY | Ohio River, Miles 934.0–936.0; Tennessee River, Miles 0.0–1.0 (Kentucky). |
| 36. 1 day—3rd or 4th of July | City of Hickman, KY/Town Of Hickman Fireworks. | Hickman, KY | 700 foot radius from GPS coordinate 36°34.5035 N, 089°11.919 W, in Hickman Harbor located at mile marker 921.5 on the Lower Mississippi River (Kentucky). |
| 37. 1 day—July 4th | City of Knoxville/Knoxville Festival on the 4th. | Knoxville, TN | Tennessee River, Miles 646.3–648.7 (Tennessee). |
| 38. 1 day in July | Nashville NCVC/Independence Celebration. | Nashville, TN | Cumberland River, Miles 189.7–192.3 (Tennessee). |
| 39. 1 day in July | Shoals Radio Group/Spirit of Freedom Fireworks. | Florence, AL | Tennessee River, Miles 254.5–257.4 (Alabama). |
| 40. 1 day—4th of July (Rain date—July 5th). | Monongahela Area Chamber of Commerce/Monongahela 4th of July Celebration. | Monongahela, PA | Monongahela River, Miles 032.0–033.0 (Pennsylvania). |
| 41. 1 day—July 4th | Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks. | Newport, KY | Ohio River, Miles 469.6–470.2 (Kentucky and Ohio). |
| 42. 1 day—July 4th | Wellsburg 4th of July Committee/Wellsburg 4th of July Freedom Celebration. | Wellsburg, WV | Ohio River, Miles 73.5–74.5 (West Virginia). |
| 43. 1 day—week of July 4th | Wheeling Symphony fireworks | Wheeling, WV | Ohio River, Miles 90–92 (West Virginia). |
| 44. 1 day—First week or weekend in July. | Summer Motions Inc./Summer Motion. | Ashland, KY | Ohio River, Miles 322.1–323.1 (Kentucky). |

TABLE 1 TO § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

| Date | Sponsor/name | Sector Ohio Valley location | Safety zone |
| --- | --- | --- | --- |
| 45. 1 day—week of July 4th | Chester Fireworks | Chester, WV | Ohio River mile 42.0–44.0 (West Virginia). |
| 46. 1 day—First week of July | Toronto 4th of July Fireworks | Toronto, OH | Ohio River, Mile 58.2–58.8 (Ohio). |
| 47. 1 day—First week of July | Cincinnati Symphony Orchestra | Cincinnati, OH | Ohio River, Miles 460.0–462.0 (Ohio). |
| 48. 1 day—First week or weekend in July. | Gallia County Chamber of Commerce/Gallipolis River Recreation Festival. | Gallipolis, OH | Ohio River, Miles 269.5–270.5 (Ohio). |
| 49. 1 day—First week or weekend in July. | Kindred Communications/Dawg Dazzle. | Huntington, WV | Ohio River, Miles 307.8–308.8 (West Virginia). |
| 50. 1 day—First week or weekend in July. | Greenup City | Greenup, KY | Ohio River, Miles 335.2–336.2 (Kentucky). |
| 51. 1day—First week or weekend in July. | Middleport Community Association | Middleport, OH | Ohio River, Miles 251.5–252.5 (Ohio). |
| 52. 1 day—First week or weekend in July. | People for the Point Party in the Park. | South Point, OH | Ohio River, Miles 317–318 (Ohio). |
| 53. 1 day—One of the first two weekends in July. | City of Bellevue, KY/Bellevue Beach Park Concert Fireworks. | Bellevue, KY | Ohio River, Miles 468.2–469.2 (Kentucky & Ohio). |
| 54. 1 day—First Week of July | Pittsburgh 4th of July Celebration | Pittsburgh, PA | Ohio River, Miles 0.0–0.5, Allegheny River, Miles 0.0–0.5, and Monongahela River, Miles 0.0–0.5 (Pennsylvania). |
| 55. 1 day—First week or weekend in July. | City of Charleston/City of Charleston Independence Day Celebration. | Charleston, WV | Kanawha River, Miles 58.1–59.1 (West Virginia). |
| 56. 1 day—First week or weekend in July. | Portsmouth River Days | Portsmouth, OH | Ohio River, Miles 355.5–357.0 (Ohio). |
| 57. 1 day—During the first week of July. | Louisville Bats Baseball Club/Louisville Bats Firework Show. | Louisville, KY | Ohio River, Miles 602.0–605.0 (Kentucky). |
| 58. 1 day—During the first week of July. | Waterfront Independence Festival/Louisville Orchestra Waterfront 4th. | Louisville, KY | Ohio River, Miles 602.0–605.0 (Kentucky). |
| 59. 1 day—During the first week of July. | Celebration of the American Spirit Fireworks/All American 4th of July. | Owensboro, KY | Ohio River, Miles 754.0–760.0 (Kentucky). |
| 60. 1 day—During the first week of July. | Riverfront Independence Festival Fireworks. | New Albany, IN | Ohio River, Miles 606.5–609.6 (Indiana). |
| 61. 1 day in July | Grand Harbor Marina/Grand Harbor Marina July 4th Celebration. | Counce, TN | Tennessee-Tombigbee Waterway, Miles 448.5–451.0 (Tennessee). |
| 62. 1 night in July | Steubenville fireworks | Steubenville, OH | Ohio River Mile 67.5–68.5. |
| 63. 1 day—During the first two weeks of July. | City of Maysville Fireworks | Maysville, KY | Ohio River, Miles 408–409 (Kentucky). |
| 64. 1 day—One of the first two weekends in July. | Madison Regatta, Inc./Madison Regatta. | Madison, IN | Ohio River, Miles 554.0–561.0 (Indiana). |
| 65. 1 day—Third Saturday in July | Pittsburgh Irish Rowing Club/St. Brendan's Cup Currach Regatta. | Pittsburgh, PA | Ohio River, Miles 7.0–9.0 (Pennsylvania). |
| 66. 1 day—Third or fourth week in July. | Upper Ohio Valley Italian Heritage Festival/Upper Ohio Valley Italian Heritage Festival Fireworks. | Wheeling, WV | Ohio River, Miles 90.0–90.5 (West Virginia). |
| 67. 1 day—Saturday Third or Fourth full week of July (Rain date—following Sunday). | Oakmont Yacht Club/Oakmont Yacht Club Fireworks. | Oakmont, PA | Allegheny River, Miles 12.0–12.5 (Pennsylvania). |
| 68. 2 days—One weekend in July | Marietta Riverfront Roar Fireworks | Marietta, OH | Ohio River, Miles 171.6–172.6 (Ohio). |
| 69. 1 day—Last weekend in July or first weekend in August. | Fort Armstrong Folk Music Festival | Kittanning, PA | Allegheny River, Mile 45.1–45.5 (Pennsylvania). |
| 70. 1 day in August | Music City Grand Prix Fireworks | Nashville, TN | Cumberland River 190–191 (Tennessee). |
| 71. 1 day in August | Wheeling Water Lantern Tribute | Wheeling, WV | Ohio River, Miles 90–92 (West Virginia). |
| 72. 1 day in August | Nashville ASAE Fireworks | Nashville, TN | Cumberland River 190–191 (Tennessee). |
| 73. 3 Days in August | Music City Grand Prix | Nashville, TN | Cumberland River 190–191 (Tennessee). |
| 74. 1 day—First week in August | Gliers Goetta Fest LLC | Newport, KY | Ohio River, Miles 469.0–471.0. |
| 75. 1 day—First or second week of August. | Bellaire All-American Days | Bellaire, OH | Ohio River, Miles 93.5–94.5 (Ohio). |
| 76. 1 day—Second full week of August. | PA FOB Fireworks Display | Pittsburgh, PA | Allegheny River, Miles 0.8–1.0 (Pennsylvania). |
| 77. 1 day—Second Saturday in August. | Guyasuta Days Festival/Borough of Sharpsburg. | Pittsburgh, PA | Allegheny River, Miles 005.5–006.0 (Pennsylvania). |
| 78. 1 day—In the Month of August | Pittsburgh Foundation/Bob O'Connor Cookie Cruise. | Pittsburgh, PA | Ohio River, Mile 0.0–0.5 (Pennsylvania). |

TABLE 1 TO § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

| Date | Sponsor/name | Sector Ohio Valley location | Safety zone |
| --- | --- | --- | --- |
| 79. 1 day—Third week of August | Beaver River Regatta Fireworks | Beaver, PA | Ohio River, Miles 25.2–25.8 (Pennsylvania). |
| 80. 1 day—One weekend in August | Parkersburg Homecoming Festival-Fireworks. | Parkersburg, WV | Ohio River, Miles 183.5–185.5 (West Virginia). |
| 81. 1 day—One weekend in August | Ravenswood River Festival | Ravenswood, WV | Ohio River, Miles 220–221 (West Virginia). |
| 82. 1 day—The second or third weekend of August. | Green Turtle Bay Resort/Grand Rivers Marina Day. | Grand Rivers, KY | 420 foot radius, from the fireworks launch site, at the entrance to Green Turtle Bay Resort, on the Cumberland River at mile marker 31.5. (Kentucky). |
| 83. 1 day—last 2 weekends in August/first week of September. | Wheeling Dragon Boat Race | Wheeling, WV | Ohio River, Miles 90.4–91.5 (West Virginia). |
| 84. 1 day—One weekend in the month of August or September. | Owensboro Fireworks and Bridge Lights show. | Owensboro, KY | Ohio River, Miles 756–757 (Kentucky). |
| 85. Sunday, Monday, or Thursday from August through February. | Pittsburgh Steelers Fireworks | Pittsburgh, PA | Allegheny River, Miles 0.0–0.25, Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1. (Pennsylvania). |
| 86. 1 day—One weekend before Labor Day. | Riverfest/Riverfest Inc | Nitro, WV | Kanawha River, Miles 43.1–44.2 (West Virginia). |
| 87. 1 day—The weekend of Labor Day. | Newburgh Fireworks Display | Newburgh, IN | Ohio River, Miles 777.3–778.3 (Indiana). |
| 88. 1 day—Labor day Weekend | Catlettsburg Labor Day Fireworks | Catlettsburg, KY | Ohio River (Mile 317–317.5) Kentucky. |
| 89. 2 days—Sunday before Labor Day and Labor Day. | Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest. | Cincinnati, OH | Ohio River, Miles 469.2–470.5 (Kentucky and Ohio) and Licking River, Miles 0.0–3.0 (Kentucky). |
| 90. 1 day in September | Nashville Symphony/Concert Fireworks. | Nashville, TN | Cumberland River, Miles 190.1–192.3 (Tennessee). |
| 91. 1 day—Second weekend in September. | City of Clarksville/Clarksville Riverfest. | Clarksville, TN | Cumberland River, Miles 124.5–127.0 (Tennessee). |
| 92. 3 days—Second or third week in September. | Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival. | Wheeling, WV | Ohio River, Miles 90.2–90.7 (West Virginia). |
| 93. 1 day—One weekend in September. | Ohio River Sternwheel Festival Committee fireworks. | Marietta, OH | Ohio River, Miles 171.5–172.5 (Ohio). |
| 94. 1 day—One weekend in September. | Tribute to the River | Point Pleasant, WV | Ohio River, Miles 264.6–265.6 (West Virginia). |
| 95. 1 day—One weekend in September. | Aurora Fireworks | Aurora, IN | Ohio River, Mile 496.3–497.3 (Ohio). |
| 96. 1 day—Last two weekends in September. | Cabana on the River | Cincinnati, OH | Ohio River, Mile 483.2–484.2 (Ohio). |
| 97. Multiple days—September through January. | University of Pittsburgh Athletic Department/University of Pittsburgh Fireworks. | Pittsburgh, PA | Ohio River, Miles 0.0–0.1, Monongahela River, Miles 0.0–0.1, Allegheny River, Miles 0.0–0.25 (Pennsylvania). |
| 98. 1 day—First three weeks of October. | Leukemia & Lymphoma Society/Light the Night. | Pittsburgh, PA | Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania). |
| 99. 1 day in October | Leukemia and Lymphoma Society/Light the Night Walk Fireworks. | Nashville, TN | Cumberland River, Miles 189.7–192.1 (Tennessee). |
| 100. 1 day—First two weeks in October. | Yeatman's Fireworks | Cincinnati, OH | Ohio River, Miles 469.0–470.5 (Ohio). |
| 101. 1 day—One weekend in October | West Virginia Motor Car Festival | Charleston, WV | Kanawha River, Miles 58–59 (West Virginia). |
| 102. 2 days—One of the last three weekends in October. | Monster Pumpkin Festival | Pittsburgh, PA | Allegheny River, Mile 0.0–0.25 (Pennsylvania). |
| 103. 1 day—Within two weeks of Thanksgiving. | Pittsburgh Downtown Partnership/Light Up Night. | Pittsburgh, PA | Allegheny River, Miles 0.0–1.0 (Pennsylvania). |
| 104. 1 day—Friday before Thanksgiving. | Kittanning Light Up Night Firework Display. | Kittanning, PA | Allegheny River, Miles 44.5–45.5 (Pennsylvania). |
| 105. 1 day—within 2 weeks of Thanksgiving. | Santa Spectacular/Light up Night | Pittsburgh, PA | Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania). |
| 106. 1 day—Friday before Thanksgiving. | Monongahela Holiday Show | Monongahela, PA | Ohio River, Miles 31.5–32.5 (Pennsylvania). |

TABLE 1 TO § 165.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING SAFETY ZONES—Continued

| Date | Sponsor/name | Sector Ohio Valley location | Safety zone |
|---|---|---|---|
| 107. 1 day in November | Friends of the Festival/Cheer at the Pier. | Chattanooga, TN | Tennessee River, Miles 462.7–465.2 (Tennessee). |

* * * * *

Dated: March 11, 2024.

**H.R. Mattern,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2024–05586 Filed 3–14–24; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 535

**[NHTSA–2020–0079]**

**RIN 2127–AM28**

### Improvements for Heavy-Duty Engine and Vehicle Fuel Efficiency Test Procedures, and Other Technical Amendments

**AGENCY:** National Highway Traffic Safety Administration.

**ACTION:** Final rule.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) is finalizing minor technical amendments to the test procedures for heavy-duty engines and vehicles to improve accuracy and reduce testing burden. These amendments affect the certification procedures for fuel efficiency standards and related requirements. These amendments increase compliance flexibility, harmonize with other requirements, add clarity, correct errors, and streamline the regulations. Given the nature of these changes, NHTSA does not expect either significant environmental impacts or significant economic impacts for any sector.

**DATES:** This final rule is effective on May 14, 2024.

**ADDRESSES:** NHTSA has established a docket for this action under Docket ID: NHTSA–2020–0079. For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov,* and/or: Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The DOT Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Standard Time (EST), Monday through Friday, except Federal holidays. Please call ahead if you plan to drop off or pick up a document to ensure someone is available to assist you. The Docket Management Facility can be reached at (202) 366–9826 or (202) 366–9317 to arrange a drop off/pick up.

**FOR FURTHER INFORMATION CONTACT:**
Seiar Zia, Deputy Division Chief, Fuel Economy Division, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; email: *seiar.zia@dot.gov.*

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## I. General Information

### *A. Does this action apply to me?*

This action will affect companies that manufacture, sell, or import into the United States new heavy-duty engines and new Class 2b through 8 trucks, including combination tractors, buses, vocational vehicles including municipal, commercial, recreational vehicles, and ¾-ton and 1-ton pickup trucks and vans. The heavy-duty category incorporates all motor vehicles with a gross vehicle weight rating of 8,501 lbs. or greater, and the engines that power them, except for medium-duty passenger vehicles covered by the corporate average fuel economy standards and greenhouse gas standards issued for light-duty vehicles. The regulations for the Medium- and Heavy-Duty Vehicle Fuel Efficiency Program are found at 49 CFR part 535.

Regulated categories and entities include the following:

| Category | NAICS codes [1] | Examples of potentially regulated entities |
|---|---|---|
| Industry | 333618, 336111, 336112, 336120, 336211, 336212, 336611, 336911, 336999. | Motor vehicle manufacturers and engine manufacturers. |

[1] North American Industry Classification System (NAICS).

| Category | NAICS codes [1] | Examples of potentially regulated entities |
|---|---|---|
| Industry | 811111, 811112, 811198, 423110 | Commercial importers of vehicles and vehicle components. |
| Industry | 335312, 811198 | Alternative fuel vehicle converters. |
| Industry | 326199, 332431 | Portable fuel container manufacturers. |

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*B. What action is the Agency taking?*

This action finalizes amendments to the regulations that implement NHTSA's fuel efficiency standards for medium-duty and heavy-duty engines and vehicles. These amendments are technical in nature and include corrections and clarifications to a variety of existing regulatory provisions to improve consistency with related EPA standards and with NHTSA's original intent for those provisions. In other words, this final rule comprises a variety of small changes for multiple types of engines and vehicles.

These amendments parallel similar ones in a rulemaking conducted by the EPA under RIN 2060–AU62.[2] These technical amendments are intended to maintain alignment between EPA's Medium and Heavy-Duty Vehicle Greenhouse Gas Emissions and NHTSA's Fuel Efficiency Standards. The technical amendments in this final rule are necessary to align with the technical amendments finalized by EPA under the parallel rulemaking referenced in this paragraph.

Most of the amendments being finalized in this rule will modify existing test procedures for medium- and heavy-duty engines and vehicles. These test procedure changes will improve accuracy, and in some cases, reduce test burden.

Other amendments will update NHTSA's regulations to enhance the implementation of existing fuel efficiency standards. For example, some changes will reduce the likelihood that manufacturers will need to conduct unique certification testing for compliance with Canadian and CARB standards, in addition to NHTSA's standards. Some amendments will make it easier for manufacturers to more fully account for the fuel efficiency benefits of advanced fuel efficiency improving technology, which could provide them the opportunity to generate additional fuel consumption improvement values for compliance. These amendments are described in II.

Additionally, as a matter of housekeeping, NHTSA is removing portions of its regulations that were vacated by the United States Court of Appeals for the District of Columbia Circuit. In November 2021, that Court ''vacate[d] all portions of the [2016 joint NHTSA and EPA] rule that apply to trailers.'' *Truck Trailer Mfrs. Ass'n, Inc.* v. *EPA,* 17 F.4th 1198, 1200 (D.C. Cir. 2021). The underlying statute authorizes NHTSA to examine the fuel efficiency of and prescribe fuel economy standards for ''commercial medium-duty [and/or] heavy-duty on-highway vehicles.'' 49 U.S.C. 32902(b)(1)(C); 49 U.S.C. 32902(k)(2). The Court reasoned that trailers do not qualify as ''vehicles'' when that term is used in the fuel economy context because trailers are motorless and use no fuel. *Truck Trailer Mfrs. Ass'n, Inc.,* 17 F.4th at 1200, 1204–08. Accordingly, the Court held that NHTSA does not have the authority to regulate the fuel economy of trailers. *Id.* at 1208.[3] As a result, NHTSA is removing the vacated trailer provisions from its regulations.

NHTSA, is however, keeping its definition of standard trailer as well as other specific types of trailers in 49 CFR 535.4 to assist manufacturers in determining tractor performance in the Greenhouse Gas Emissions Model (GEM). In October 2016, NHTSA and EPA issued its Phase 2 Heavy-Duty (HD) National Program final rule that increased efficiency standards beginning in model year (MY) 2021.[4] As part of the 2016 rulemaking, NHTSA and EPA adopted provisions such that tractor performance in GEM is determined by assuming the tractor is pulling a ''standard'' trailer. The specific characteristics of a standard trailer are dependent upon the type of tractor. 40 CFR 1037.501(g) provides the specific criteria a standard trailer must meet for specific types of trailers. In addition to measurement criteria, some standard trailers must be of a specific type (*e.g.,* tank trailer, flatbed trailer). Therefore, while NHTSA is removing the requirements for trailers, NHTSA is keeping its definition of standard trailer as well as other specific types of trailers in 49 CFR 535.4 to assist manufacturers in determining tractor performance in GEM.

*C. What are the incremental costs and benefits of this action?*

This action is limited in scope and is not intended to include amendments that will have significant economic or environmental impacts. NHTSA has therefore not estimated the potential costs or benefits of this final rule.

## II. Medium and Heavy-Duty Fuel Efficiency Program Technical Amendments

*A. Overview of the Medium and Heavy-Duty Fuel Efficiency Program*

In September 2011, NHTSA and EPA finalized Phase 1 of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles.[5] The Phase 1 program covered new commercial heavy-duty vehicles and work trucks manufactured in model years 2014 through 2020, with unique standards for combination tractors, heavy-duty pickup trucks and vans, and vocational vehicles, as well as separate standards for engines in tractors and vocational vehicles. NHTSA and EPA finalized Phase 2 of the standards in October 2016.[6] In addition to more stringent standards, the Phase 2 program also incorporated enhanced test procedures that (among other things) allow individual drivetrain and powertrain performance to be reflected in the vehicle certification process; and included an expanded and improved compliance simulation model.

Since the promulgation of the Phase 2 regulations, manufacturers have been revising their internal test procedures for compliance with the new

[2] NPRM published on May 12, 2020 (85 FR 28140); final rule published on June 29, 2021 (86 FR 34308), as corrected by notices published on September 23, 2021 (86 FR 52833) and October 26, 2022 (87 FR 64864).

[3] For similar reasons, the Court also held that the statute authorizing EPA to regulate the emissions of ''motor vehicles'' does not encompass trailers. *Id.* at 1200–03. The Court affirmed, however, that both agencies still ''can regulate *tractors* based on the *trailers* they pull.'' *Id.* at 1208. Moreover, NHTSA is still authorized to regulate trailers in other contexts, such as under 49 U.S.C. chapter 301. *See* 49 U.S.C. 30102(a)(7) (defining ''motor vehicle'' to include ''a vehicle . . . drawn by mechanical power''); *Truck Trailer Mfrs. Ass'n, Inc.,* 17 F.4th at 1207 (''A trailer is 'drawn by mechanical power.' '').

[4] 81 FR 73478, October 25, 2016.

[5] 76 FR 57106, September 15, 2011.

[6] 81 FR 73478, October 25, 2016.

requirements that began for model year 2021. While doing so, they have made the agencies aware of several areas in which the test procedure regulations could be improved (in terms of overall accuracy, repeatability, and clarity) without changing the effective stringency of the standards.

In its May 12, 2020 NPRM, EPA proposed numerous changes to the test procedure regulations to address manufacturers' concerns in addition to other issues it had identified.[7] EPA sought comment on those changes and issued a final rule on June 29, 2021 responding to the comments and adjusting the regulatory changes as appropriate.[8] After carefully reviewing all technical amendments in the EPA proposal, public comments to EPA's proposal, and the technical amendments that EPA finalized, NHTSA published a NPRM proposing technical amendments to its regulations that parallel the technical amendments that EPA has finalized.[9] After providing opportunity for public comment, NHTSA is now finalizing its proposed technical amendments. NHTSA's regulatory changes described below consist primarily of references and definitions contained in NHTSA regulations which were impacted by the technical amendments finalized by the EPA. This final rule also includes various minor editorial changes to NHTSA's regulations that simply correct typographical/formatting errors or revise NHTSA's regulatory text to improve clarity or to update references to EPA regulations that have changed as a result of the EPA technical amendments.

*B. Public Participation Opportunities and Summary of Comments*

NHTSA published the NPRM on September 13, 2022, and provided a 60-day comment period. The agency left the docket open with the intention to consider late comments to the extent practicable. NHTSA's docket received two comments from individual members of the public [10] [11] and one comment from a stakeholder organization,[12] for an overall total of three comment submissions. The two comments from members of the public were outside the scope of the proposal.

The stakeholder organization, Allison Transmission (Allison), commented on the current version of the Greenhouse Gas Emissions Model (GEM). Allison commented that ''while the current version of GEM offers adequate modeling of emissions in vehicles, Allison believes that some future changes to GEM could prove to be beneficial in improving the overall accuracy of the model.'' Allison then recommended five changes to GEM that it believes ''would promote further adoption of current vehicle technologies and strategies that improve fuel economy (FE) . . . as well as continue to enhance the accuracy of the modeled vs actual FE performance.''

NHTSA appreciates the comment from Allison. However, changes to the GEM are beyond the scope of this rulemaking. Although NHTSA relies on outputs from GEM to generate emissions and fuel consumption performance results and allows manufacturers to use GEM for compliance purposes, GEM was developed by EPA, who continues to maintain and update it. Accordingly, while NHTSA provides input to EPA regarding GEM and conducts its own analysis when deciding the appropriateness of using GEM in its fuel efficiency program, comments requesting changes to GEM are more appropriately addressed to EPA.

In conjunction with its final rule issued on June 29, 2021, EPA issued a notice of proposed rulemaking (NPRM) proposing further revisions to GEM.[13] In the NPRM, EPA proposed to revise GEM after consideration of comments solicited and received on its technical amendments NPRM. EPA issued a final rule on July 28, 2022 (87 FR 45257) that included corrections, clarifications, additional flexibilities, and adjustment factors to improve the GEM compliance tool.[14]

While none of the comments NHTSA received were within the scope of the proposal, the agency appreciates the information and opinions provided.

*C. Overview of the Final Rule*

NHTSA is largely finalizing the requirements proposed in the NPRM. Although NHTSA is not making any changes based on the comments received, NHTSA is making minor changes to better align NHTSA with the changes EPA finalized regarding updates to the GEM as well as other minor technical amendments. The changes NHTSA is finalizing are described in more detail below.

*D. Authority Citation for Part 535*

NHTSA is amending the citation for part 535 to remove reference to 49 U.S.C. 30101 because the provision does not pertain to NHTSA's authority to establish a fuel efficiency program for medium- and heavy-duty vehicles and engines.

*E. 49 CFR 535.1 Scope*

NHTSA is amending § 535.1 by removing the reference to trailers from the scope section of MDHD Fuel Efficiency Program regulation, consistent with the 2021 D.C. Circuit decision discussed above.

*F. 49 CFR 535.3 Applicability*

1. Section 535.3(a) Enforcement Action Related to Compliance With NHTSA Standards

While NHTSA proposed amending § 535.3(a) to clarify the applicability and compliance provisions of its MDHD Fuel Efficiency Program, NHTSA no longer believes the proposed changes are appropriate. Accordingly, NHTSA is not finalizing any changes to § 535.3(a).

2. Section 535.3(c) Applicable Vehicle and Engine Manufacturers

NHTSA is revising § 535.3(c) by removing an outdated reference to 40 CFR part 86 and adding the specific subpart references for 40 CFR parts 1036 and 1037, such that the regulation will now reference 40 CFR part 1036, subpart C and 40 CFR part 1037, subpart C.

3. Section 535.3(d)(5) Exclusion of Heavy-Duty Trailers

NHTSA is removing paragraph (d)(5) from § 535.3, consistent with the 2021 D.C. Circuit decision discussed above, and reserving it for future use.

4. Section 535.3(e)(1) Off-Road Vocational Vehicle Exemption

NHTSA is revising § 535.3(e)(1) by removing details regarding exemptions and just referencing NHTSA's provision at § 535.5(b)(9) that provides complete details about off-road exemptions. This change is intended to reduce confusion by providing details in only one location in NHTSA's regulations. Although NHTSA proposed adding additional details to paragraph (e)(1) to

[7] 85 FR 28140.

[8] 86 FR 34308, as corrected by documents published on September 23, 2021 (86 FR 52833) and October 26, 2022 (87 FR 64864).

[9] 87 FR 56156, September 13, 2022.

[10] Docket ID: NHTSA–2020–0079–0002 commenter recommended stop engine testing and allowing unrestricted engines to be produced for all diesel vehicles.

[11] Docket ID: NHTSA–2020–0079–0004 commenter recommended including ''off-road'' vehicles in these regulations and reduce the emissions of on-road vehicles.

[12] Docket ID: NHTSA–2020–0079–003 Allison Transmission commented on the current version of the Greenhouse Gas Emissions Model and recommended five future changes to it.

[13] 86 FR 34189.

[14] Additional information can be found on EPA's website. ''Greenhouse Gas Emissions Model (GEM) for Medium- and Heavy-Duty Vehicle Compliance.'' (n.d.). *https://www.epa.gov/regulations-emissions-vehicles-and-engines/greenhouse-gas-emissions-model-gem-medium-and-heavy-duty.* Accessed July 2, 2023.

better align with EPA's provision, NHTSA now believes those details would be more appropriately placed in § 535.5(b)(9). As discussed below, NHTSA is finalizing a technical amendment to add language to § 535.5(b)(9) that allows vocational vehicles with a date of manufacture before January 1, 2021, to automatically qualify for an exemption under § 535.5(b)(9) if the tires installed on the vehicle have a maximum speed rating at or below 55 miles per hour. This new provision, found at 49 CFR 535.5(b)(9)(i), reflects the intention of the NPRM and achieves consistency with 40 CFR 1037.150(h).

5. Section 535.3(e)(2)(ii)(A) and (B) Early Certification for Small Manufacturers

In the NPRM, NHTSA proposed adding paragraphs (A) and (B) to § 535.3(e)(2)(ii) to discuss two flexibilities to NHTSA's compliance provisions for small manufacturers. While, NHTSA is not finalizing the exact language proposed, NHTSA is finalizing the substance of the proposed change. Vehicle manufacturers that qualify as small businesses are exempt from the Phase 1 standards but must meet the Phase 2 standards beginning January 1, 2022. However, some vehicle families have been certified voluntarily to Phase 1 standards by small manufacturers. To encourage more voluntary early certification to Phase 1 standards, EPA finalized a new interim provision in 40 CFR 1037.150(c)(4) for small manufacturers that certify their entire U.S.-directed production volume to the Phase 1 standards for calendar year 2021 (*see* 86 FR 34337). These small manufacturers will be allowed to certify to the Phase 1 standards for model year 2022, instead of the otherwise applicable Phase 2 standards. The agencies believe that early compliance with the Phase 1 standards should more than offset any reduction in benefits that will otherwise be achieved from meeting Phase 2 standards starting January 1, 2022.[15] NHTSA is finalizing this change at § 535.3(e)(2)(ii)(B) and has shifted some existing language from § 535.3(e)(2)(ii) into a new subparagraph (A).

NHTSA also proposed allowing Phase 1 compliance credits that small manufacturers generate from model years 2018 through 2022 for vocational vehicles to be used through model year 2027. In the NPRM, NHTSA cited EPA's rationale for making its corresponding change. In its final rule, EPA stated that the agencies believe that the limit on credit life can be problematic for small manufacturers because their limited product lines provide them with less flexibility when averaging their fleets. EPA also stated that the agencies believe the longer credit life will provide small manufacturers with additional flexibility to ensure all their products are fully compliant by the time the Phase 2 standards are fully phased-in for model year 2027. NHTSA continues to believe that the rationale for these changes is valid. However, the scope of the change is smaller than NHTSA recognized when proposing the additional flexibility for small manufacturers. NHTSA's rationale in adopting EPA's reasoning was predicated on an incorrect understanding of the regulation. In proposing the technical amendment, NHTSA believed that all credit carry forwards for vocational vehicles between Phase 1 and Phase 2 were limited by the five-year credit life. This is incorrect. Under the existing regulations, fuel consumption credits a manufacturer generates for light and medium heavy-duty vocational vehicles in model years 2018 through 2021 may be used through model year 2027, instead of being limited to a five-year credit life. These credits, generated under the Phase 1 program, can be used for compliance in the Phase 2 averaging, banking, and trading program. The existing regulations limit the use of fuel consumption credits generated for heavy heavy-duty vocational to a five-year credit life. Therefore, the proposed change would only extend the credit flexibility to heavy heavy-duty vocational vehicles produced by small manufacturers.

As EPA stated in its final rule, the agencies believe that the limit on credit life can be problematic for small manufacturers because their limited product lines provide them with less flexibility when averaging their fleets. The agencies believe the longer credit life will provide small manufacturers with additional flexibility to ensure all their products are fully compliant by the time the Phase 2 standards are fully phased-in for model year 2027. Therefore, NHTSA will finalize an amendment, harmonizing with EPA's regulations, to allow fuel consumption credits generated for heavy heavy-duty vocational vehicles produced by small manufacturers in model years 2018 through 2021 to be used through 2027, instead of being limited to a five-year credit life. This provision, however, is being more appropriately added to § 535.7(a)(8), which includes provisions for credit transfers between Phase 1 and Phase 2.

Additionally, NHTSA is finalizing an amendment to address credit carry forwards for small manufacturers that certify 2022 vehicles to Phase 1 standards if the manufacturer voluntarily certified its entire U.S.-directed production volume to the Phase 1 standards for calendar year 2021. Specifically, NHTSA is adding a provision stating that fuel consumption credits that a small manufacturer generates for vocational vehicles in model year 2022 that are certified to Phase 1 standards as permitted under § 535.3(e)(2)(ii)(B) may be used through model year 2027. This provision is also being more appropriately added to § 535.7(a)(8), which includes provisions for credit transfers between Phase 1 and Phase 2. Although NHTSA's rationale for making this change varies slightly from EPA, the changes themselves maintain program alignment across both agencies.

6. Section 535.3(e)(3) Transitional Allowance for Trailers

NHTSA is removing 535.3(e)(3) from its regulations, consistent with the 2021 D.C. Circuit decision discussed above, and reserving it for future use.

Section 535.3(j) Potential Enforcement Actions for Incomplete, Incorrect or Fraudulent Information

In the NPRM, NHTSA proposed adding paragraph (j) to § 535.3. The new paragraph was intended outline eligibility determinations and potential enforcement actions under the NHTSA fuel efficiency program if EPA denies, suspends or revokes, a manufacturer's certificate of conformity in accordance with 40 CFR 1036.255 or 1037.255, due to incomplete, incorrect or fraudulent information. However, NHTSA has decided not to finalize the provision because the agency no longer believes it is necessary. Manufacturers that submit fraudulent information may be subject to enforcement action under 18 U.S.C. 1001. Additionally, there is already an existing provision at § 535.8(a)(3) explaining that manufacturers providing incomplete information may be subject to civil penalties in accordance with 49 U.S.C. 32912 and a provision at § 535.9(a)(10) indicating actions NHTSA may take if EPA suspends or revokes a certificate of conformity.

### *G. 49 CFR 535.4 Definitions*

NHTSA is adding several new terms to its list of definitions and modifying the definitions of several existing terms

[15] EPA stated that it believed that the magnitude of any impact on air quality would be small because of the low production volumes from these small business manufacturers.

on the list to clarify the meaning of those terms. Almost all these definitions reference EPA regulatory definitions to ensure alignment of the NHTSA and EPA programs.

*1. Introductory Text*

NHTSA is amending the introductory text by updating the statutory reference for the definitions of the terms *manufacture* and *manufacturer* to reference 49 U.S.C. 32901.

*2. Act*

NHTSA is removing the term *Act* because it is no longer used in part 535.

3. Adjustable Parameter

NHTSA is adding the term *adjustable parameter* and defining it as having the same meaning given in 40 CFR 1065.1001. However, while the NPRM proposed only referencing 40 CFR 1037.801, NHTSA now believes it is more appropriate to provide the entire definition and reference 40 CFR 1065.1001, which includes EPA's definition for *adjustable parameter,* and 40 CFR 1068.50, which provides general provisions that apply to adjustable parameters.

4. Advanced Technology

NHTSA is amending the definition of *advanced technology* to remove an outdated reference and to streamline the definition to specify that it is specific vehicle technology for which manufacturers may earn special credits under § 535.6 and § 535.7 (*e.g.,* hybrids with powertrain designs that include energy storage systems, vehicles with waste heat recovery, electric vehicles, and fuel cell vehicles).

5. Alterers

NHTSA is amending the term *alterers* to be *alterer* as the definition refers to a single manufacturer.

6. Alternative Fuel Conversion

Although NHTSA proposed adding the term *alternative fuel conversion* and defining it as having the meaning given for clean alternative fuel conversion in 40 CFR 85.502, the term already appears in the current regulation. Accordingly, NHTSA is not making any changes to the term.

7. Averaging Set

NHTSA is removing the terms ''Long trailers'' and ''Short trailers'' from the definition of *Averaging set,* consistent with the 2021 D.C. Circuit decision.

8. Certificate of Conformity

In its 2021 final rule, EPA amended 40 CFR 1036.225(e) and 1037.225(e) by adding a statement that clarifies the application date for amended applications for the certification of engine and vehicle families submitted to EPA under 40 CFR 1036 subpart C and 1037 subpart C, respectively.[16] In response, NHTSA proposed updating its definition of *Certificate of Conformity* to include the same language finalized by EPA because the clarifications are also applicable to NHTSA's fuel efficiency program. After further consideration, NHTSA determined that no changes were needed to NHTSA's current definition to maintain program alignment across the agencies. Accordingly, NHTSA is not finalizing any change to the definition of *Certificate of Conformity.*

9. Certified Emission Level

NHTSA is finalizing a technical amendment to remove the definition of *certified emission level* because the term is not used within part 535 and to the extent that term is used in EPA's program for engine and vehicle families, the terms are defined in the respective regulations at 40 CFR 1036.801 and 1037.801.

10. Class

NHTSA is removing the reference to trailers from its definition of *class,* consistent with the 2021 D.C. Circuit decision.

11. Defeat Device

NHTSA is adding the term *defeat device* and defining it as having the same meaning given in 40 CFR 86.004–2. The addition will include a full definition of the term and note that the term is also defined in EPA's regulations at 40 CFR 86.004–2.

12. Emission Data Engine

Although NHTSA proposed adding the term *emission data engine* and defining it as having the meaning given in 40 CFR 1036.801, NHTSA has reconsidered. Since the term is not used in part 535, NHTSA does not believe it is necessary or appropriate to define the term at § 535.4.

13. Engine Configuration

NHTSA is adding the term *engine configuration* and defining it as having the same definition as given in 40 CFR 1036.801. However, while the NPRM proposed only referencing 40 CFR 1036.801, NHTSA now believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1036.801.

[16] 86 FR 34308, as corrected by documents published on September 23, 2021 (86 FR 52833) and October 26, 2022 (87 FR 64864).

14. Engine Identification Number

NHTSA is adding the term *engine identification number* and defining it to have the same meaning as given in 40 CFR 1036.801 for *identification number.* This nonsubstantive change is to maintain alignment with EPA's program.

15. Flexible-Fuel

NHTSA is adding the term *flexible-fuel* and defining it as having the same meaning given in 40 CFR 1036.801. However, while the NPRM proposed only referencing 40 CFR 1036.801, NHTSA now believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1036.801.

16. Fuel Type

NHTSA is adding the term *fuel type* and defining it as having the same meaning given in 40 CFR 1036.801. However, while the NPRM proposed only referencing 40 CFR 1036.801, NHTSA now believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1036.801.

17. Gear Ratio

NHTSA is adding the term *gear ratio* or *transmission gear ratio, kg* and defining it as having the same meaning given in 40 CFR 1037.801. However, while the NPRM proposed referencing 40 CFR 1036.801, the correct reference is § 1037.801. Additionally, while NHTSA proposed only referencing EPA's definition, NHTSA now believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1037.801.

18. Good Engineering Judgment

NHTSA is amending 535.4 to place the term *good engineering judgement* in the correct alphabetical order.

19. Greenhouse Gas

In the NPRM, NHTSA proposed adding the term *greenhouse gas* and defining it as having the meaning given in 40 CFR 1036.801. However, upon reconsideration NHTSA has determined that it is unnecessary to define it in part 535.

20. Heavy-Duty Engine

NHTSA is adding the term *heavy-duty engine* and defining it as having the meaning given in 49 CFR 523.2. Although NPRM proposed referencing both 40 CFR 1036.801 and 49 CFR 523.2, NHTSA believes it is unnecessary to reference both. Additionally, NHTSA

will reference the specific section, § 523.2, instead of the general part number.

21. Hybrid or Hybrid Vehicle

NHTSA is amending the term *hybrid vehicle* to be *hybrid* or *hybrid vehicle* because part 535 uses *hybrid* as a standalone term to mean hybrid vehicle. The definition of *hybrid* or *hybrid vehicle* will remain the same as the definition of *hybrid vehicle* currently in § 535.4. NHTSA has determined that is not appropriate to reference the definition of *hybrid* in 40 CFR 1036.801 because that term is defined in part as an ''engine or powertrain'' and NHTSA's use of the term *hybrid* as a standalone term in part 535 is to hybrid vehicles, not hybrid engines or powertrains. This definition aligns with the definition for *hybrid vehicle* in 40 CFR 1037.801.

22. Hybrid Engine

To develop consistency with the revised hybrid powertrain test procedures it recently finalized in 40 CFR part 1036, subpart F, EPA has added the term *hybrid engine* along with its definition to 40 CFR 1036.801. To maintain alignment across the agencies, NHTSA is removing the term *hybrid engine or powertrain* and adding the terms *hybrid engine* and *hybrid powertrain* and defining the terms as having the same meanings given in 40 CFR 1036.801. However, while the NPRM proposed only referencing 40 CFR 1036.801, NHTSA now believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1036.801.

23. Hybrid Powertrain

To develop consistency with the revised hybrid powertrain test procedures it recently finalized in 40 CFR part 1036, subpart F, EPA has added the term *hybrid powertrain* along with its definition to 40 CFR 1036.801. To maintain alignment across the agencies, NHTSA is adding the term *hybrid powertrain* and defining it as having the same meaning given in 40 CFR 1036.801. However, while the NPRM proposed only referencing 40 CFR 1036.801, NHTSA now believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1036.801.

24. Manufacturer

In the NPRM, NHTSA proposed adding the term *manufacturer* and defining it as having the meaning given in 40 CFR 1037.801. However, NHTSA is not finalizing this change because the term *manufacturer* is defined in 49 U.S.C. 32901, as stated in the introductory paragraph to 49 CFR 535.4.

25. Model Year

NHTSA is revising its definition for *model year* as it pertains to vehicles and engines. NHTSA is also removing the reference to trailers from its definition of *model year* as it applies to vehicles, consistent with the 2021 D.C. Circuit decision. NHTSA has included the specifications for model year for vehicles and engines into a single definition as the same term is used for both vehicles and engines. The meanings for the vehicle categories and for engines are retained. Additionally, while the NPRM proposed adding details regarding ABT reports into the definition of model year, NHTSA has reconsidered. The details are already found in 49 CFR 535.8 and NHTSA has concluded that it is not appropriate or necessary to include them in the definition section.

26. Motor Vehicle

NHTSA is adding the term *motor vehicle* and defining it as having the meaning given in 49 CFR 523.2. Although the NPRM proposed defining the term as having the meaning in 49 U.S.C. 32901, NHTSA has since realized that the term does not appear in section 32901.

27. Multi-Purpose

NHTSA is adding the term *multi-purpose* and defining it as having the same meaning given in 40 CFR 1037.801. However, while the NPRM proposed only referencing 40 CFR 1037.801, NHTSA now believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1037.801.

28. Neutral-Idle

NHTSA is adding the term *neutral-idle* and defining it as having the same meaning given in 40 CFR 1037.801. However, while the NPRM proposed only referencing 40 CFR 1037.801, NHTSA now believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1037.801.

29. New Vehicles

In the NPRM, NHTSA proposed adding the term *new vehicles* and defining it as having the meaning given to *new motor vehicle* in 40 CFR 1037.801. However, upon reconsideration, NHTSA has determined that is not necessary to define the term in part 535.

30. Percent

NHTSA is adding the term *percent* and defining it as having the same meaning given in 40 CFR 1065.1001, which is the definition referenced in 40 CFR 1037.801. However, while the NPRM proposed only referencing 40 CFR 1037.801, NHTSA believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1037.801 and 40 CFR 1065.1001.

31. Phase 2

NHTSA is removing the reference to trailers from its definition of *Phase 2,* consistent with the 2021 D.C. Circuit decision.

32. Placed Into Service

NHTSA is adding the term *Placed into service* and defining it as having the same meaning given in 40 CFR 1037.801. However, while the NPRM proposed only referencing 40 CFR 1037.801, NHTSA believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1037.801.

33. Primary Intended Service Class

NHTSA is amending the definition of *primary intended service class* to update an incorrect reference in the existing text. The change is nonsubstantive and only changes two references in paragraph (2)(iii).

34. Rechargeable Energy Storage System (RESS)

NHTSA is amending the definition of *rechargeable Energy Storage System (RESS)* to correct a typographical error.

35. Regulatory Subcategory

NHTSA is removing trailer subcategories from its definition of *regulatory subcategory,* consistent with the 2021 D.C. Circuit decision, and reserving the paragraph for future use.

36. Relating To

NHTSA is adding the term *relating to* and defining it as having the same meaning given in 40 CFR 1037.801. However, while the NPRM proposed only referencing 40 CFR 1037.801, NHTSA believes it is more appropriate to provide the entire definition and noting that the definition is also found in 40 CFR 1037.801.

37. Round

NHTSA is adding the term *round* and defining it as having the same meaning given in 40 CFR 1065.1001. However, while the NPRM proposed only referencing 40 CFR 1065.1001, NHTSA believes it is more appropriate to

provide the entire definition and noting that the definition is also found in 40 CFR 1065.1001.

38. Standard Payload

NHTSA is removing paragraph (3), which includes defined standard payloads for trailers, from its definition of *standard payload.* This change is consistent with the 2021 D.C. Circuit decision.

39. Standard Tractor

In the NPRM, NHTSA proposed amending the definition of *standard tractor* by defining it as having the meaning given in 40 CFR 1037.801 not 40 CFR 1037.501, which is how it's currently defined. However, upon reconsideration, NHTSA determined that it was not necessary to define the term in part 535. Accordingly, NHTSA is removing the term *standard tractor* from the definitions section.

40. Standard Trailer

NHTSA is amending the definition for *standard trailer* by defining it as having the same meaning given in 40 CFR 1037.801 not 40 CFR 1037.501, which is how it's currently defined. However, while the NPRM proposed only referencing 40 CFR 1037.501, NHTSA now believes it is more appropriate to provide the entire definition and note that the definition is also found in 40 CFR 1037.801.

41. Stop-Start

NHTSA is adding the term *stop-start* and defining it to have the same meaning as given for *stop-start* in 40 CFR 1037.801. However, while the proposed regulatory text in the NPRM only included a reference to 40 CFR 1037.801, NHTSA now believes it is more appropriate to include the entire definition and note that the definition is also found in 40 CFR 1037.801.

42. Suspend

In the NPRM, NHTSA proposed adding the term *Suspend* and defining it as having the meaning given in 40 CFR 1037.801. However, NHTSA has now concluded that the proposed definition is neither necessary nor appropriate at it applies to NHTSA's use of the term *suspend* in part 535. Accordingly, NHTSA is not adding the term to the definition section of part 535.

43. Vehicle Identification Number

In the NPRM, NHTSA proposed adding the term *identification number* and defining it as having the meaning given in 40 CFR 1037.801. However, upon reconsideration, NHTSA realized that the term *identification number* is defined in both 40 CFR part 1037 and 40 CFR part 1036, with one term applying to vehicles and one applying to engines. To reduce confusion, NHTSA is finalizing amendments to add two new terms, *vehicle identification number* and *engine identification number.* Because NHTSA establishes requirements for vehicles to be assigned unique vehicle identification numbers, or VINs, NHTSA is defining *vehicle identification number* for purposes of part 535 as having the same meaning as *VIN* in 49 CFR 565.12.

44. Vehicle Service Class

NHTSA is revising the definition of *vehicle service class* to align with the changes EPA to their definition given in 40 CFR 1037.140. Although the NPRM proposed only referencing EPA's definition in 40 CFR 1037.140, NHTSA has concluded that it is important to maintain the entire definition as there are some important terminology differences between EPA's definition and NHTSA's that should be retained. However, even with these differences, the terms are aligned.

The recent EPA technical amendments clarify that the classification for tractors, where provisions are the same as vocational vehicles, are applicable to both hybrid and non-hybrid vehicles. The amendments also clarify that Class 8 hybrid and electric vehicles are considered heavy heavy-duty "HHD" vehicles while all other vehicles are classified by GVWR classes.

EPA explained in its final rule that prior to these revisions, manufacturers had expressed concern that the Phase 2 regulations were not specific enough regarding how to classify hybrid vocational vehicles, because vocational vehicles are generally classified by the class of the engines (as opposed to tractors, which are classified based on GVW), which was not applicable to electrically driven vehicles that have no engine.

To address these problems, EPA proposed changes to § 1037.140(g)(1) to clarify that the classification for tractors where provisions are the same as vocational vehicles applies for hybrid and non-hybrid vehicles, and paragraph (g)(4) to clarify that Class 8 hybrid and electric vehicles are Heavy HHVs and all other vehicles are classified by GVWR classes. The changes we are finalizing maintain alignment with EPA's changes.

45. Void

In the NPRM, NHTSA proposed adding the term *void* and defining it as having the meaning given in 40 CFR 1037.801. However, NHTSA has now concluded that the addition of the term is not necessary as the only use of the term in part 535 is in reference to an EPA action, and EPA provides its own definition for the term.

*H. 49 CFR 535.5 Standards*

1. Section 535.5(a) Introductory Text

NHTSA is amending § 535.5(a) introductory text to clarify its regulatory standards relating to heavy-duty pickup trucks and vans. More specifically, the agency is adding language that ensures that manufacturers use the same options for purposes of grouping vehicles and/or engines for applying target standards and determining compliance for both EPA's and NHTSA's programs. NHTSA is also adding clarifying language explaining that engines installed in vehicles that are subject to the standards in paragraph (a) are not subject to the standards in paragraph (d) of this section and may not optionally comply with paragraph (d).

2. Section 535.5(a)(1)

NHTSA is amending § 535.5(a)(1) to update an outdated cross reference, such that the reference to 40 CFR 86.1819 now reads "40 CFR 86.1819–14".

3. Section 535.5(b) Introductory Text

NHTSA is amending the introductory text of § 535.5(b) to clarify its regulatory standards relating to heavy-duty vocational vehicles. More specifically, the agency is adding language that ensures manufacturers use the same options for purposes of grouping vehicles and/or engines for applying standards and determining compliance for both EPA's and NHTSA's programs.

4. Section 535.5(b)(1)(iii)(B)

NHTSA is removing paragraph (B) from § 535.5(b)(1)(iii) and reserving it for future use. This change removes the requirement for heavy-duty vocational vehicles that meet the requirement in § 535.5(b)(1)(iii)(A) by being equipped with tire pressure monitoring systems to use low pressure warning and malfunction telltales in clear view of the driver as specified in S4.3 and S4.4 of 49 CFR 571.138. The revision, however, does not remove the requirements in § 535.5(b)(6)(vi)(C) for motorhomes that comply with § 535.5(b)(6)(vi)(B) by having a TPMS.

5. Section 535.5(b)(4)

NHTSA is correcting the Vocational HHD Vehicle Regional compression ignition (CI) standards. The current published standard for this vehicle class

is incorrect and does not align with EPA GHG standards for this vehicle type. The incorrect values resulted from an incorrect calculation during the Phase 2 rulemaking which intended to maintain alignment of the NHTSA and EPA standards. The corrected value for this regulatory class is 20.1375 gallons per 1000 ton-miles not 20.2358 gallons per 1000 ton-miles, which is the currently published standard.

6. Section 535.5(b)(9)(i) Introductory Text

NHTSA is amending the introductory text of § 535.5(b)(9)(i) to align with EPA's technical amendments by adding an exemption provision for vocational vehicles with a date of manufacture before January 1, 2021. With this provision, vocational vehicles automatically qualify for an exemption under § 535.5(b)(9), if the tires installed on the vehicle have a maximum speed rating at or below 55 miles per hour.

7. Section 535.5(c) Introductory Text

NHTSA is amending the introductory text of § 535.5(c) to clarify its regulatory standards relating to truck tractors. More specifically, the agency is adding language that ensures manufacturer options (in terms of grouping vehicles and/or engines for purposes of applying standards and determining compliance) for EPA and NHTSA vehicle standards are aligned across both agencies.

8. Section 535.5(c)(5)

NHTSA is revising its Alternate Fuel Consumption Standards for Tractors above 120,000 pounds GCWR for model year 2021 and later. The revised standards are directly aligned with the revised GHG standards for this class of vehicles proposed and finalized by EPA as part of its technical amendment rulemaking.[17] The revised standards provide additional clarity on this vehicle class along with fuel efficiency standards that increase in three increments, model years 2021 through 2023, model years 2024 through 2026, and model years 2027 and later.

As described in EPA's final rulemaking action, the agencies originally defined these alternate fuel consumption and greenhouse-gas standards during the Phase 2 rulemaking, to enable Environment and Climate Change Canada (ECCC) to fully harmonize with the U.S.'s HD Phase 2 standards.

In the interim, ECCC has since adopted final standards for these 120,000- to 140,000-pound GCWR tractors, which differ from the optional standards finalized in Phase 2.[18] Since the purpose of these standards was to facilitate certification of vehicles intended for Canada, EPA proposed optional standards in 40 CFR 1037.670 that would be the same as the final ECCC standards, and did not receive any adverse comments regarding that proposal. NHTSA is adopting these alternative standards, in gallons per 1,000 ton-miles, for 120,000- to 140,000-pound GCWR tractors that are equivalent to the EPA and ECCC standards. This maintains harmonization across the programs for all three agencies.

9. Section 535.5(d) Introductory Text

NHTSA is clarifying the introductory text of 49 CFR 535.5(d) to expand its regulatory provision to optionally accommodate powertrain families and subfamilies added by EPA in 40 CFR 1036.108(a), and 1036.230(d), and 1036.230(f). The EPA provisions allow manufacturers to apply $CO_2$ standards to powertrain families and subfamilies. They also allow manufacturers to optionally certify powertrains using the engine testing provisions in 40 CFR part 1036 instead of part 1037. Manufacturers may choose to include electric powertrain and hybrid electric powertrain emissions in their engine families or subfamilies under 40 CFR part 1036 instead of (or in addition to) the otherwise applicable engine fuel maps. Doing so provides the same compliance options for manufacturers under the EPA and NHTSA programs. NHTSA is finalizing a similar amendment to § 535.6(d).

NHTSA is also amending the introductory text of § 535.5(d) to add language that ensures manufacturer options (in terms of grouping engines for purposes of applying standards and determining compliance) for EPA and NHTSA standards are aligned across both agencies.

10. Section 535.5(d)(3)

NHTSA is correcting the Heavy-Duty Engine Fuel Consumption Standards for Phase 1 MHD and HHD compression ignition (CI) tractor engines. The current published standards for these engine classes are incorrect, and do not align with EPA GHG standards for these engine types. The incorrect values resulted from an incorrect calculation during the Phase 2 rulemaking which intended to maintain alignment of the NHTSA and EPA standards. The corrected values for these regulatory classes are 4.7839 gallons per 100 hp-hr for MHD CI tractor engines and 4.5187 gallons per 100 hp-hr for HHD CI tractor engines.

11. Section 535.5(d)(11)(i)(A) and (C)

NHTSA is correcting the *Alternate transition option for Phase 2 engine standards* (i)(A) and (C). The current published standards for these engine standards are incorrect, and do not align with current EPA GHG standards for these engine types. The incorrect values resulted from an incorrect calculation during the Phase 2 rulemaking which intended to maintain alignment for the NHTSA and EPA standards. The corrected values for these regulatory classes are 5.3241 gallons per 100 hp-hr for MHD vocational vehicle engines and 5.0098 gallons per 100 hp-hr for HHD vocational engines.

12. Section 535.5(e)

NHTSA is removing paragraph (e) from § 535.3, which removes the Heavy-duty Trailer standards, consistent with the 2021 D.C. Circuit decision, discussed above.

*I. 49 CFR 535.6 Measurement and Calculation Procedures*

1. Section 535.6(b)(1)

NHTSA is amending § 535.6(b)(1) by adding a reference to EPA's finalized regulation at 40 CFR 1037.150. This added reference will provide clear guidance that will be used to determine the proper vehicle and vehicle family to select when determining a manufacturer's regulatory subcategories for vocational vehicles and tractors. The addition also maintains program alignment across the agencies.

2. Section 535.6(b)(4)(ii)

NHTSA is amending § 535.6(b)(4)(ii) by adding references to EPA's finalized regulations at 40 CFR 1037.525, 1037.527, and 1037.528. These added references clarify how to determine a high-roof tractor's aerodynamic performance. EPA finalized this revision to more clearly relate the drag areas to

[17] In December 2020, EPA proposed further revisions to the Phase 2 GEM Simulation Model in the December 2020 Notice of Proposed Rulemaking (NRPM) for technical amendments to the GHG Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Vehicles and is soliciting comments on these revisions. S. The latest EPA's GEM model is released and can be found *https://www.epa.gov/regulations-emissions-vehicles-and-engines/greenhouse-gas-emissions-model-gem-medium-and-heavy-duty* which incorporates the revisions being considered.'' (last accessed: May 11, 2022)

[18] Regulations Amending the Heavy-duty Vehicle and Engine Greenhouse Gas Emission Regulations and Other Regulations Made Under the Canadian Environmental Protection Act, 1999: SOR/2018–98, Canada Gazette, Part II, Volume 152, Number 11, May 16, 2018.

the defined effective yaw variable, as recommended by EMA as a comment to the EPA proposal.[19] NHTSA is adopting this same measurement schema to keep programs aligned across the agencies. NHTSA is also amending § 535.6(b)(4)(ii) to provide manufacturers with an alternate compliance approach for determining coefficient of aerodynamic drag values in GEM.

3. Section 535.6(b)(5)(i)

NHTSA is revising § 535.6(b)(5)(i) to change the reference to an EPA regulation from 40 CFR 1036.510 to 1036.503. This revision aligns the NHTSA regulations to the revised and finalized EPA regulations, which also keeps the agencies' programs aligned.

4. Section 535.6(b)(5)(v)(E)(3)

NHTSA is adding paragraph *(3)* to § 535.6(b)(5)(v)(E), which allows manufacturers to characterize torque converters to determine their own torque converter capacity factor instead of using the default value provided in GEM. This change aligns with EPA provisions in 40 CFR 1037.570 and maintains program alignment across both agencies.

5. Section 535.6(b)(5)(v)(E)(*4*)

NHTSA is adding paragraph (*4*) to § 535.6(b)(5)(v)(E), which allows vocational vehicles to input a value for neutral coasting in GEM as a compliance option for its fuel consumption program. This revision aligns the NHTSA regulations with the EPA regulations in 40 CFR 1037.520 and keep both agencies aligned for program compliance.

6. Section 535.6(d) Introductory Text

Like § 535.5(d), NHTSA is amending the introductory text of § 535.6(d) by adding clarifications to § 535.6(d) to expand its regulatory provision to optionally accommodate powertrain families and subfamilies added by EPA in 40 CFR 1036.108(a), and 1036.230(d), and 1036.230(f). The EPA provisions allow manufacturers to apply $CO_2$ standards to powertrain families and subfamilies. They also allow manufacturers to optionally certify powertrains using the engine testing provisions in 40 CFR part 1036 instead of part 1037. Manufacturers may choose to include electric powertrain and hybrid electric powertrain emissions in their engine families or subfamilies under 40 CFR part 1036 instead of (or in addition to) the otherwise applicable engine fuel maps. Doing so provides the same compliance options for manufacturers under the EPA and NHTSA programs.

7. Section 535.6(d)(1)

NHTSA is updating paragraph (d)(1) to reference to EPA regulation 40 CFR 1036.501 for engines in heavy-duty truck tractors and vocational vehicles that make up each of the manufacturer's regulatory subcategories. This replaces the reference to 40 CFR part 86 and 40 CFR 1036.235. This change maintains alignment across the NHTSA and EPA programs.

8. Section 535.6(d)(2) Introductory Text

NHTSA is amending the introductory text of paragraph (d)(2) to align with the EPA regulation 40 CFR 1036.230(f) by expanding this regulatory provision to accommodate powertrains other than engines and to also include sub-families.

9. Section 535.6(d)(3) Introductory Text

NHTSA is amending § 535.6(d)(3) introductory text by replacing the existing provision with the prescribed emissions tests required for medium HD and heavy HD engines certified as a tractor and other long-haul engine family as well as those certified as a tractor and vocational engine family. In the same paragraph, NHTSA also prescribes the emissions test required for all other engines. These amendments are being made to align with EPA's technical amendments and to provide greater clarity to manufacturers about how compliance must be determined for the different types of engines.

10. Section 535.6(d)(3)(ii)

NHTSA is expanding the provisions of § 535.6(d)(3)(ii) to powertrains other than engines and subfamilies in addition to families. This change is being made to maintain alignment with EPA's technical amendments.

11. Section 535.6(e)

NHTSA is removing paragraph (e) from § 535.6, which removes heavy-duty trailers from its measurement and calculation procedures, consistent with the 2021 D.C. Circuit decision.

*J. 49 CFR 535.7 Averaging, Banking, and Trading (ABT) Credit Program*

1. Section 535.7(a) Introductory Text

NHTSA is removing the references to trailer manufacturers and trailers from the introductory text of § 535.7(a), consistent with the 2021 D.C. Circuit decision.

2. Section 535.7(a)(2)(v)

NHTSA is removing the reference to the application of banked or traded credits to trailers from § 535.7(a)(2)(v), consistent with the 2021 D.C. Circuit decision.

3. Section 535.7(a)(3)(v)

NHTSA is removing paragraph (v) from § 535.7(a)(3), consistent with the 2021 D.C. Circuit decision, and reserving it for future use.

4. Section 535.7(a)(4) Introductory Text

NHTSA is amending the introductory text of paragraph (a)(4) to remove reference to trailers, consistent with the 2021 D.C. Circuit decision.

5. Section 535.7(a)(4)(v)

NHTSA is removing paragraph (v) from § 535.7(a), consistent with the 2021 D.C. Circuit decision, and reserving it for future use.

6. Section 535.7(a)(8)(i)

As discussed above, NHTSA is finalizing two amendments to provide greater flexibility to small manufacturers of vocational vehicles. First, NHTSA is finalizing an amendment such that fuel consumption credits a small manufacturer generates for heavy heavy-duty vocational vehicles in model years 2018 through 2021 may be used through 2027, instead of being limited to a five-year credit life (this flexibility is already provided for fuel consumption credits any manufacturer generates for light and medium heavy-duty vocational vehicles in model years 2018 through 2021). Second, as discussed above, NHTSA is finalizing an amendment to address credit carry forwards for small manufacturers that certify 2022 vehicles to Phase 1 standards if the manufacturer voluntarily certified its entire U.S.-directed production volume to the Phase 1 standards for calendar year 2021. Specifically, NHTSA is adding a provision stating that fuel consumption credits that a small manufacturer generates for vocational vehicles in model year 2022 that are certified to Phase 1 standards as permitted under § 535.3(e)(2)(ii)(B) may be used through model year 2027.

7. Section 535.7(a)(9)(iv)(B)

NHTSA is amending § 535.7(a)(9)(iv)(B) by adding clarifying details regarding corporate relationship status as it relates to production limits for generating credits for drayage tractors under the custom chassis allowance. In the NPRM, NHTSA proposed language such that the limit would apply with respect to vehicles

[19] The variables $C_dA_{effective\text{-}yaw\text{-}coastdown}$ and $C_dA_{effective\text{-}yaw\text{-}alt}$ are now $C_dA_{coastdown}(\psi_{eff})$ and $C_dA_{alt}(\psi_{eff})$, respectively.

produced by the parent manufacturer and its owned subordinate companies. However, to better align with existing regulations, NHTSA is finalizing language that specifies that the limit applies with respect to vehicles produced by manufactures within a control relationship as defined in § 534.3.

8. Section 535.7(a)(11)

NHTSA is adding paragraph (11) to § 535.7(a), which is a provision that prevents manufacturers from generating fuel consumption credits more than once for compliance. NHTSA has updated the text that was proposed in the NPRM to provide greater clarity and to reduce ambiguity.

9. Section 535.7(b)(1)

NHTSA is amending § 535.7(b)(1) to correct the Total MY Fleet FCC equation for HDPUVs.

10. Section 535.7(c)(1) Introductory Text

NHTSA is amending the introductory text § 535.7(c)(1) to correct the Vehicle Family FCC equation for vocational vehicle and tractor families and subfamilies.

11. Section 535.7(d)(1) Introductory Text

NHTSA is amending the introductory text of § 535.7(d)(1) to correct the Engine Family FCC equation for heavy-duty engine families and subfamilies.

12. Section 535.7(d)(7)

NHTSA is amending § 535.7(d)(7) by removing the conditions for when engine credits generated for compression-ignition engines in model year 2020 and earlier can be used in model year 2021 and later and adding them to new lower-level paragraphs in this section.

13. Section 535.7(d)(7)(i)

NHTSA is adding paragraph (i) to § 535.7(d)(7), which states that engine credits generated for compression-ignition engines certified to the tractor engine standards in § 535.5(d) in model year 2020 and earlier can be used in model year 2021 and later. This provision was in the existing regulation and is just being moved down to a lower-level paragraph.

14. Section 535.7(d)(7)(ii)

NHTSA is also amending § 535.7(d)(7) by removing the provision that manufacturers may otherwise use fuel consumption credits generated in one model year for certifying vehicles in a later model year without adjustment, even if the consumption standards are different. In its place, NHTSA is adding paragraph (ii) to § 535.7(d)(7), stipulating that fuel consumption credits generated for compression-ignition engines certified to the vocational engine standards in § 535.5(d) in MY 2020 and earlier can be used in MY 2021 and later in accordance with specific requirements. Specifically, the fuel consumption credits may only be used in later years relative to specified family certification levels (FCLs), consistent with EPA's regulations.

15. Section 535.7(d)(7)(ii)(A)

NHTSA is adding paragraph (A) to § 535.7(d)(7)(ii), which is the FCL manufacturers should use to calculate credits for compression-ignition medium HD engines certified to the vocational vehicle standards in § 535.5(d) in MY 2020 and earlier and will be used in MY 2021 and later.

16. Section 535.7(d)(7)(ii)(B)

NHTSA is adding paragraph (B) to § 535.7(d)(7)(ii), which is the FCL manufacturers should use to calculate credits for compression-ignition heavy HD engines certified to the vocational vehicle standards in § 535.5(d) in MY 2020 and earlier and will be used in MY 2021 and later.

17. Section 535.7(d)(7)(ii)(C)

NHTSA is adding paragraph (C) to § 535.7(d)(7)(ii), which is the provision that provides instructions on how to use the FCLs in paragraphs (A) and (B) of this section to recalculate engine credits for compression-ignition engines certified to the vocational vehicle standards in § 535.5(d) that have been generated in Phase 1 but used in Phase 2 of the program.

18. Section 535.7(e)

NHTSA is removing paragraph (e) from § 535.7, which removes the ABT provisions for trailers, consistent with the 2021 D.C. Circuit decision, discussed above, and reserving it for future use.

19. Section 535.7(f)(1)(ii) Introductory Text

NHTSA is amending § 535.7(f)(1)(ii) to clarify the final model year in which manufacturers may use the advanced technology credit multipliers to increase the credits they earn for advanced technology vehicles in Phase 2. In the Phase 2 final rule for the Heavy-Duty National Program, NHTSA and EPA jointly explained that we were adopting advanced technology credit multipliers for three types of advanced technologies. As described in the final rule, there will be a multiplier of 3.5 for advanced technology credits for plug-in hybrid vehicles, a multiplier of 4.5 for advanced technology credits for all-electric vehicles, and a multiplier of 5.5 for advanced technology credits for fuel cell vehicles. The agencies stated that their intention in adopting these multipliers was to create a meaningful incentive to manufacturers considering adopting these technologies in their vehicles. The agencies further noted that the adoption rates for these advanced technologies in heavy vehicles was essentially non-existent at the time the final rule was issued and seemed unlikely to grow significantly within the next decade without additional incentives. Because of their large size, the agencies decided to adopt them as an interim program that will continue through model year 2027. These changes, however, were not accurately reflected in the regulatory changes made by the Phase 2 final rule. NHTSA is now amending the introductory text of § 535.7(f)(1)(ii) to clarify that for Phase 2, advanced technology credits may be increased by the applicable multiplier through model year 2027.

20. Section 535.7(f)(1)(ii)(G)

NHTSA is adding paragraph (G) to § 535.7(f)(1)(ii) to add a provision clarifying that advanced technology credits increased with a multiplier in Phase 2 cannot be used across averaging sets. In the Phase 2 final rule, the agencies explained that because of the adoption of the large multipliers, the agencies were discontinuing the allowance to use advanced technology credits across averaging sets. This change was not accurately reflected in the regulatory changes made by the Phase 2 final rule; therefore, NHTSA is adding the provision as § 535.7(f)(1)(ii)(G).

21. Section 535.7(f)(2)(v)

NHTSA is removing paragraph (v) from § 535.7(f)(2), which removes the provision that provides manufacturers with the ability to apply the off-cycle provisions of § 535.7(f)(2) and 40 CFR 1037.610 to trailers, consistent with the 2021 D.C. Circuit decision discussed above, and reserving it for future use.

*K. 49 CFR 535.8 Reporting and Recordkeeping Requirements*

1. Section 535.8(a)(6)

NHTSA is amending § 535.8(a)(6) to correct the mailing address for NHTSA to 1200 New Jersey Avenue SE, NVS–200, Office W45–306, Washington, DC 20590.

2. Section 535.8(g)(11)(i)(C)

Like § 535.6(d)(3)(ii), NHTSA is expanding the provisions of § 535.8(g)(11)(i)(C) to broaden the language to provide clarity that the provision is referring to ''engine and powertrain families and subfamilies'' as opposed to just ''engine families.''

3. Section 535.8(g)(12)

NHTSA is amending § 535.8(g)(12) by removing all references to trailers and trailer manufacturers from its production reporting requirements, consistent with the 2021 D.C. Circuit decision, discussed above.

4. Section 535.8(i)

NHTSA is amending § 535.8(i) to include a statement reminding manufacturers that providing false, fictitious, or fraudulent information may subject them to penalties under 18 U.S.C. 1001.

*L. 49 CFR 535.9 Enforcement Approach*

1. Section 535.9(a)(1)(i)

NHTSA is amending § 535.9(a)(1)(i) by adding additional language and clarifications that NHTSA may conduct audits or perform confirmatory testing on any configuration. Any such testing would be performed as specified in EPA's regulations and NHTSA will collaborate with EPA regarding any potential issues with testing results.

2. Section 535.9(a)(1)(v)

NHTSA is adding paragraph (v) to § 535.9(a)(1) to add a provision stating that NHTSA may require a manufacturer to perform selective enforcement audits with respect to any GEM inputs in its application for certification or in the end of the year ABT final reports. The provision further specifies that any such selective enforcement audit would be required to be conducted in a manner consistent with EPA's corresponding provisions for selective enforcement audits.

*M. Section 535.10 How do manufacturers comply with fuel consumption standards?*

1. Section 535.10(a)(3)

NHTSA is removing (a)(3) and reserving it for future use. Although the NPRM proposed clarifying that EPA's compliance requirements 40 CFR 1037.601 and 40 CFR part 1068 apply similarly to NHTSA's fuel consumption program, except for the warranty provisions in 40 CFR 1037.601(a)(5), NHTSA has now concluded that it is not appropriate for NHTSA to incorporate by reference EPA's general compliance provisions for regulations issued under 40 CFR parts 1037 and 1068. Accordingly, NHTSA is removing the provisions at (a)(3) and reserving it for future use.

2. Section 535.10(a)(6)

NHTSA is amending § 535.10(a)(6) by clarifying that vehicles required to meet the fuel consumption standards of this part must also comply with the same requirements as specified in 40 CFR 1037.115(a) and (d). However, while the NPRM proposed only referencing 40 CFR 1037.115, NHTSA has now concluded that it would be more appropriate to place the entirety of the substantive requirements into part 535 and note that the requirements are consistent with 40 CFR 1037.115(a) and (d).

3. Section 535.10(c)(2)

NHTSA is amending § 535.10(c)(2) by removing the reference to box trailers, consistent with the 2021 D.C. Circuit decision, discussed above.

4. Section 535.10(c)(3)

NHTSA is removing § 535.10(c)(3), consistent with the 2021 D.C. Circuit decision discussed above, and reserving it for future use.

## III. Statutory Authority and Executive Order Reviews

*A. Executive Order 12866, Executive Order 14094, Executive Order 13563, and DOT Regulatory Policies and Procedures*

We have considered the potential impact of this proposed rule under Executive Order 12866, Executive Order 14094, Executive Order 13563, and DOT Order 2100.6A. The Office of Management and Budget (OMB) has determined that this rule is not a significant regulatory action and, therefore, was not submitted to OMB for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0104, 2060–0287, 2060–0338, 2060–0545, 2060–0641. This rule clarifies and simplifies procedures without affecting information collection requirements.

*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. In making this determination, the impact of concern is any significant economic impact on small entities. This action is designed to reduce testing burdens, increase compliance flexibility, and make various corrections and adjustments to compliance provisions. We therefore anticipate no costs and no regulatory burden associated with this rule. We further do not believe the benefits of this rule would result in significant economic impact to regulated small entities. Accordingly, we have concluded that this action will have no significant economic impact on regulated small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2010 results in $136 million (110.993/81.606 = 1.36). This rule will not result in a cost of $136 million or more to either State, local, or Tribal governments, in the aggregate, or the private sector or uniquely affect small governments. Thus, this rule is not subject to the requirements of sections 202 of the UMRA.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the Federal 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*

This action does not have Tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and affects engine and vehicle manufacturers. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not

economically significant as defined in Executive Order 12866, and because there are no environmental health or safety risks created by this action that could present a disproportionate risk to children.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this action is not likely to have any adverse energy effects because it is designed merely to reduce testing burdens, increase compliance flexibility, and make various corrections and adjustments to compliance provisions.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. Voluntary consensus standards are technical standards (*e.g.,* material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO) and the SAE International (SAE). The NTTAA directs agencies to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. NHTSA searched for but did not find voluntary consensus standards directly applicable to the amendments in this final rule.

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

NHTSA believes this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). Due to the lack of environmental impact, these regulatory changes will not have a disproportionate adverse effect on minority populations, low-income populations, or indigenous peoples.

**List of Subjects in 49 CFR Part 535**

Fuel economy, Reporting and recordkeeping requirements.

**Regulatory Text**

For the reasons discussed in the preamble, NHTSA is amending 49 CFR part 535 as set forth below:

## PART 535—MEDIUM- AND HEAVY-DUTY VEHICLE FUEL EFFICIENCY PROGRAM

■ 1. The authority citation for part 535 is revised to read as follows:

**Authority:** 49 U.S.C. 32902*;* delegation of authority at 49 CFR 1.95.

■ 2. Revise § 535.1 to read as follows:

**§ 535.1 Scope.**

This part establishes fuel consumption standards pursuant to 49 U.S.C. 32902(k) for work trucks and commercial medium- and heavy-duty on-highway vehicles (hereafter referenced as heavy-duty vehicles), and engines manufactured for sale in the United States. This part establishes a credit program that manufacturers may use to comply with standards and requirements for manufacturers to provide reports to the National Highway Traffic Safety Administration regarding their efforts to reduce the fuel consumption of heavy-duty vehicles and engines.

■ 3. Amend § 535.3 by revising paragraph (c), removing and reserving paragraph (d)(5), and revising paragraph (e).

The revisions read as follows:

**§ 535.3 Applicability.**

* * * * *

(c) Vehicle and engine manufacturers that must comply with this part include manufacturers required to have approved certificates of conformity from EPA as specified in subparts C in 40 CFR parts 1036 and 1037.

* * * * *

(e) The following heavy-duty vehicles and engines are exempted from the requirements of this part:

(1) *Off-road vehicles.* Vocational vehicles intended for off-road use are exempt with or without request, subject to the provisions of § 535.5(b)(9).

(2) *Small business manufacturers.* (i) For Phase 1, small business manufacturers are exempted from the vehicle and engine standards of § 535.5 but must comply with the reporting requirements of § 535.8(g).

(ii) For Phase 2, fuel consumption standards apply on a delayed schedule for manufacturers meeting the small business criteria specified in 13 CFR 121.201 and in 40 CFR 86.1819–14(k)(5), 1036.150, and 1037.150.

(A) Qualifying manufacturers of truck tractors, vocational vehicles, heavy duty pickups and vans, and engines are not subject to the fuel consumption standards for vehicles built before January 1, 2022, and engines (such as those engines built by small alternative fuel engine converters) with a date of manufacturer on or after November 14, 2011, and before January 1, 2022. Qualifying manufacturers may choose to voluntarily comply early.

(B) Small manufacturers that certify their entire U.S.-directed production volume to the Phase 1 standards for calendar year 2021 may certify to the Phase 1 standards for model year 2022 (instead of the otherwise applicable Phase 2 standards).

(iii) Small business manufacturers producing vehicles and engines that run on any fuel other than gasoline, E85, or diesel fuel meeting the criteria specified in 13 CFR 121.201 and in 40 CFR 86.1819–14(k)(5), 1036.150, and 1037.150 may delay complying with every new mandatory standard under this part by one model year.

(3) [Reserved]

(4) *Engines for specialty vehicles.* Engines certified to the alternative standards specified in 40 CFR 86.007–11 and 86.008–10 for use in specialty vehicles as described in 40 CFR 1037.605. Compliance with the vehicle provisions in 40 CFR 1037.605 satisfies compliance for NHTSA under this part.

* * * * *

■ 4. Revise § 535.4 to read as follows:

**§ 535.4 Definitions.**

The terms *manufacture, manufacturer, commercial medium and heavy-duty on-highway vehicle, fuel,* and *work truck* are used as defined in 49 U.S.C. 32901. See 49 CFR 523.2 for general definitions related to NHTSA's fuel efficiency programs.

*Adjustable parameter* means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect measured or modeled emissions (as applicable). In some cases, this may exclude a parameter that is difficult to access if it cannot be adjusted to affect emissions without significantly degrading engine performance, or if it will not be adjusted in a way that affects emissions during in-use operation. (See 40 CFR 1065.1001 and 40 CFR 1068.50).

*Administrator* means the Administrator of the National Highway

Traffic Safety Administration (NHTSA) or the Administrator's delegate.

*Advanced technology* means specific vehicle technology for which manufacturers may earn special credits under §§ 535.6 and 535.7 (*e.g.,* hybrids with powertrain designs that include energy storage systems, vehicles with waste heat recovery, electric vehicles, and fuel cell vehicles).

*Alterer* means a manufacturer that modifies an altered vehicle as defined in 49 CFR 567.3

*Alternative fuel conversion* has the meaning given for clean alternative fuel conversion in 40 CFR 85.502

*A to B testing* has the meaning given in 40 CFR 1037.801.

*Automated manual transmission* has the meaning given in 40 CFR 1037.801.

*Automatic tire inflation system* has the meaning given in 40 CFR 1037.801.

*Automatic transmission (AT)* has the meaning given in 40 CFR 1037.801.

*Auxiliary power unit* has the meaning given in 40 CFR 1037.801.

*Averaging set* means, a set of engines or vehicles in which fuel consumption credits may be exchanged. Credits generated by one engine or vehicle family may only be used by other respective engine or vehicle families in the same averaging set as specified in § 535.7. Note that an averaging set may comprise more than one regulatory subcategory. The averaging sets for this HD program are defined as follows:

(1) Heavy-duty pickup trucks and vans.

(2) Light heavy-duty (LHD) vehicles.

(3) Medium heavy-duty (MHD) vehicles.

(4) Heavy heavy-duty (HHD) vehicles.

(5) Light heavy-duty engines subject to compression-ignition standards.

(6) Medium heavy-duty engines subject to compression-ignition standards.

(7) Heavy heavy-duty engines subject to compression-ignition standards.

(8) Engines subject to spark-ignition standards.

(9) Vehicle types certifying to optional custom chassis standards as specified in § 535.5(b)(6) form separate averaging sets for each vehicle type as specified in § 535.7(c).

*Axle ratio or Drive axle ratio, ka* has the meaning given in 40 CFR 1037.801.

*Basic vehicle frontal area* has the meaning given in 40 CFR 1037.801.

*Cab-complete vehicle* has the meaning given in 49 CFR 523.2.

*Carryover* has the meaning given in 40 CFR 1037.801.

*Certificate holder* means the manufacturer who holds the certificate of conformity for the vehicle or engine and that assigns the model year based on the date when its manufacturing operations are completed relative to its annual model year period.

*Certificate of Conformity* means an approval document granted by EPA to a manufacturer that submits an application for a vehicle or engine emissions family in 40 CFR 1036.205 and 1037.205. A certificate of conformity is valid from the indicated effective date until December 31 of the model year for which it is issued. The certificate must be renewed annually for any vehicle a manufacturer continues to produce.

*Certification* has the meaning given in 40 CFR 1037.801.

*Chassis-cab* means the incomplete part of a vehicle that includes a frame, a completed occupant compartment and that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions.

*Chief Counsel* means the NHTSA Chief Counsel, or his or her designee.

*Class* means relating to GVWR classes for vehicles, as follows:

(1) *Class 2b vehicles* are vehicles with a gross vehicle weight rating (GVWR) ranging from 8,501 to 10,000 pounds.

(2) *Class 3 through Class 8 vehicles* are vehicles with a gross vehicle weight rating (GVWR) of 10,001 pounds or more as defined in 49 CFR 565.15.

*Complete sister vehicle* is a complete vehicle of the same configuration as a cab-complete vehicle.

*Complete vehicle* has the meaning given in 49 CFR part 523.

*Compression-ignition (CI)* means relating to a type of reciprocating, internal-combustion engine, such as a diesel engine, that is not a spark-ignition engine. Note, in accordance with 40 CFR 1036.1, gas turbine engines and other engines not meeting the definition of compression-ignition are deemed to be compression-ignition engines for complying with fuel consumption standards.

*Configuration* means a subclassification within a test group for passenger cars, light trucks and medium-duty passenger vehicles and heavy-duty pickup trucks and vans which is based on basic engine, engine code, transmission type and gear ratios, and final drive ratio.

*Container chassis trailer* has the same meaning as container chassis in 40 CFR 1037.801.

*Curb weight* has the meaning given in 40 CFR 86.1803.

*Custom chassis vehicle* means a vocational vehicle that is a motor home, school bus, refuse hauler, concrete mixer, emergency vehicle, mixed-use vehicle or other buses that are not school buses or motor coaches. These vehicle types are defined in 49 CFR 523.3. A ''mixed-use vehicle'' is one that meets at least one of the criteria specified in 40 CFR 1037.631(a)(1) or at least one of the criteria in 40 CFR 1037.631(a)(2), but not both.

*Date of manufacture* means the date on which the certifying vehicle manufacturer completes its manufacturing operations, except as follows:

(1) Where the certificate holder is an engine manufacturer that does not manufacture the complete or incomplete vehicle, the date of manufacture of the vehicle is based on the date assembly of the vehicle is completed.

(2) EPA and NHTSA may approve an alternate date of manufacture based on the date on which the certifying (or primary) vehicle manufacturer completes assembly at the place of main assembly, consistent with the provisions of 40 CFR 1037.601 and 49 CFR 567.4.

(3) A vehicle manufacturer that completes assembly of a vehicle at two or more facilities may ask to use as the month and year of manufacture, for that vehicle, the month and year in which manufacturing is completed at the place of main assembly, consistent with provisions of 49 CFR 567.4, as the model year. Note that such staged assembly is subject to the provisions of 40 CFR 1068.260(c). NHTSA's allowance of this provision is effective when EPA approves the manufacturer's certificates of conformity for these vehicles.

*Day cab* has the meaning given in 40 CFR 1037.801.

*Defeat device* means, consistent with 40 CFR 86.004–2, an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the applicable Federal emission test procedure for heavy-duty vehicles and heavy-duty engines described in subpart N of this part;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident;

(3) The AECD does not go beyond the requirements of engine starting; or

(4) The AECD applies only for engines that will be installed in emergency vehicles, and the need is justified in terms of preventing the engine from losing speed, torque, or power due abnormal conditions of the emission control system, or in terms of preventing such abnormal conditions from occurring, during operation related to

emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, and running out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction.

*Drayage tractor* has the meaning given in 40 CFR 1037.801.

*Dual-clutch transmission (DCT)* means a transmission has the meaning given in 40 CFR 1037.801.

*Dual-fuel* has the meaning given in 40 CFR 1037.801.

*Electric vehicle* has the meaning given in 40 CFR 1037.801.

*Emergency vehicle* means a vehicle that meets one of the criteria in 40 CFR 1037.801.

*Engine configuration* means a unique combination of engine hardware and calibration (related to the emission standards) within an engine family, which would include hybrid components for engines certified as hybrid engines and hybrid powertrains. Engines within a single engine configuration differ only with respect to normal production variability or factors unrelated to compliance with emission standards. (See 40 CFR 1036.801).

*Engine family* has the meaning given in 40 CFR 1036.230. Manufacturers designate families in accordance with EPA provisions and may not choose different families between the NHTSA and EPA programs.

*Engine identification number* means a unique specification (for example, a model number/serial number combination) that allows someone to distinguish a particular engine from other similar engines. (See the definition of *identification number* in 40 CFR 1036.801).

*Excluded* means a vehicle or engine manufacturer or component is not required to comply with any aspects with the NHTSA fuel consumption program.

*Exempted* means a vehicle or engine manufacturer or component is not required to comply with certain provisions of the NHTSA fuel consumption program.

*Family certification level (FCL)* has the meaning given in 40 CFR 1036.801.

*Family emission limit (FEL)* has the meaning given in 40 CFR 1037.801.

*Final drive ratio* has the meaning given in 40 CFR 1037.801.

*Final-stage manufacturer* has the meaning given in 49 CFR 567.3 and includes secondary vehicle manufacturers as defined in 40 CFR 1037.801.

*Flatbed trailer* has the meaning given in 40 CFR 1037.801.

*Fleet* in this part means all the heavy-duty vehicles or engines within each of the regulatory sub- categories that are manufactured by a manufacturer in a particular model year and that are subject to fuel consumption standards under § 535.5.

*Fleet average fuel consumption* is the calculated average fuel consumption performance value for a manufacturer's fleet derived from the production weighted fuel consumption values of the unique vehicle configurations within 'ach vehicle model type that makes up that manufacturer's vehicle fleet in a given model year. In this part, the fleet average fuel consumption value is determined for each manufacturer's fleet of heavy-duty pickup trucks and vans.

*Fleet average fuel consumption standard* is the actual average fuel consumption standard for a manufacturer's fleet derived from the production weighted fuel consumption standards of each unique vehicle configuration, based on payload, tow capacity and drive configuration (2, 4 or all-wheel drive), of the model types that makes up that manufacturer's vehicle fleet in a given model year. In this part, the fleet average fuel consumption standard is determined for each manufacturer's fleet of heavy-duty pickup trucks and vans.

*Flexible-fuel* means relating to an engine designed for operation on any mixture of two or more different types of fuels. (See 40 CFR 1036.801).

*Fuel cell* means an electrochemical cell that produces electricity via the non-combustion reaction of a consumable fuel, typically hydrogen.

*Fuel cell electric vehicle* means a motor vehicle propelled solely by an electric motor where energy for the motor is supplied by a fuel cell.

*Fuel efficiency* means the amount of work performed for each gallon of fuel consumed.

*Fuel type* means a general category of fuels such as diesel fuel, gasoline, or natural gas. There can be multiple grades within a single fuel type, such as premium gasoline, regular gasoline, or gasoline with 10 percent ethanol. (See 40 CFR 1037.801).

*Gaseous fuel* has the meaning given in 40 CFR 1037.801.

*Gear ratio* or *Transmission gear ratio,* kg, means the dimensionless number representing the angular speed of the transmission's input shaft divided by the angular speed of the transmission's output shaft when the transmission is operating in a specific gear. (See 40 CFR 1037.801).

*Good engineering judgment* has the meaning given in 40 CFR 1068.30. See 40 CFR 1068.5 for the administrative process used to evaluate good engineering judgement.

*Greenhouse gas Emissions Model (GEM)* has the meaning given in 40 CFR 1037.801.

*Gross axle weight rating (GAWR)* has the meaning given in 49 CFR 571.3.

*Gross combination weight rating (GCWR)* has the meaning given in 49 CFR 571.3.

*Gross vehicle weight rating (GVWR)* has the meaning given in 49 CFR 571.3.

*Heavy-duty engine* has the meaning given in 49 CFR part 523.2.

*Heavy-duty off-road vehicle* means a heavy-duty vocational vehicle or vocational tractor that is intended for off-road use.

*Heavy-duty vehicle* has the meaning given in 49 CFR part 523.

*Heavy-haul tractor* has the meaning given in 40 CFR 1037.801.

*Heavy heavy-duty (HHD) vehicle* has the meaning given in vehicle service class.

*Hybrid* or *Hybrid vehicle* means a vehicle that includes energy storage features (other than a conventional battery system or conventional flywheel) in addition to an internal combustion engine or other engine using consumable chemical fuel. Supplemental electrical batteries and hydraulic accumulators are examples of hybrid energy storage systems. Note that certain provisions in this part treat hybrid vehicles that include regenerative braking different than those that do not include regenerative braking.

*Hybrid engine* means a hybrid system with features for storing and recovering energy that are integral to the engine or are otherwise upstream of the vehicle's transmission other than a conventional battery system or conventional flywheel. Supplemental electrical batteries and hydraulic accumulators are examples of hybrid energy storage systems. Examples of hybrids that could be considered hybrid engines are P0, P1, and P2 hybrids where hybrid features are connected to the front end of the engine, at the crankshaft, or connected between the clutch and the transmission where the clutch upstream of the hybrid feature is in addition to the transmission clutch(s), respectively. Note other examples of systems that qualify as hybrid engines are systems that recover kinetic energy and use it to power an electric heater in the aftertreatment. (See 40 CFR 1036.801).

*Hybrid powertrain* means a powertrain that includes energy storage features other than a conventional battery system or conventional flywheel. Supplemental electrical batteries and hydraulic accumulators are examples of hybrid energy storage systems. Note

other examples of systems that qualify as hybrid powertrains are systems that recover kinetic energy and use it to power an electric heater in the aftertreatment. (See 40 CFR 1037.801).

*Idle operation* has the meaning given in 40 CFR 1037.801.

*Incomplete vehicle* has the meaning given in 49 CFR part 523. For the purpose of this regulation, a manufacturer may request EPA and NHTSA to allow the certification of a vehicle as an incomplete vehicle if it manufactures the engine and sells the unassembled chassis components, provided it does not produce and sell the body components necessary to complete the vehicle.

*Innovative technology* means technology certified under § 535.7 and by EPA under 40 CFR 86.1819–14(d)(13), 1036.610, and 1037.610 in the Phase 1 program.

*Intermediate manufacturer* has the meaning given in 49 CFR 567.3.

*Light heavy-duty (LHD) vehicle* has the meaning given in vehicle service class.

*Liquefied petroleum gas (LPG)* has the meaning given in 40 CFR 1036.801.

*Low rolling resistance tire* means a tire on a vocational vehicle with a tire rolling resistance level (TRRL) of 7.7 kg/metric ton or lower, a steer tire on a tractor with a TRRL of 7.7 kg/metric ton or lower, or a drive tire on a tractor with a TRRL of 8.1 kg/metric ton or lower.

*Manual transmission (MT)* has the meaning given in 40 CFR 1037.801.

*Medium heavy-duty (MHD) vehicle* has the meaning given in vehicle service class.

*Model type* has the meaning given in 40 CFR 600.002.

*Model year* means one of the following for compliance with this part. Note that manufacturers may have other model year designations for the same vehicle for compliance with other requirements or for other purposes:

(1) For tractors and vocational vehicles with a date of manufacture on or after January 1, 2021, the vehicle's *model year* is the calendar year corresponding to the date of manufacture; however, the vehicle's model year may be designated to be the year before the calendar year corresponding to the date of manufacture if the engine's model year is also from an earlier year. Note that paragraph (2) of this definition limits the extent to which vehicle manufacturers may install engines built in earlier calendar years. Note that 40 CFR 1037.601(a)(2) limits the extent to which vehicle manufacturers may install engines built in earlier calendar years.

(2) For Phase 1 tractors and vocational vehicles with a date of manufacture before January 1, 2021, *model year* means the manufacturer's annual new model production period, except as restricted under this definition. It must include January 1 of the calendar year for which the model year is named, may not begin before January 2 of the previous calendar year, and it must end by December 31 of the named calendar year. The model year may be set to match the calendar year corresponding to the date of manufacture.

(i) The manufacturer who holds the certificate of conformity for the vehicle must assign the model year based on the date when its manufacturing operations are completed relative to its annual model year period. In unusual circumstances where completion of your assembly is delayed, we may allow you to assign a model year one year earlier, provided it does not affect which regulatory requirements will apply.

(ii) Unless a vehicle is being shipped to a secondary manufacturer that will hold the certificate of conformity, the model year must be assigned prior to introduction of the vehicle into U.S. commerce. The certifying manufacturer must re-designate the model year if it does not complete its manufacturing operations within the originally identified model year. A vehicle introduced into U.S. commerce without a model year is deemed to have a model year equal to the calendar year of its introduction into U.S. commerce unless the certifying manufacturer assigns a later date.

(3) For engines, *model year* means the manufacturer's annual new model production period, except as restricted under this definition. It must include January 1 of the calendar year for which the model year is named, may not begin before January 2 of the previous calendar year, and it must end by December 31 of the named calendar year. Manufacturers may not adjust model years to circumvent or delay compliance with emission standards or to avoid the obligation to certify annually.

*Motor Vehicle* has the meaning given in 49 CFR 523.2.

*Multi-purpose* means relating to the Multi-Purpose duty cycle as specified in 40 CFR 1037.510. (See 40 CFR 1037.801).

*Natural gas* has the meaning given in 40 CFR 1036.801. Vehicles that use a pilot-ignited natural gas engine (which uses a small diesel fuel ignition system), are still considered natural gas vehicles.

*NHTSA Enforcement* means the NHTSA Associate Administrator for Enforcement, or his or her designee.

*Neutral coasting* has the meaning given in 40 CFR 1037.801.

*Neutral idle* means a vehicle technology that automatically puts the transmission in neutral when the vehicle is stopped, as described in 40 CFR 1037.660(a). (See 40 CFR 1037.801).

*Off-cycle technology* means technology certified under § 535.7 and by EPA under 40 CFR 86.1819–14(d)(13), 1036.610, and 1037.610 in the Phase 2 program.

*Party* means the person alleged to have committed a violation of § 535.9, and includes manufacturers of vehicles and manufacturers of engines.

*Payload* means in this part the resultant of subtracting the curb weight from the gross vehicle weight rating.

*Percent (%)* means a representation of exactly 0.01. Numbers expressed as percentages in this part (such as a tolerance of ±2%) have infinite precision, so 2% and 2.000000000% have the same meaning. This means that where we specify some percentage of a total value, the calculated value has the same number of significant digits as the total value. For example, 2% of a span value where the span value is 101.3302 is 2.026604. (See 40 CFR 1037.801 and 40 CFR 1065.1001.

*Petroleum* has the meaning given in 40 CFR 1037.801.

*Phase 1* means the joint NHTSA and EPA program established in 2011 for fuel efficiency standards and greenhouse gas emissions standards regulating medium- and heavy-duty engines and vehicles. See § 535.5 for the specific model years that standards apply to vehicles and engines.

*Phase 2* means the joint NHTSA and EPA program established in 2016 for fuel efficiency standards and greenhouse gas emissions standards regulating medium- and heavy-duty vehicles and engines. See § 535.5 for the specific model years that standards apply to vehicles and engines.

*Pickup truck* has the meaning given in 49 CFR part 523.

*Placed into service* means put into initial use for its intended purpose, excluding incidental use by the manufacturer or a dealer. (See 40 CFR 1037.801).

*Plug-in hybrid electric vehicle (PHEV)* means a hybrid electric vehicle that has the capability to charge the battery or batteries used for vehicle propulsion from an off-vehicle electric source, such that the off-vehicle source cannot be connected to the vehicle while the vehicle is in motion.

*Power take-off (PTO)* means a secondary engine shaft or other system on a vehicle that provides substantial auxiliary power for purposes unrelated to vehicle propulsion or normal vehicle accessories such as air conditioning, power steering, and basic electrical accessories. A typical PTO uses a secondary shaft on the engine to transmit power to a hydraulic pump that powers auxiliary equipment such as a boom on a bucket truck.

*Powertrain family* has the meaning given in 40 CFR 1037.231. Manufacturers choosing to perform powertrain testing as specified in 40 CFR 1037.550, divide product lines into powertrain families that are expected to have similar fuel consumptions and $CO_2$ emission characteristics throughout the useful life.

*Preliminary approval* means approval granted by an authorized EPA representative prior to submission of an application for certification, consistent with the provisions of 40 CFR 1037.210. For requirements involving NHTSA, EPA will ensure decisions are jointly made and will convey the decision to the manufacturer.

*Primary intended service class* has the same meaning for engines as specified in 40 CFR 1036.140. Manufacturers must identify a single primary intended service class for each engine family that best describes vehicles for which it designs and markets the engine, as follows:

(1) Divide compression-ignition engines into primary intended service classes based on the following engine and vehicle characteristics:

(i) Light heavy-duty ''LHD'' engines usually are not designed for rebuild and do not have cylinder liners. Vehicle body types in this group might include any heavy-duty vehicle built from a light-duty truck chassis, van trucks, multi-stop vans, and some straight trucks with a single rear axle. Typical applications will include personal transportation, light-load commercial delivery, passenger service, agriculture, and construction. The GVWR of these vehicles is normally below 19,500 pounds.

(ii) Medium heavy-duty ''MHD'' engines may be designed for rebuild and may have cylinder liners. Vehicle body types in this group will typically include school buses, straight trucks with single rear axles, city tractors, and a variety of special purpose vehicles such as small dump trucks, and refuse trucks. Typical applications will include commercial short haul and intra-city delivery and pickup. Engines in this group are normally used in vehicles whose GVWR ranges from 19,500 to 33,000 pounds.

(iii) Heavy heavy-duty ''HHD'' engines are designed for multiple rebuilds and have cylinder liners. Vehicles in this group are normally tractors, trucks, straight trucks with dual rear axles, and buses used in inter-city, long-haul applications. These vehicles normally exceed 33,000 pounds GVWR.

(2) Divide spark-ignition engines into primary intended service classes as follows:

(i) Spark-ignition engines that are best characterized by paragraph (1)(i) or (ii) of this section are in a separate ''spark-ignition'' primary intended service class.

(ii) Spark-ignition engines that are best characterized by paragraph (1)(iii) of this section share a primary intended service class with compression-ignition heavy heavy-duty engines. Gasoline-fueled engines are presumed not to be characterized by paragraph (1)(iii) of this section; for example, vehicle manufacturers may install some number of gasoline-fueled engines in Class 8 trucks without causing the engine manufacturer to consider those to be heavy heavy-duty engines.

(iii) References to ''spark-ignition standards'' in this part relate only to the spark-ignition engines identified in paragraph (2)(i) of this definition. References to ''compression-ignition standards'' in this part relate to compression-ignition engines, to spark-ignition engines optionally certified to standards that apply to compression-ignition engines, and to all engines identified under paragraph (2)(ii) of this definition as heavy heavy-duty engines.

*Rechargeable Energy Storage System (RESS)* means the component(s) of a hybrid engine or vehicle that store recovered energy for later use, such as the battery system in an electric hybrid vehicle.

*Refuse hauler* has the meaning given in 40 CFR 1037.801.

*Regional* has the meaning relating to the Regional duty cycle as specified in 40 CFR 1037.510.

*Regulatory category* means each of the four types of heavy-duty vehicles defined in 49 CFR 523.6 and the heavy-duty engines used in these heavy-duty vehicles.

*Regulatory subcategory* means the sub-groups in each regulatory category to which mandatory fuel consumption standards and requirements apply as specified in 40 CFR 1036.230 and 1037.230 and are defined as follows:

(1) Heavy-duty pick-up trucks and vans.

(2) Vocational vehicle subcategories have 18 separate vehicle service classes as shown in paragraphs (2)(i) and (ii) of this definition and include vocational tractors. Paragraph (2)(i) of this definition includes vehicles complying with Phase 1 standards. Phase 2 vehicles are included in paragraph (2)(ii) of this definition which have separate subcategories to account for engine characteristics, GVWR, and the selection of duty cycle for vocational vehicles as specified in 40 CFR 1037.510; vehicles may additionally fall into one of the subcategories defined by the custom-chassis standards in § 535.5(b)(6) and 40 CFR 1037.105(h). Manufacturers using the alternate standards in § 535.5(b)(6) and 40 CFR 1037.105(h) should treat each vehicle type as a separate vehicle subcategory.

(i) *Phase 1 Vocational Vehicle Subcategories.* (A) Vocational LHD vehicles.

(B) Vocational MHD vehicles.

(C) Vocational HHD vehicles.

(ii) *Phase 2 vocational vehicle subcategories.*

| Engine type | Vocational LHD vehicles | Vocational MHD vehicles | Vocational HHD vehicles |
|---|---|---|---|
| CI | Urban | Urban | Urban. |
| CI | Multi-Purpose | Multi-Purpose | Multi-Purpose. |
| CI | Regional | Regional | Regional. |
| SI | Urban | Urban | N/A. |
| SI | Multi-Purpose | Multi-Purpose | N/A. |
| SI | Regional | Regional | N/A. |

(3) Tractor subcategories are shown in paragraph (3)(i) of this definition for Phase 1 and 2. Paragraph (3)(i) includes 10 separate subcategories for tractors complying with Phase 1 and 2 standards. The heavy-haul tractor subcategory only applies for Phase 2.

(i) *Phase 1 and 2 truck tractor subcategories.*

| Class 7 | Class 8 day cabs | Class 8 sleeper cabs |
| --- | --- | --- |
| Low-roof tractors | Low-roof day cab tractors | Low-roof sleeper cab tractors. |
| Mid-roof tractors | Mid-roof day cab tractors | Mid-roof sleeper cab tractors. |
| High-roof tractors | High-roof day cab Tractors | High-roof sleeper cab tractors. |
| N/A | Heavy-haul tractors (applies only to Phase 2 program). | |

(ii) [Reserved]

(4) [Reserved]

(5) Engine subcategories are shown for each primary intended service class in paragraph (5)(i) of this definition. Paragraph (5)(i) includes 6 separate subcategories for engines which are the same for Phase 1 and 2 standards.

(i) *Engine subcategories.*

| LHD engines | MHD engines | HHD engines |
| --- | --- | --- |
| CI engines for vocational vehicles | CI engines for vocational vehicles | CI engines for vocational vehicles. |
| N/A | CI engines for truck Tractors | CI engines for truck tractors. |
| All spark-ignition engines | | N/A. |

(ii) [Reserved]

*Relating to* as used in this section means relating to something in a specific, direct manner. This expression is used in this section only to define terms as adjectives and not to broaden the meaning of the terms. (See 40 CFR 1037.801).

*Revoke* has the same meaning given in 40 CFR 1068.30.

*Roof height* means the maximum height of a vehicle (rounded to the nearest inch), excluding narrow accessories such as exhaust pipes and antennas, but including any wide accessories such as roof fairings. Measure roof height of the vehicle configured to have its maximum height that will occur during actual use, with properly inflated tires and no driver, passengers, or cargo onboard. Determine the base roof height on fully inflated tires having a static loaded radius equal to the arithmetic mean of the largest and smallest static loaded radius of tires a manufacturer offers or a standard tire EPA approves. If a vehicle is equipped with an adjustable roof fairing, measure the roof height with the fairing in its lowest setting. Once the maximum height is determined, roof heights are divided into the following categories:

(1) Low-roof means a vehicle with a roof height of 120 inches or less.

(2) Mid-roof means a vehicle with a roof height between 121 and 147 inches.

(3) High-roof means a vehicle with a roof height of 148 inches or more.

*Round* means to apply the rounding convention specified in 40 CFR 1065.20(e), unless otherwise specified. (See 40 CFR 1065.1001).

*Secondary vehicle manufacturer* has the same meaning as final-stage manufacturer in 49 CFR part 567.

*Service class group* means a group of engine and vehicle averaging sets defined as follows:

(1) Spark-ignition engines, light heavy-duty compression-ignition engines, light heavy-duty vocational vehicles and heavy-duty pickup trucks and vans.

(2) Medium heavy-duty compression-ignition engines and medium heavy-duty vocational vehicles and tractors.

(3) Heavy heavy-duty compression-ignition engines and heavy heavy-duty vocational vehicles and tractors.

*Sleeper cab* means a type of truck cab that has a compartment behind the driver's seat intended to be used by the driver for sleeping. This includes both cabs accessible from the driver's compartment and those accessible from outside the vehicle.

*Small business manufacturer* means a manufacturer meeting the criteria specified in 13 CFR 121.201. For manufacturers owned by a parent company, the employee and revenue limits apply to the total number employees and total revenue of the parent company and all its subsidiaries.

*Spark-ignition (SI)* means relating to a gasoline-fueled engine or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Note that some spark-ignition engines are subject to requirements that apply for compression-ignition engines as described in 40 CFR 1036.140.

*Standard payload* means the payload assumed for each vehicle, in tons, for modeling and calculating emission credits, as follows:

(1) For vocational vehicles:

(i) 2.85 tons for light heavy-duty vehicles.

(ii) 5.6 tons for medium heavy-duty vehicles.

(iii) 7.5 tons for heavy heavy-duty vocational vehicles.

(2) For tractors:

(i) 12.5 tons for Class 7.

(ii) 19 tons for Class 8.

(iii) 43 tons for heavy-haul tractors.

*Standard trailer* means a trailer that meets the applicable criteria found in 40 CFR 1037.501(g). (See 40 CFR 1037.801).

*Stop-start* means a vehicle technology that automatically turns the engine off when the vehicle is stopped, as described in 40 CFR 1037.660(a). (See the definition for *stop-start* in 40 CFR 1037.801)

*Subconfiguration* means a unique combination within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristics or parameters that EPA determines may significantly affect $CO_2$ emissions within a vehicle configuration as defined in 40 CFR 600.002.

*Tank trailer* has the meaning given in 40 CFR 1037.801.

*Test group* means the multiple vehicle lines and model types that share critical emissions and fuel consumption related features and that are certified as a group by a common certificate of conformity issued by EPA and is used collectively with other test groups within an averaging set or regulatory subcategory and is used by NHTSA for determining the fleet average fuel consumption.

*The agencies* means the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) in this part.

*Tire pressure monitoring system (TPMS)* has the meaning given in section S3 of 49 CFR 571.138.

*Tire rolling resistance level (TRRL)* means a value with units of kg/metric ton that represents that rolling resistance of a tire configuration. TRRLs are used as inputs to the GEM model under 40 CFR 1037.520. Note that a manufacturer may assign a value higher than a measured rolling resistance of a tire configuration.

*Towing capacity* in this part is equal to the resultant of subtracting the gross vehicle weight rating from the gross combined weight rating.

*Trade* means to exchange fuel consumption credits, either as a buyer or a seller.

*U.S.-directed production volume* means the number of vehicle units, subject to the requirements of this part, produced by a manufacturer for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

*Useful life* has the meaning given in 40 CFR 1036.801 and 1037.801.

*Vehicle configuration* means a unique combination of vehicle hardware and calibration (related to measured or modeled emissions) within a vehicle family as specified in 40 CFR 1037.801. Vehicles with hardware or software differences, but that have no hardware or software differences related to measured or modeled emissions or fuel consumption can be included in the same vehicle configuration. Note that vehicles with hardware or software differences related to measured or modeled emissions or fuel consumption are considered to be different configurations even if they have the same GEM inputs and FEL. Vehicles within a vehicle configuration differ only with respect to normal production variability or factors unrelated to measured or modeled emissions and fuel consumption for EPA and NHTSA.

*Vehicle family* has the meaning given in 40 CFR 1037.230. Manufacturers designate families in accordance with EPA provisions and may not choose different families between the NHTSA and EPA programs. If a manufacturer is certifying vehicles within a vehicle family to more than one FEL, it must subdivide its greenhouse gas and fuel consumption vehicle families into subfamilies that include vehicles with identical FELs. Note that a manufacturer may add subfamilies at any time during the model year.

*Vehicle identification number* has the meaning given in 49 CFR 565.12 for *VIN.*

*Vehicle service class* means classes of vehicles, generally based on a vehicle's weight class, that are used for purposes of determining applicable requirements. The *vehicle service classes* defined here for use in this part align with the *vehicle service classes* specified in 40 CFR 1037.140(g). Fuel consumption standards and other provisions of this part apply to specific vehicle service classes for tractors and vocational vehicles as follows:

(1) Phase 1 and Phase 2 tractors are divided based on GVWR into Class 7 tractors and Class 8 tractors. Where provisions apply to both tractors and vocational vehicles, Class 7 tractors are considered medium heavy-duty ''MHD'' vehicles and Class 8 tractors are considered heavy heavy-duty ''HHD'' vehicles. This paragraph applies for both hybrid and non-hybrid vehicles.

(2) Phase 1 vocational vehicles are divided based on GVWR. Light heavy-duty ''LHD'' vehicles includes Class 2b through Class 5 vehicles; medium heavy-duty ''MHD'' vehicles includes Class 6 and Class 7 vehicles; and heavy heavy-duty ''HHD'' vehicles includes Class 8 vehicles.

(3) Phase 2 vocational vehicles with spark-ignition engines are divided based on GVWR. Light heavy-duty ''LHD'' vehicles includes Class 2b through Class 5 vehicles, and medium heavy-duty ''MHD'' vehicles includes Class 6 through Class 8 vehicles.

(4) Phase 2 vocational vehicles with compression-ignition engines are divided as follows:

(i) Class 2b through Class 5 vehicles are considered light heavy-duty ''LHD'' vehicles.

(ii) Class 6 through 8 vehicles are considered heavy heavy-duty ''HHD'' vehicles if the installed engine's primary intended service class is heavy heavy-duty (see 40 CFR 1036.140), except that Class 8 hybrid vehicles are considered heavy heavy-duty ''HHD'' vehicles regardless of the engine's primary intended service class. All other Class 6 through Class 8 vehicles are considered medium heavy-duty ''MHD'' vehicles.

(5) Heavy-duty vehicles with no installed propulsion engine, such as electric vehicles, are divided as follows:

(i) Class 2b through Class 5 vehicles are considered light heavy-duty ''LHD'' vehicles.

(ii) Class 6 and 7 vehicles are considered medium heavy-duty ''MHD'' vehicles.

(iii) Class 8 vehicles are considered heavy heavy-duty ''HHD'' vehicles.

(6) In certain circumstances, manufacturers may certify vehicles to standards that apply for a different vehicle service class such as allowed in § 535.5(b)(6) and (c)(7). If manufacturers optionally certify vehicles to different standards, those vehicles are subject to all the regulatory requirements as if the standards were mandatory.

*Vehicle subfamily or subfamily* means a subset of a vehicle family including vehicles subject to the same FEL(s).

*Vocational tractor* has the meaning given in 40 CFR 1037.801.

*Zero emissions vehicle* means an electric vehicle or a fuel cell vehicle.

■ 5. Amend § 535.5 by:

■ a. Revising paragraphs (a) introductory text, (a)(1), and (b) introductory text;

■ b. Removing and reserving paragraph (b)(1)(iii)(B);

■ c. Revising paragraphs (b)(4), (b)(9)(i) introductory text, (c) introductory text, (c)(5), (d) introductory text, (d)(3), and (d)(11)(i)(A) and (C); and

■ d. Removing paragraph (e).

The revisions read as follows:

**§ 535.5 Standards.**

(a) *Heavy-duty pickup trucks and vans.* Each manufacturer's fleet of heavy-duty pickup trucks and vans shall comply with the fuel consumption standards in this paragraph (a) expressed in gallons per 100 miles. Each vehicle must be manufactured to comply for its full useful life. For the Phase 1 program, if the manufacturer's fleet includes conventional vehicles (gasoline, diesel and alternative fueled vehicles) and advanced technology vehicles (hybrids with powertrain designs that include energy storage systems, vehicles with waste heat recovery, electric vehicles and fuel cell vehicles), it may divide its fleet into two separate fleets each with its own separate fleet average fuel consumption standard which the manufacturer must comply with the requirements of this paragraph (a). For Phase 2, manufacturers may calculate their fleet average fuel consumption standard for a conventional fleet and multiple advanced technology vehicle fleets. Advanced technology vehicle fleets should be separated into plug-in hybrid electric vehicles, electric vehicles, and fuel cell vehicles. The standards in this paragraph (a) correspond to EPA requirements specified in 40 CFR 86.1819–14. When applying the fuel consumption standards in this paragraph (a), manufacturers must use the same options they use to comply with EPA in 40 CFR part 86, subpart S in terms of grouping vehicles and/or engines for purposes of determining

applicable standards and determining compliance (*i.e.,* the vehicles and/or engines and must be grouped in the same way for purposes of this paragraph (a) as they are grouped for compliance with EPA's requirements in 40 CFR part 86, subpart S). Engines that are installed in vehicles that are subject to the standards in this paragraph are not subject to the standards in paragraph (d) of this section and may not optionally comply with paragraph (d).

(1) *Mandatory standards.* For model years 2016 and later, each manufacturer must comply with the fleet average standard derived from the unique subconfiguration target standards (or groups of subconfigurations approved by EPA in accordance with 40 CFR 86.1819–14) of the model types that make up the manufacturer's fleet in a given model year. Each subconfiguration has a unique attribute-based target standard, defined by each group of vehicles having the same payload, towing capacity and whether the vehicles are equipped with a 2-wheel or 4-wheel drive configuration. Phase 1 target standards apply for model years 2016 through 2020. Phase 2 target standards apply for model year 2021 and afterwards.

* * * * *

(b) *Heavy-duty vocational vehicles.* Each manufacturer building complete or incomplete heavy-duty vocational vehicles shall comply with the fuel consumption standards in this paragraph (b) expressed in gallons per 1,000 ton-miles. When applying the fuel consumption standards in this paragraph (b), manufacturers must use the same options they use to comply with EPA in 40 CFR 1037.105 in terms of grouping vehicles and/or engines for purposes of determining applicable standards and determining compliance (*i.e.,* the vehicles and/or engines and must be grouped in the same way for purposes of this paragraph (b) as they are grouped for compliance with EPA's requirements in 40 CFR 1037.105). Engines used in heavy-duty vocational vehicles shall comply with the standards in paragraph (d) of this section. Each vehicle must be manufactured to comply for its full useful life. Standards apply to the vehicle subfamilies based upon the vehicle service classes within each of the vocational vehicle regulatory subcategories in accordance with § 535.4 and based upon the applicable modeling and testing specified in § 535.6. Determine the duty cycles that apply to vocational vehicles according to 40 CFR 1037.140 and 1037.150(z).

* * * * *

(4) *Regulatory subcategory standards for model years 2021 and later.* The mandatory fuel consumption standards for heavy-duty vocational vehicles are given in the following table:

TABLE 9 TO PARAGRAPH (b)(4)—PHASE 2 VOCATIONAL VEHICLE FUEL CONSUMPTION STANDARDS

[Gallons per 1,000 ton-miles]

| Model Years 2021 through 2023 Standards for CI Vehicles | | | |
|---|---|---|---|
| Duty cycle | LHD vocational vehicles | MHD vocational vehicles | Vocational HHD vehicles |
| Urban | 41.6503 | 29.0766 | 30.2554 |
| Multi-Purpose | 36.6405 | 26.0314 | 25.6385 |
| Regional | 30.5501 | 22.9862 | 20.1375 |
| **Model Years 2021 through 2023 Standards for SI Vehicles** | | | |
| Duty cycle | LHD vocational vehicles | MHD and HHD vocational vehicles | N/A |
| Urban | 51.8735 | 36.9078 | N/A |
| Multi-Purpose | 45.7972 | 32.9695 | N/A |
| Regional | 37.6955 | 29.3687 | N/A |
| **Model Years 2024 through 2026 Standards for CI Vehicles** | | | |
| Duty cycle | Vocational LHD vehicles | Vocational MHD vehicles | Vocational HHD vehicles |
| Urban | 37.8193 | 26.6208 | 27.7996 |
| Multi-Purpose | 33.7917 | 24.1650 | 23.7721 |
| Regional | 29.0766 | 21.7092 | 19.0570 |
| **Model Years 2024 through 2026 Standards for SI Vehicles** | | | |
| Duty cycle | Vocational LHD vehicles | Vocational MHD and HHD vehicles | N/A |
| Urban | 48.6103 | 34.8824 | N/A |
| Multi-Purpose | 43.3217 | 31.3942 | N/A |
| Regional | 36.4577 | 28.2435 | N/A |
| **Model Years 2027 and later Standards for CI Vehicles** | | | |
| Duty cycle | Vocational LHD vehicles | Vocational MHD vehicles | Vocational HHD vehicles |
| Urban | 36.0511 | 25.3438 | 26.4244 |
| Multi-Purpose | 32.4165 | 23.0845 | 22.5933 |
| Regional | 28.5855 | 21.4145 | 18.5658 |

TABLE 9 TO PARAGRAPH (b)(4)—PHASE 2 VOCATIONAL VEHICLE FUEL CONSUMPTION STANDARDS—Continued

[Gallons per 1,000 ton-miles]

| Duty cycle | | | |
|---|---|---|---|
| **Model Years 2027 and later Standards for SI Vehicles** | | | |
| Duty cycle | Vocational LHD vehicles | Vocational MHD and HHD vehicles | N/A |
| Urban | 46.4724 | 33.4196 | N/A |
| Multi-Purpose | 41.8589 | 30.1564 | N/A |
| Regional | 35.8951 | 27.7934 | N/A |

* * * * *

(9) * * *

(i) *Qualifying criteria.* Vocational vehicles with a date of manufacture before January 1, 2021 automatically qualify for an exemption under this paragraph (b)(9) if the tires installed on the vehicle have a maximum speed rating at or below 55 miles per hour. Vocational vehicles intended for off-road use are exempt without request, subject to the provisions of this section, if they are primarily designed to perform work off-road (such as in oil fields, mining, forests, or construction sites), and they meet at least one of the criteria of paragraph (b)(9)(i)(A) of this section and at least one of the criteria of paragraph (b)(9)(i)(B) of this section. See paragraph (b)(6) of this section for alternate standards that apply for vehicles meeting only one of these sets of criteria.

* * * * *

(c) *Truck tractors.* Each manufacturer building truck tractors, except vocational tractors or vehicle constructed in accordance with 49 CFR 571.7(e), with a GVWR above 26,000 pounds shall comply with the fuel consumption standards in this paragraph (c) expressed in gallons per 1,000 ton-miles. When applying the fuel consumption standards in this paragraph (c), manufacturers must use the same options they use to comply with EPA in 40 CFR 1037.106 in terms of grouping vehicles and/or engines for purposes of determining applicable standards and determining compliance (*i.e.,* the vehicles and/or engines and must be grouped in the same way for purposes of this paragraph (c) as they are grouped for compliance with EPA's requirements in 40 CFR 1037.106). Engines used in heavy-duty truck tractors vehicles shall comply with the standards in paragraph (d) of this section. Each vehicle must be manufactured to comply for its full useful life. Standards apply to the vehicle subfamilies within each of the tractor vehicle regulatory subcategories in accordance with § 535.4 and 40 CFR 1037.230 and based upon the applicable modeling and testing specified in § 535.6. Determine the vehicles in each regulatory subcategory in accordance with 40 CFR 1037.140.

* * * * *

(5) *Alternate standards for tractors at or above 120,000 pounds GCWR.* Manufacturers may certify tractors at or above 120,000 pounds GCWR to the following fuel consumption standards in the following table:

TABLE 12 TO PARAGRAPH (c)(5)—ALTERNATE FUEL CONSUMPTION STANDARDS FOR TRACTORS ABOVE 120,000 POUNDS GCWR FOR 2021 MY AND LATER

[Gallons per 1,000 ton-miles]

| Regulatory subcategory | Model years 2021 through 2023 | Model years 2024 through 2026 | Model years 2027 and later |
|---|---|---|---|
| Heavy Class 8 Low-Roof Day Cab | 5.25540 | 4.99018 | 4.80354 |
| Heavy Class 8 Low-Roof Sleeper Cab | 4.62672 | 4.37132 | 4.16503 |
| Heavy Class 8 Mid-Roof Day Cab | 5.46169 | 5.18664 | 4.99018 |
| Heavy Class 8 Mid-Roof Sleeper Cab | 4.87230 | 4.60707 | 4.39096 |
| Heavy Class 8 High-Roof Day Cab | 5.35363 | 5.04912 | 4.77407 |
| Heavy Class 8 High-Roof Sleeper Cab | 4.62672 | 4.34185 | 4.02750 |

* * * * *

(d) *Heavy-duty engines.* Each manufacturer of heavy-duty engines shall comply with the fuel consumption standards in this paragraph (d) of this section expressed in gallons per 100 horsepower-hour. When applying the fuel consumption standards in this paragraph (d), manufacturers must use the same options they use to comply with EPA in 40 CFR 1036.108 in terms of grouping engines for purposes of determining applicable standards and determining compliance (*i.e.,* the engines must be grouped in the same way for part 535.5(d) purposes as they are grouped for compliance with EPA's requirements in 40 CFR 1036.108). Each engine must be manufactured to comply for its full useful life, expressed in service miles, operating hours, or calendar years, whatever comes first. The provisions of this part apply to all new 2014 model year and later heavy-duty engines fueled by conventional and alternative fuels and manufactured for use in heavy-duty tractors or vocational vehicles. Standards apply to the engine and powertrain families and sub-families based upon the primary intended service classes within each of the engine regulatory subcategories as described in § 535.4 and based upon the applicable modeling and testing specified in § 535.6.

* * * * *

(3) *Regulatory subcategory standards.* The primary fuel consumption standards for heavy-duty engine families are given in the following table:

TABLE 13 TO PARAGRAPH (d)(3)—PRIMARY HEAVY-DUTY ENGINE FUEL CONSUMPTION STANDARDS
[Gallons per 100 hp-hr]

| Phase 1—Voluntary Standards | | | | | | |
|---|---|---|---|---|---|---|
| Regulatory subcategory | CI LHD engines and all other engines | CI MHD engines and all other engines | | HHD CI engines and all other engines | | SI engines |
| Application | Vocational | Vocational | Tractor | Vocational | Tractor | All |
| 2015 | | | | | | 7.0552 |
| 2013 through 2016 | 5.8939 | 5.8939 | 4.9312 | 5.5697 | 4.666 | |

| Phase 1—Mandatory Standards | | | | | | |
|---|---|---|---|---|---|---|
| Regulatory subcategory | CI LHD engines and all other engines | CI MHD engines and all other engines | | CI HHD engines and all other engines | | SI engines |
| Application | Vocational | Vocational | Tractor | Vocational | Tractor | All |
| 2016 | | | | | | 7.0552 |
| 2017 through 2020 | 5.6582 | 5.6582 | 4.7839 | 5.4519 | 4.5187 | 7.0552 |

| Phase 2—Mandatory Standards | | | | | | |
|---|---|---|---|---|---|---|
| Regulatory subcategory | CI LHD engines and all other engines | CI MHD engines and all other engines | | CI HHD engines and all other engines | | SI engines (except HHD engines) |
| Application | Vocational | Vocational | Tractor | Vocational | Tractor | All |
| 2021 through 2023 | 5.5305 | 5.3536 | 4.6464 | 5.0393 | 4.3910 | 7.0552 |
| 2024 through 2026 | 5.4519 | 5.2849 | 4.5285 | 4.9705 | 4.2829 | 7.0552 |
| 2027 and Later | 5.4224 | 5.2554 | 4.4892 | 4.9411 | 4.2436 | 7.0552 |

* * * * *

(11) * * *

(i) * * *

(A) 5.3241 gallons per 100 hp-hr for MHD vocational vehicle engines.

* * * * *

(C) 5.0098 gallons per 100 hp-hr for HHD vocational vehicle engines.

* * * * *

■ 6. Amend § 535.6 by:

■ a. Revising paragraphs (b)(1), (b)(4)(ii), and (b)(5)(i);

■ b. Adding paragraphs (b)(5)(v)(E)(*3*) and (*4*)

■ c. Revising paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, (d)(3) introductory text, and (d)(3)(ii) introductory text; and

■ d. Removing paragraph (e).

The revisions and additions read as follows:

**§ 535.6 Measurement and calculation procedures.**

* * * * *

(b) * * *

(1) Select vehicles and vehicle family configurations as specified in 40 CFR 1037.150 and 1037.230 for vehicles that make up each of the manufacturer's regulatory subcategories of vocational vehicles and tractors. For the Phase 2 program, select powertrain, axle and transmission families in accordance with 40 CFR 1037.231 and 1037.232.

* * * * *

(4) * * *

(ii) Coefficient of aerodynamic drag ($C_dA$) or drag area, as described in 40 CFR 1037.520(b), 1037.525, 1037.527, and 1037.528. Alternatively, manufacturers may use $C_dA$ values as specified in 40 CFR 1037.530, 1037.532, or 1037.534 if used for determining $CO_2$ compliance for EPA. Manufacturers must use the same compliance approach for determining $C_dA$ values in GEM for the NHTSA and EPA programs.

* * * * *

(5) * * *

(i) *Engine characteristics.* Enter information from the engine manufacturer to describe the installed engine and its operating parameters as described in 40 CFR 1036.503 and 1037.520(f).

* * * * *

(v) * * *

(E) * * *

(*3*) Manufacturers may use values to characterize torque converters as inputs to GEM as specified in the procedure defined in 40 CFR 1037.570.

(*4*) Vocational vehicle manufacturers may optionally use values for neutral coasting in GEM as specified in 40 CFR 1037.520

* * * * *

(d) *Heavy-duty engines.* This section describes the method for determining equivalent fuel consumption family certification level (FCL) values for engine and powertrain families and subfamilies of heavy-duty truck tractors and vocational vehicles. The NHTSA heavy-duty engine fuel consumption FCLs are determined from the EPA FCLs tested in accordance with 40 CFR part 1036, subpart F. Each engine and powertrain family must use the same primary intended service class as designated for EPA in accordance with 40 CFR 1036.140.

(1) Manufacturers must select emission-data engines representing the tested configuration of each engine family specified in 40 CFR 1036.501 for engines in heavy-duty truck tractors and vocational vehicles that make up each of the manufacturer's regulatory subcategories.

(2) Standards in § 535.5(d) apply to the CO2 emissions rates for each emissions-data engine in an engine or powertrain family or sub-family subject to the procedures and equipment specified in 40 CFR part 1036, subpart F. Determine equivalent fuel consumptions rates using CO2 emissions rates in grams per hp-hr measured to at least one more decimal place than that of the applicable EPA standard in 40 CFR 1036.108.

* * * * *

(3) For medium HD and heavy HD engines certified as tractor and other long-haul engine families, use the CO2 emissions test results from the steady-state duty cycle, which is referred to as the Supplemental Emission Test (SET), as specified in 40 CFR 1036.510 for each model year; for medium HD and heavy HD engines certified as tractor and vocational engine families, use the CO2 test results from the transient duty

cycle, which is referred to as the Federal Test Procedure (FTP) duty cycle, as specified in 40 CFR 1036.512 for each model year; for all other engines (including those certifying to SI standards) use the CO2 emissions test results from the appropriate duty cycle, as specified in 40 CFR 1036.501 for each model year.

* * * * *

(ii) The following engines are excluded from the engine and powertrain families and subfamilies used to determine fuel consumption FCL values and the benefit for these engines is determined as an advanced technology credit under the ABT provisions provided in § 535.7(e); these provisions apply only for the Phase 1 program:

* * * * *

■ 7. Amend § 535.7 by:
■ a. Revising paragraphs (a) introductory text and (a)(2)(v);
■ b. Removing paragraph (a)(3)(v);
■ c. Revising paragraph (a)(4) introductory text;
■ d. Removing and reserving paragraph (a)(4)(v);
■ e. Revising paragraphs (a)(8)(i) and (a)(9)(iv)(B);
■ f. Adding paragraph (a)(11);
■ g. Revising paragraphs (b)(1), (c)(1) introductory text, (d)(1) introductory text, and (d)(7);
■ h. Removing and reserving paragraph (e);
■ i. Revising paragraph (f)(1)(ii) introductory text;
■ j. Adding paragraph (f)(1)(ii)(G); and
■ k. Removing and reserving paragraph (f)(2)(v).

The revisions and additions read as follows:

### § 535.7 Averaging, banking, and trading (ABT) credit program.

(a) *General provisions.* After the end of each model year, manufacturers must comply with the fuel consumption standards in § 535.5 for averaging, banking and trading credits. Manufacturers comply with standards if the sum of averaged, banked and traded credits generate a ‘‘zero’’ credit balance or a credit surplus within an averaging set of vehicles or engines. Manufacturers fail to comply with standards if the sum of the credit flexibilities generate a credit deficit (or shortfall) in an averaging set. Credit shortfalls must be offset by banked or traded credits within three model years after the shortfall is incurred. These processes are hereafter referenced as the NHTSA ABT credit program. The following provisions apply to all fuel consumption credits.

* * * * *

(2) * * *

(v) If a manufacturer certifies a vehicle family to an FEL that exceeds the otherwise applicable standard, it must obtain enough FCC to offset the vehicle family’s deficit by the due date of its final report required in § 535.8. The emission credits used to address the deficit may come from other vehicle families that generate FCCs in the same model year (or from the next three subsequent model years), from banked FCCs from previous model years, or from FCCs generated in the same or previous model years that it obtained through trading.

* * * * *

(4) *Trading.* Trading is a transaction that transfers banked family regulatory subcategory or averaging set fuel consumption credits. Tractor, vocational vehicle and engine manufacturers may trade credits generated for vehicle or engine families or subfamilies while manufacturers of heavy-duty pickup trucks and vans certified as complete vehicles may trade credit credits generated for averaging sets. A manufacturer may use traded FCCs for averaging, banking, or further trading transactions.

(8) * * *

(i) Fuel consumption credits a manufacturer generates for light and medium heavy-duty vocational vehicles in model years 2018 through 2021 may be used through model year 2027, instead of being limited to a five-year credit life as specified in this part. Fuel consumption credits that small manufacturers generate for heavy heavy-duty vocational vehicles in model years 2018 through may be used through model year 2027, instead of being limited to a five-year credit life as specified in this part. Fuel consumption credits that a small manufacturer generates for vocational vehicles in model year 2022 that are certified to Phase 1 standards as permitted under § 535.3(e)(2)(ii)(B) may be used through model year 2027.

* * * * *

(9) * * *

(iv) * * *

(B) Manufacturers may produce up to 200 drayage tractors in a given model year to the standards described in § 535.5(b)(6) for ‘‘other buses’’. Treat these drayage tractors as being in their own averaging set. This limit applies with respect to vehicles produced by manufacturers within a control relationship as defined § 534.3.

* * * * *

(11) Fuel consumption credits may not be generated more than once. This means that fuel consumption credits may only be generated once for a given engine or vehicle and fuel consumption credits may not be generated for both a given engine and the vehicle in which the engine is installed. For example, if a manufacturer generates fuel consumption credits for a given hybrid vehicle under this part, no one may generate fuel consumption credits for the associated hybrid engine. This provision, however, does not prevent manufacturers from generating fuel consumption credits for engines that are identical to the given engine in the example if those engines are installed in vehicles for which fuel consumption credits are not generated. This provision does not impact any adjustment factor or multiplier that is applied to the fuel consumption credits as specified or permitted by this part.

(b) * * *

(1) Calculate fuel consumption credits in a model year for one fleet of conventional heavy-duty pickup trucks and vans and if designated by the manufacturer another consisting of advance technology vehicles for the averaging set as defined in § 535.4. Calculate credits for each fleet separately using the following equation:

$$\text{Total MY Fleet FCC (gallons)} = (\text{Std} - \text{Act}) \times (\text{Volume}) \times (\text{UL}) \times (10^2)$$

Where:

Std = Fleet average fuel consumption standard (gal/100 mile).
Act = Fleet average actual fuel consumption value (gal/100 mile).
Volume = the total U.S.-directed production of vehicles in the regulatory subcategory.
UL = the useful life for the regulatory subcategory. The useful life value for heavy- pickup trucks and vans manufactured for model years 2013 through 2020 is equal to the 120,000 miles. The useful life for model years 2021 and later is equal to 150,000 miles.

* * * * *

(c) * * *

(1) Calculate the fuel consumption credits in a model year for each participating family or subfamily consisting of conventional vehicles in each averaging set (as defined in § 535.4) using the equation in this section. Each designated vehicle family or subfamily has a ‘‘family emissions limit’’ (FEL) that is compared to the associated regulatory subcategory standard. An FEL that falls below the regulatory subcategory standard creates ‘‘positive credits,’’ while fuel consumption level of a family group above the standard creates a ‘‘negative credits.’’ The value of credits generated for each family or subfamily in a model year is calculated as follows and must be rounded to nearest whole number:

Vehicle Family FCC (gallons) = $(Std - FEL) \times (Payload) \times (Volume) \times (UL) \times (10^3)$

Where:

Std = the standard for the respective vehicle family regulatory subcategory (gal/1,000 ton-mile).

FEL = family emissions limit for the vehicle family (gal/1,000 ton-mile).

Payload = the prescribed payload in tons for each regulatory subcategory as shown in the following table:

TABLE 1 TO PARAGRAPH (c)(1) INTRODUCTORY TEXT

| Regulatory subcategory | Payload (tons) |
|---|---|
| Vocational LHD Vehicles | 2.85 |
| Vocational MHD Vehicles | 5.60 |
| Vocational HHD Vehicles | 7.5 |
| MDH MHD Tractors | 12.50 |
| HHD Tractors, other than heavy-haul Tractors | 19.00 |
| Heavy-haul Tractors | 43.00 |

Volume = the number of U.S.-directed production volume of vehicles in the corresponding vehicle family.

UL = the useful life for the regulatory subcategory (miles) as shown in the following table:

TABLE 2 TO PARAGRAPH (c)(1) INTRODUCTORY TEXT

| Regulatory subcategory | UL (miles) |
|---|---|
| LHD Vehicles | 110,000 (Phase 1);150,000 (Phase 2). |
| Vocational MHD Vehicles and tractors at or below 33,000 pounds GVWR | 185,000. |
| Vocational HHD Vehicles and tractors at or above 33,000 pounds GVWR | 435,000. |

* * * * *

(d) * * *

(1) Calculate the fuel consumption credits in a model year for each participating family or subfamily consisting of engines in each averaging set (as defined in § 535.4) using the equation in this section. Each designated engine family has a ''family certification level'' (FCL) which is compared to the associated regulatory subcategory standard. A FCL that falls below the regulatory subcategory standard creates ''positive credits,'' while fuel consumption level of a family group above the standard creates a ''credit shortfall.'' The value of credits generated in a model year for each engine family or subfamily is calculated as follows and must be rounded to nearest whole number:

Engine Family FCC (gallons) = $(Std - FCL) \times (CF) \times (Volume) \times (UL) \times (10^2)$

Where:

Std = the standard for the respective engine regulatory subcategory (gal/100 hp-hr).

FCL = family certification level for the engine family (gal/100 hp-hr).

CF= a transient cycle conversion factor in hp-hr/mile which is the integrated total cycle horsepower-hour divided by the equivalent mileage of the applicable test cycle. For engines subject to spark-ignition heavy-duty standards, the equivalent mileage is 6.3 miles. For engines subject to compression-ignition heavy-duty standards, the equivalent mileage is 6.5 miles.

Volume = the number of engines in the corresponding engine family.

UL = the useful life of the given engine family (miles) as shown in the following table:

TABLE 3 TO PARAGRAPH (d)(1) INTRODUCTORY TEXT

| Regulatory Subcategory | UL (miles) |
|---|---|
| SI and CI LHD Engines | 120,000 (Phase 1); 150,000 (Phase 2). |
| CI MHD Engines | 185,000. |
| CI HHD Engines | 435,000. |

* * * * *

(7) Engine credits generated for compression-ignition engines in model year 2020 and earlier may be used in model year 2021 and later as follows:

(i) For credit-generating engines certified to the tractor engine standards in § 535.5(d), you may use credits calculated relative to the tractor engine standards.

(ii) For credit-generating engines certified to the vocational engine standards in § 535.5(d), you may use credits calculated relative to the following family certification levels (FCLs):

(A) Medium Heavy-Duty Engines = 5.4813 gallons/100 hp-hr

(B) Heavy Heavy-Duty Engines = 5.1572 gallons/100 hp-hr

(C) To transfer Phase 1 credits for use in the Phase 2 fuel consumption program, manufacturers must recalculate credit values for the Phase 1 model years by substituting the FCLs in paragraph (d)(1) of this section with the those in paragraphs (d)(7)(ii)(A) and (B) of this section.

* * * * *

(f) * * *

(1) * * *

(ii) There are no separate credit allowances for advanced technology vehicles in the Phase 2 program. Instead, through model year 2027, vehicle families containing plug-in battery electric hybrids, all-electric, and fuel cell vehicles certifying to Phase 2 vocational and tractor standards may multiply credits by a multiplier of:

* * * * *

(G) Advanced technology credits increased with a multiplier in Phase 2,

in accordance with § 535.7(f)(1)(ii), cannot be used across averaging sets.

* * * * *

■ 8. Amend § 535.8 by revising paragraphs (a)(6), (g)(11)(i)(C), (g)(12), and (i) to read as follows:

**§ 535.8 Reporting and recordkeeping requirements.**

(a) * * *

(6) Any information that must be sent directly to NHTSA. In instances in which EPA has not created an electronic pathway to receive the information, the information should be sent through an electronic portal identified by NHTSA or through the NHTSA CAFE database (*i.e.,* information on fuel consumption credit transactions). If hardcopy documents must be sent, the information should be sent to the Associate Administrator of Enforcement at 1200 New Jersey Avenue SE, NVS–200, Office W45–306, Washington, DC 20590.

* * * * *

(g) * * *

(11) * * *

(i) * * *

(C) The averaging set corresponding to the engine and powertrain families and subfamilies that generated fuel consumption credits for the trade, including the number of fuel consumption credits from each averaging set.

* * * * *

(12) *Production reports.* Within 90 days after the end of the model year and no later than March 31st, manufacturers participating and not-participating in the ABT program must send to EPA and NHTSA a report including the total U.S.-directed production volume of vehicles it produced in each vehicle and engine family during the model year (based on information available at the time of the report) as required by 40 CFR 1036.250 and 1037.250. Each manufacturer shall report by vehicle or engine identification number and by configuration and identify the subfamily identifier. Report uncertified vehicles sold to secondary vehicle manufacturers. Small business manufacturers may omit reporting. Identify any differences between volumes included for EPA but excluded for NHTSA.

* * * * *

(i) *Information received from EPA.* NHTSA will receive information from EPA as specified in 40 CFR 1036.755 and 1037.755. The knowing and willful submission of false, fictitious or fraudulent information under this part will subject a manufacturer to the civil and criminal penalties of 18 U.S.C. 1001.

* * * * *

■ 9. Amend § 535.9 by revising paragraph (a)(1)(i) and adding paragraph (a)(1)(v) to read as follows:

**§ 535.9 Enforcement approach.**

(a) * * *

(1) * * *

(i) NHTSA may conduct audits or confirmatory testing on any configuration prior to first sale throughout a given model year or after the model year in order to validate data received from manufacturers and will discuss any potential issues with EPA and the manufacturer. NHTSA may perform confirmatory testing. Any such testing would be performed as specified in EPA's regulations at 40 CFR part 1037. Audits may periodically be performed to confirm manufacturers' credit balances, or other credit transactions or other information submitted to EPA and NHTSA.

* * * * *

(v) NHTSA may require a manufacturer to perform selective enforcement audits with respect to any GEM inputs in its application for certification or in the end of the year ABT final reports. Any required selective enforcement audits would be required to be conducted in a manner consistent with EPA's corresponding provisions at 40 CFR 1037.301, 1037.305, and 1037.320.

* * * * *

■ 10. Amend § 535.10 by:

■ a. Removing and reserving paragraph (a)(3);

■ b. Revising paragraphs (a)(6) and (c)(2); and

■ c. Removing and reserving paragraph (c)(3).

The revisions read as follows:

**§ 535.10 How do manufacturers comply with fuel consumption standards?**

(a) * * *

(6) Manufacturers apply the fuel consumption standards specified in § 535.5 to vehicles, engines and components that represent production units and components for vehicle and engine families, subfamilies and configurations consistent with the EPA specifications in 40 CFR 86.1819, 1036.230, and 1037.230. Vehicles required to meet the fuel consumption standards of this part must also comply with the following additional requirements, consistent with CFR 1037.115(a) and (d):

(i) *Adjustable parameters.* Vehicles that have adjustable parameters must meet all the requirements of this part for any adjustment in the practically adjustable range. We may require that you set adjustable parameters to any specification within the practically adjustable range during any testing. See 40 CFR 1068.50 for general provisions related to adjustable parameters. You must ensure safe vehicle operation throughout the practically adjustable range of each adjustable parameter, including consideration of production tolerances. Note that adjustable roof fairings and trailer rear fairings are deemed not to be adjustable parameters.

(ii) *Defeat devices.* Consistent with 40 CFR 1068.101, the use of defeat devices is prohibited.

* * * * *

(c) * * *

(2) For truck tractors, vocational vehicles, and engines the manufacturer's fuel consumption performance for each vehicle or engine family (or subfamily), as determined in § 535.6, is lower than the applicable regulatory subcategory standards in § 535.5.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

**Sophie Shulman,**

*Deputy Administrator.*

[FR Doc. 2024–05010 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 231215–0305; RTID 0648–XD808]**

## Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From Virginia to New Jersey

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the Commonwealth of Virginia is transferring a portion of its 2024 commercial summer flounder quota to the State of New Jersey. This adjustment to the 2024 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) quota transfer provisions. This announcement informs the public of the revised 2024

commercial quotas for Virginia and New Jersey.

**DATES:** Effective March 14, 2024, through December 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Laura Deighan, Fishery Management Specialist, (978) 281–9184.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.111. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2024 allocations were published on December 21, 2023 (88 FR 88266).

The final rule implementing amendment 5 to the Summer Flounder FMP, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: (1) the transfers or combinations would not preclude the overall annual quota from being fully harvested; (2) the transfers address an unforeseen variation or contingency in the fishery; and (3) the transfers are consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

Virginia is transferring 2,860 pounds (lb; 1,297 kilograms (kg)) to New Jersey through a mutual agreement between the states. This transfer was requested to repay landings made by an out-of-state permitted vessel under a safe harbor agreement. The revised summer flounder quotas for 2024 are: Virginia, 1,876,941 lb (851,366 kg); and New Jersey, 1,472,958 lb (668,123 kg).

## Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.102(c)(2)(i) through (iv), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: March 11, 2024.

**Everett Wayne Baxter,**

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

[FR Doc. 2024–05603 Filed 3–14–24; 8:45 am]

BILLING CODE 3510–22–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 240227–0061 and 240304–0068; RTID 0648–XD758]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

**ACTION:** Temporary rule; opening.

**SUMMARY:** NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program and the Community Development Quota (CDQ) Program. The season will open 1200 hours, Alaska local time (A.l.t.), March 15, 2024, and will close 1200 hours, A.l.t., December 7, 2024. This period is the same as the 2024 commercial halibut fishery opening dates adopted by the International Pacific Halibut Commission, except the hours are not the same. The IFQ and CDQ halibut season dates are the same as specified by a separate publication in the **Federal Register** of annual management measures, which should be referenced for the halibut specific open and closure times.

**DATES:** Effective 1200 hours, A.l.t., March 15, 2024, until 1200 hours, A.l.t., December 7, 2024.

**FOR FURTHER INFORMATION CONTACT:** Adam Zaleski, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** Beginning in 1995, fishing for Pacific halibut and sablefish with fixed gear in the IFQ regulatory areas defined in 50 CFR 679.2 has been managed under the IFQ Program. The IFQ Program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, adopted by the International Pacific Halibut Commission (IPHC). The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hours, A.l.t., March 15, 2024, and will close 1200 hours, A.l.t., December 7, 2024. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC, except the hours are not the same. The IFQ and CDQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

There is a difference in the time of day for opening and closing the halibut IFQ and CDQ commercial fishery and the Alaska IFQ and CDQ sablefish commercial fishery. IPHC regulations open the halibut IFQ and CDQ fishery at 0600 hours on March 15, 2024, and NMFS will open the Alaska IFQ and CDQ sablefish fishery at 1200 hours on March 15, 2024. Therefore, if gear is deployed to fish for halibut in the commercial fishery of Alaska before 1200 hours on March 15, 2024, then IFQ or CDQ sablefish caught from that deployment may not be retained. If a vessel operator holds both halibut and sablefish IFQ or CDQ, and the operator intends to retain sablefish on March 15, then the vessel should deploy its commercial fishing gear after 1200 hours.

IPHC regulations close the halibut IFQ and CDQ fishery at 2359 hours on December 7, 2024, and NMFS will close the Alaska IFQ and CDQ sablefish fishery at 1200 hours on December 7, 2024. Therefore, if gear is deployed to fish for halibut in the commercial fishery off Alaska after 1200 hours on December 7, 2024, then IFQ and CDQ sablefish caught from that deployment may only be retained up to the

Maximum Retainable Amount (MRA). If a vessel operator holds both halibut and sablefish IFQ or CDQ, and the operator intends to retain sablefish on December 7, 2024, after 1200 hours then the vessel may only retain IFQ or CDQ sablefish in accordance with the MRA regulations at § 679.20(e).

### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, and prevent the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 11, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: March 12, 2024.

**Everett Wayne Baxter,**

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

[FR Doc. 2024–05680 Filed 3–14–24; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 240304–0068; RTID 0648–XD774]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amounts of the Aleut Corporation and the Community Development Quota (CDQ) pollock directed fishing allowance (DFA) from the Aleutian Islands subarea to the Bering Sea subarea. This action is necessary to provide the opportunity for the harvest of the 2024 total allowable catch (TAC) of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI).

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), March 15, 2024, through 2400 hours, A.l.t., December 31, 2024.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

In the Aleutian Islands subarea, the portion of the 2024 pollock TAC allocated to the Aleut Corporation and CDQ DFA is 13,680 metric tons (mt) and 1,900 mt, respectively, as established by the final 2024 and 2025 harvest specifications for groundfish in the BSAI (89 FR 17287, March 11, 2024).

As of March 8, 2024, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 11,680 mt of the Aleut Corporation's DFA and 1,900 mt of pollock CDQ DFA in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 11,680 mt of the Aleut Corporation's DFA and 1,900 mt of pollock CDQ DFA from the Aleutian Islands subarea to the Bering Sea subarea allocations. The 1,900 mt of pollock CDQ DFA is added to the 2024 Bering Sea CDQ DFA. The 11,680 mt of pollock Aleut Corporation's DFA is apportioned to the American Fisheries Act (AFA) inshore sector (50 percent), AFA catcher/processor (CP) sector (40 percent), and the AFA mothership sector (10 percent). The 2024 Bering Sea subarea pollock incidental catch allowance remains at 50,000 mt. As a result, the 2024 harvest specifications for pollock in the Aleutian Islands subarea included in the final 2024 and 2025 harvest specifications for groundfish in the BSAI (89 FR 17287, March 11, 2024) are revised as follows: 0 mt to CDQ DFA and 2,000 mt to the Aleut Corporation's DFA. Furthermore, pursuant to § 679.20(a)(5), table 4 is revised to make 2024 pollock allocations consistent with this reallocation. This reallocation results in an adjustment to the 2024 CDQ pollock allocation established at § 679.20(a)(5).

TABLE 4—FINAL 2024 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

| Area and sector | 2024 Allocations | 2024 A season [1] | | 2024 B season [1] |
|---|---|---|---|---|
| | | A season DFA | SCA harvest limit [2] | B season DFA |
| Bering Sea subarea TAC [1] | 1,313,580 | n/a | n/a | n/a |
| CDQ DFA | 131,900 | 59,355 | 36,932 | 72,545 |
| ICA [1] | 50,000 | n/a | n/a | n/a |
| Total Bering Sea non-CDQ DFA | 1,131,680 | 509,256 | 316,870 | 622,424 |
| AFA Inshore | 565,840 | 254,628 | 158,435 | 311,212 |
| AFA Catcher/Processors [3] | 452,672 | 203,702 | 126,748 | 248,970 |
| Catch by CPs | 414,195 | 186,388 | n/a | 227,807 |
| Catch by CVs [3] | 38,477 | 17,315 | n/a | 21,162 |
| Unlisted CP Limit [4] | 2,263 | 1,019 | n/a | 1,245 |

TABLE 4—FINAL 2024 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

| Area and sector | 2024 Allocations | 2024 A season [1] | | 2024 B season [1] |
|---|---|---|---|---|
| | | A season DFA | SCA harvest limit [2] | B season DFA |
| AFA Motherships | 113,168 | 50,926 | 31,687 | 62,242 |
| Excessive Harvesting Limit [5] | 198,044 | n/a | n/a | n/a |
| Excessive Processing Limit [6] | 339,504 | n/a | n/a | n/a |
| Aleutian Islands subarea ABC | 42,654 | n/a | n/a | n/a |
| Aleutian Islands subarea TAC [1] | 5,420 | n/a | n/a | n/a |
| CDQ DFA | | | n/a | |
| ICA | 3,420 | 1,710 | n/a | 1,710 |
| Aleut Corporation | 2,000 | 2,000 | n/a | |
| Area harvest limit [7] | n/a | n/a | n/a | n/a |
| 541 | 12,796 | n/a | n/a | n/a |
| 542 | 6,398 | n/a | n/a | n/a |
| 543 | 2,133 | n/a | n/a | n/a |
| Bogoslof District ICA [8] | 250 | n/a | n/a | n/a |

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (50,000 mt; 3.85 percent), is allocated as a DFA as follows: inshore sector—50 percent, CP—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA and CDQ DFA are allocated to the A season (January 20–June 10) and 55 percent of the DFA and CDQ DFA are allocated to the B season (June 10–November 1). When the Aleutian Islands (AI) pollock ABC equals or exceeds 19,000 mt, the annual TAC is equal to 19,000 mt (§ 679.20(a)(5)(iii)(B)(*1*)). Pursuant to § 679.20(a)(5)(iii)(B)(*2*), the AI subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (3,420 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated no more than 40 percent of the AI pollock ABC.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before 12 p.m., A.l.t., April 1. The SCA is defined at § 679.22(a)(7)(vii).

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the allocation to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative contract for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted CPs are limited to harvesting not more than 0.5 percent of the CP sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the AI pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

## Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the reallocation of Aleutian Islands pollock. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 11, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: March 12, 2024.

**Everett Wayne Baxter,**

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

[FR Doc. 2024–05598 Filed 3–12–24; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 240227–0061; RTID 0648–XD436]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2024 and 2025 Harvest Specifications for Groundfish

In rule document 2024–04516 beginning on page 15484 in the issue of Monday, March 4, 2024, make the following correction:

On page 15489, in Table 1 the three final entries should read:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Sharks | 4,891 | 4,891 | 0 | 0% | 4,891 | 0 | 0% |
| Octopuses | 980 | 980 | 0 | 0% | 980 | 0 | 0% |
| Total | 476,537 | 520,020 | 43,483 | 9.1% | 483,700 | 7,163 | 1.5% |

[FR Doc. C1–2024–04516 Filed 3–14–24; 8:45 am]

BILLING CODE 1505–01–D

# Proposed Rules

Federal Register

Vol. 89, No. 52

Friday, March 15, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

**[EERE–2017–BT–STD–0014]**

**RIN 1904–AF58**

## Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers

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

**ACTION:** Notice of proposed rulemaking.

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

**DATES:** DOE will accept comments, data, and information regarding this NOPR no later than July 3, 2024. Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before April 15, 2024.

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

Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2017–BT–STD–0014. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0014, by any of the following methods:

(1) *Email: ApplicanceStandardsQuestions@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0014 in the subject line of the message.

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

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

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

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0014.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section IV of this document for information on how to submit comments through *www.regulations.gov.*

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

**FOR FURTHER INFORMATION CONTACT:**

Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

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

**SUPPLEMENTARY INFORMATION:**

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## I. Synopsis of the Proposed Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include consumer (residential) [3] clothes washers (''RCWs''), the subject of this proposed rulemaking. (42 U.S.C. 6292(a)(7))

Pursuant to EPCA, any new or amended energy conservation standard must, among other things, be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

In light of the above and under the authority provided by 42 U.S.C. 6295(p)(4)(A)(i), DOE is proposing this rule amending the energy conservation standards for RCWs and is concurrently issuing a direct final rule elsewhere in this issue of the **Federal Register**. DOE will proceed with this notice of proposed rulemaking only if it determines it must withdraw the direct final rule pursuant to the criteria provided in 42 U.S.C. 6295(p)(4). The amended standard levels in the proposed rule and the direct final rule were proposed in a letter submitted to DOE jointly by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility. This letter, titled ''Energy Efficiency Agreement of 2023'' (hereafter, the ''Joint Agreement'' [4]), recommends specific energy conservation standards for RCWs that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). DOE subsequently received letters of support for the Joint Agreement from States including New York, California, and Massachusetts [5] and utilities including San Diego Gas and Electric and Southern California Edison [6] advocating for the adoption of the recommended standards. As discussed in more detail in the accompanying direct final rule and in accordance with the provisions at 42 U.S.C. 6295(p)(4), DOE has determined that the recommendations contained in the Joint Agreement comply with the requirements of 42 U.S.C. 6295(o).

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for RCWs. The standards are expressed in terms of energy efficiency ratio (''EER''), measured in pounds per kilowatt-hour per cycle (''lb/kWh/cycle''), and water efficiency ratio (''WER''), measured in pounds per gallon per cycle (''lb/gal/cycle''), as determined in accordance with DOE's clothes washer test procedure codified at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix J (''appendix J''). The EER metric includes active mode, inactive mode, and off mode energy use.

Table I.1 presents the proposed energy conservation standards for RCWs. The proposed standards are the same as those recommended by the Joint Agreement. These standards apply to all products listed in Table I.1 and manufactured in, or imported into the United States starting on March 1, 2028, as recommended in the Joint Agreement.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS
[Compliance Starting March 1, 2028]

| Product class | Minimum energy efficiency ratio (lb/kWh/cycle) | Minimum water efficiency ratio (lb/gal/cycle) |
|---|---|---|
| Automatic Clothes Washers: | | |
| Top-Loading Ultra-Compact (less than 1.6 ft³ capacity) | 3.79 | 0.29 |
| Top-Loading Standard-Size (1.6 ft³ or greater capacity) with an average cycle time of 30 minutes or greater | 4.27 | 0.57 |
| Front-Loading Compact (less than 3.0 ft³ capacity) * | 5.02 | 0.71 |
| Front-Loading Standard-Size (3.0 ft³ or greater capacity) with an average cycle time of 45 minutes or greater | 5.52 | 0.77 |
| Semi-Automatic Clothes Washers | 2.12 | 0.27 |

* The standards in this table do not apply to front-loading clothes washers with a capacity greater than or equal to 1.6 ft³ and less than 3.0 ft³ with an average cycle time of less than 45 minutes.

## II. Introduction

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

### *A. Authority*

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include RCWs, the subject of this document. (42 U.S.C. 6292(a)(7)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(g)(2) and (g)(9)(A)), and directed DOE to conduct

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] DOE uses the ''residential'' nomenclature and ''RCW'' abbreviation for consumer clothes washers in order to distinguish from the ''CCW'' abbreviation used for commercial clothes washers, which are also regulated equipment under EPCA.

[4] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0505.*

[5] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0506.*

[6] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0507.*

future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4) and (g)(9)(B)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

In establishing energy conservation standards with both energy and water use performance standards for RCWs manufactured after January 1, 2011, Congress also directed DOE to ''determin[e] whether to amend'' those standards. (42 U.S.C. 6295(g)(9)(B)) Congress's directive, in section 6295(g)(9)(B), to consider whether ''to amend the standards in effect for RCWs'' refers to ''the standards'' established in the immediately preceding paragraph, 6295(g)(9)(A). There, Congress established energy conservation standards with *both* energy and water use performance standards for RCWs. Indeed, the energy and water use performance standards for RCWs (both top-loading and front-loading) are each contained within a single subparagraph. *See id.* Everything in section 6295(g)(9) suggests that Congress intended both of those twin standards to be evaluated when it came time, ''[n]ot later than December 13, 2011,'' to consider amending them. (*Id.* 6295(g)(9)(B)(i)) Accordingly, DOE understands its authority, under 6295(g)(9)(B), to include consideration of amended energy and water use performance standards for RCWs.

DOE similarly understands its authority under 42 U.S.C. 6295(m) to amend ''standards'' for covered products to include amending both the energy and water use performance standards for RCWs. Neither section 6295(g)(9)(B) nor section 6295(m) limit their application to ''energy use standards.'' Rather, they direct DOE to consider amending ''the standards,'' 42 U.S.C. 6295(g)(9)(B), or simply ''standards,'' *id.* 6295(m)(1)(B), which may include both energy use standards and water use standards.

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

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

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

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

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

In considering how to treat these products and standards that Congress has directly added to 42 U.S.C. 6295 without making conforming changes to the rest of the statute, including the list of covered products in 42 U.S.C. 6292, and the water-use products in the definition of an ''energy conservation standard,'' DOE construes the statute as a whole. When Congress added products and standards directly to 42 U.S.C. 6295 it must have meant those products to be covered products and those standards to be energy conservation standards, given that the purpose of 42 U.S.C. 6295 is to provide ''energy conservation standards applicable to covered products'' and to

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

It would similarly defeat congressional intent for a manufacturer to be permitted to distribute a covered product, *e.g.,* a clothes washer or dishwasher, that violates a water use performance standard because Congress added the standard to 42 U.S.C. 6295 without also updating the definition of energy conservation standard in 42 U.S.C. 6291(6). By prescribing directly, in 6295(g)(9), energy conservation standards for RCWs that include both energy and water use performance standards, Congress intended that energy conservation standards for RCWs include both energy use and water use.

DOE recognizes that some might argue that Congress's specific reference in section 6291(6) to water standards for showerheads, faucets, water closets, and urinals could ''create a negative implication'' that energy conservations standards for other covered products may not include water use standards. *See Marx* v. *Gen. Revenue Corp.,* 568 U.S. 371, 381 (2013). ''The force of any negative implication, however, depends on context.'' *Id.; see also NLRB* v. *SW Gen., Inc.,* 580 U.S. 288, 302 (2017) (''The *expressio unius* canon applies only when circumstances support a sensible inference that the term left out must have been meant to be excluded.'' (alterations and quotation marks omitted)). In this context, the textual and structural cues discussed above show that Congress did not intend to exclude from the definition of energy conservation standard the water use performance standards that it specifically prescribed, and directed DOE to amend, in section 6295. To conclude otherwise would negate the plain text of 6295(g)(9). Furthermore, to the extent the definition of energy conservation standards in section 6291(6), which was last amended in the Energy Policy Act of 1992, could be read as in conflict with the energy and water use performance standards prescribed by Congress in EISA 2007, any such conflict should be resolved in favor of the more recently enacted statute. *See United States* v. *Estate of Romani,* 523 U.S. 517, 530–31 (1998) (''[A] specific policy embodied in a later federal statute should control our construction of the priority statute, even though it had not been expressly amended.''). Accordingly, based on a complete reading of the statute, DOE has determined that products and standards added directly to 42 U.S.C. 6295 are appropriately considered ''covered products'' and ''energy conservation standards'' for the purposes of applying the various provisions in EPCA.

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

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for RCWs appear at 10 CFR part 430, subpart B, appendix J (''appendix J'') and appendix J2 (''appendix J2'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including RCWs. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy (''Secretary'') determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

Moreover, DOE may not prescribe a standard if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

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

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing

by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. A rule prescribing an energy conservation standard for a type (or class) of product must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. (*Id.*) Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Additionally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, final rules for new or amended energy conservation standards promulgated after July 1, 2010, are required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for RCWs address standby mode and off mode energy use, as do the standards proposed in this NOPR.

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

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

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

*B. Background*

1. Current Standards

In a direct final rule published on May 31, 2012 (''May 2012 Direct Final Rule''), DOE prescribed the current energy conservation standards for RCWs manufactured on or after January 1, 2018. 77 FR 32308.[7] These standards are set forth in DOE's regulations at 10 CFR 430.32(g)(4). These standards are consistent with a prior joint proposal submitted to DOE by interested parties representing manufacturers, energy and environmental advocates, and consumer groups.[8] The current standards are defined in terms of a minimum allowable integrated modified energy factor (''IMEF''), measured in cubic feet per kilowatt-hour per cycle (''$ft^3$/kWh/cycle''), and maximum allowable integrated water factor (''IWF''), measured in gallons per cycle per cubic

[7] DOE published a confirmation of effective date and compliance date for the direct final rule on October 1, 2012. 77 FR 59719.

[8] Available at *www.regulations.gov/document/EERE-2008-BT-STD-0019-0032.*

foot (''gal/cycle/ft$^3$''), as measured according to appendix J2.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

| Product class | Minimum integrated modified energy factor (ft$^3$/kWh/cycle) | Maximum integrated water factor (gal/cycle/ft$^3$) |
|---|---|---|
| Top-Loading, Compact (less than 1.6 ft$^3$ capacity) | 1.15 | 12.0 |
| Top-Loading, Standard (1.6 ft$^3$ or greater capacity) | 1.57 | 6.5 |
| Front-Loading, Compact (less than 1.6 ft$^3$ capacity) | 1.13 | 8.3 |
| Front-Loading, Standard (1.6 ft$^3$ or greater capacity) | 1.84 | 4.7 |

For top-loading semi-automatic clothes washers, a design standard currently applies, which requires such products to have an unheated rinse water option. 10 CFR 430.32(g)(1).

2. Current Test Procedure

As discussed, DOE's current energy conservation standards for RCWs are expressed in terms of IMEF and IWF as measured using appendix J2. (*See* 10 CFR 430.32(g)(4).)

In a final rule published on June 1, 2022 (''June 2022 TP Final Rule''), DOE finalized a new test procedure at appendix J, which defines new energy efficiency metrics: an energy efficiency ratio (*i.e.,* EER) and a water efficiency ratio (*i.e.,* WER). 87 FR 33316, 33319. EER is defined as the quotient of the weighted-average load size divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of (1) the machine electrical energy consumption, (2) the hot water energy consumption, (3) the energy required for removal of the remaining moisture in the wash load, and (4) the combined low-power mode energy consumption. 10 CFR part 430 subpart B, appendix J section 1. WER is defined as the quotient of the weighted-average load size divided by the total weighted per-cycle water consumption for all wash cycles in gallons. *Id.* For both EER and WER, a higher value indicates more efficient performance. The standard levels proposed in this NOPR are expressed in terms of the EER and WER metrics as measured according to the newly established test procedure contained in appendix J.

3. The Joint Agreement

On September 25, 2023, DOE received a joint statement (*i.e.,* the Joint Agreement) recommending standards for RCWs, that was submitted by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility.[9] In addition to the recommended standards for RCWs, the Joint Agreement also included separate recommendations for several other covered products.[10] And, while acknowledging that DOE may implement these recommendations in separate rulemakings, the Joint Agreement also stated that the recommendations were recommended as a complete package and each recommendation is contingent upon the other parts being implemented. DOE understands this to mean that the Joint Agreement is contingent upon DOE initiating rulemaking processes to adopt all of the recommended standards in the agreement. That is distinguished from an agreement where issuance of an amended energy conservation standard for a covered product is contingent on issuance of amended energy conservation standards for the other covered products. If the Joint Agreement were so construed, it would conflict with the anti-backsliding provision in 42 U.S.C. 6295(o)(1), because it would imply the possibility that, if DOE were unable to issue an amended standard for a certain product, it would have to withdraw a previously issued standard for one of the other products. The anti-backsliding provision, however, prevents DOE from withdrawing or amending an energy conservation standard to be less stringent. As a result, DOE will be proceeding with individual rulemakings that will evaluate each of the recommended standards separately under the applicable statutory criteria.

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

On February 14, 2024, following the Fifth Circuit's decision in *Louisiana* v. *United States Department of Energy,* DOE received a second joint statement from this same group of stakeholders in which the signatories reaffirmed the Joint Agreement, stating that the recommended standards represent the maximum levels of efficiency that are technologically feasible and

[9] The signatories to the Joint Agreement include the Association of Home Appliance Manufacturers (''AHAM''), American Council for an Energy-Efficient Economy, Alliance for Water Efficiency, Appliance Standards Awareness Project, Consumer Federation of America, Consumer Reports, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company. Members of AHAM's Major Appliance Division that make the affected products include: Alliance Laundry Systems, LLC; Asko Appliances AB; Beko US Inc.; Brown Stove Works, Inc.; BSH Home Appliances Corporation; Danby Products, Ltd.; Electrolux Home Products, Inc.; Elicamex S.A. de C.V.; Faber; Fotile America; GE Appliances, a Haier Company; L'Atelier Paris Haute Design LLG; LG Electronics; Liebherr USA, Co.; Midea America Corp.; Miele, Inc.; Panasonic Appliances Refrigeration Systems (PAPRSA) Corporation of America; Perlick Corporation; Samsung Electronics America Inc.; Sharp Electronics Corporation; Smeg S.p.A; Sub-Zero Group, Inc.; The Middleby Corporation; U-Line Corporation; Viking Range, LLC; and Whirlpool Corporation.

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

economically justified.[11] In the letter, the signatories clarified that ''short-cycle'' product classes for RCWs, consumer clothes dryers, and dishwashers did not exist at the time that the signatories submitted their recommendations and it is their understanding that these classes also do not exist at the current time. Accordingly, the parties clarified that the Joint Agreement did not address short-cycle product classes. The signatories also stated that they did not anticipate that the recommended energy conservation standards in the Joint Agreement will negatively affect features or performance, including cycle time, for RCWs.

In a recently issued request for information (''RFI''),[12] DOE is commencing a rulemaking process on remand from the Fifth Circuit (the ''Remand Proceeding'') by soliciting further information, relevant to the issues identified by the Fifth Circuit, regarding any short cycle product classes. In that Remand Proceeding, DOE will conduct the analysis required by 42 U.S.C. 6295(q)(1)(B) to determine whether any short-cycle products have a ''capacity or other performance-related feature [that] . . . justifies a higher or lower standard from that which applies (or will apply) to other products. . . .''

The Joint Agreement recommends amended standard levels for RCWs as presented in Table II.2. (Joint Agreement, No. 505 at p. 9) Details of the Joint Agreement recommendations for other products are provided in the Joint Agreement posted in the docket.[13]

TABLE II.2—RECOMMENDED AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

| Product class | Minimum energy efficiency ratio (lb/kWh/cycle) | Minimum water efficiency ratio (lb/gal/cycle) | Compliance date |
|---|---|---|---|
| Top-Loading, Ultra-Compact (less than 1.6 ft$^3$ capacity) | 3.79 | 0.29 | March 1, 2028. |
| Top-Loading, Standard-Size (1.6 ft$^3$ or greater capacity) | 4.27 | 0.57 | |
| Front-Loading, Compact (less than 1.6 ft$^3$ capacity) | 5.02 | 0.71 | |
| Front-Loading, Standard-Size (1.6 ft$^3$ or greater capacity) | 5.52 | 0.77 | |
| Semi-Automatic Clothes Washers | 2.12 | 0.27 | |

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

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

When the Joint Agreement was submitted, DOE was conducting a rulemaking to consider amending the standards for RCWs. As part of that process, DOE published a NOPR and announced a public meeting on March 3, 2023, (''March 2023 NOPR'') seeking comment on its proposed amended standards to inform its decision consistent with its obligations under EPCA and the Administrative Procedures Act (''APA''). 88 FR 13520. The March 2023 NOPR proposed amended standards defined in terms of the EER and WER metrics as measured according to appendix J. *Id.* at 88 FR 13522. The March 2023 NOPR also proposed to re-establish a product class, and establish new performance standards, for semi-automatic clothes washers. *Id.* at 88 FR 13541.[14] The March 2023 NOPR TSD is available at: *www.regulations.gov/document/EERE-2017-BT-STD-0014-0058.*

## III. Proposed Standards

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

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

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

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to

[11] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

[12] See *Appliance Standards Rulemakings and Notices (energy.gov).*

[13] The Joint Agreement is available in the docket at *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0505.*

[14] Top-loading semi-automatic clothes washers were subject to a design standard requiring an unheated rinse water option, as established by section 5(g) of the National Appliance Energy Conservation Act of 1987, Public Law 100–12.

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

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the direct final rule TSD [15] available in the docket for this rulemaking. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[16]

*A. Benefits and Burdens of TSLs Considered for Residential Clothes Washer Standards*

Table III.1 and Table III.2 summarize the quantitative impacts estimated for each TSL for RCWs. The national impacts are measured over the lifetime of RCWs purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2027–2056 for all TSLs except TSL 2, *i.e.,* the ''Recommended TSL'' for RCWs, and 2028–2057 for TSL 2). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle (''FFC'') results. DOE is presenting monetized benefits of greenhouse gas (''GHG'') emissions reductions in accordance with the applicable Executive Orders and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the Interim Estimates presented by the Interagency Working Group. The efficiency levels contained in each TSL are described in section V.A of the direct final rule published elsewhere in this issue of the **Federal Register**.

TABLE III.1—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLS: NATIONAL IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| **Cumulative FFC National Energy Savings** | | | | |
| Quads | 0.58 | 0.67 | 1.34 | 2.12 |
| **Cumulative FFC Emissions Reduction** | | | | |
| $CO_2$ (*million metric tons*) | 12.88 | 13.96 | 31.22 | 55.77 |
| $CH_4$ (*thousand tons*) | 116.74 | 124.57 | 294.14 | 554.46 |
| $N_2O$ (*thousand tons*) | 0.11 | 0.12 | 0.24 | 0.38 |
| $NO_X$ (*thousand tons*) | 26.03 | 27.74 | 65.47 | 123.66 |
| $SO_2$ (*thousand tons*) | 3.18 | 3.65 | 6.97 | 10.33 |
| Hg (*tons*) | 0.02 | 0.02 | 0.05 | 0.07 |
| **Present Value of Benefits and Costs (3% discount rate, billion 2022$)** | | | | |
| Consumer Operating Cost Savings | 12.99 | 17.92 | 26.18 | 34.19 |
| Climate Benefits * | 0.79 | 0.84 | 1.89 | 3.38 |
| Health Benefits ** | 1.51 | 1.62 | 3.53 | 6.10 |
| Total Benefits † | 15.30 | 20.38 | 31.60 | 43.66 |
| Consumer Incremental Product Costs ‡ | 4.51 | 9.20 | 11.50 | 13.07 |
| Consumer Net Benefits | 8.48 | 8.71 | 14.68 | 21.12 |
| Total Net Benefits | 10.79 | 11.18 | 20.10 | 30.59 |
| **Present Value of Benefits and Costs (7% discount rate, billion 2022$)** | | | | |
| Consumer Operating Cost Savings | 6.61 | 8.65 | 12.90 | 16.61 |
| Climate Benefits * | 0.79 | 0.84 | 1.89 | 3.38 |
| Health Benefits ** | 0.70 | 0.73 | 1.58 | 2.65 |
| Total Benefits † | 8.11 | 10.22 | 16.37 | 22.64 |
| Consumer Incremental Product Costs ‡ | 2.83 | 5.37 | 6.94 | 7.86 |
| Consumer Net Benefits | 3.78 | 3.28 | 5.96 | 8.76 |

[15] The TSD is available in the docket for this rulemaking at *www.regulations.gov/docket/EERE-2014-BT-STD-0005/document.*

[16] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies.* 2005. 72(3): pp. 853–883. doi: 10.1111/0034–6527.00354.

TABLE III.1—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLS: NATIONAL IMPACTS—Continued

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| Total Net Benefits | 5.28 | 4.85 | 9.43 | 14.79 |

**Note:** This table presents the costs and benefits associated with RCWs shipped during the period 2027–2056 for all TSLs except for TSL 2 (the Recommended TSL). These results include benefits to consumers which accrue after 2056 from the products shipped during the period 2027–2056. For TSL 2, this table presents the costs and benefits associated with RCWs shipped during the period 2028–2057.

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

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

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

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

TABLE III.2—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLS: MANUFACTURER AND CONSUMER IMPACTS

| Category | TSL 1 | TSL 2 ** | TSL 3 | TSL 4 |
|---|---|---|---|---|
| Industry NPV (million 2022$) (No-new-standards case INPV = 1,707.9). | 1,639.0 to 1,710.7 | 1,429.6 to 1,560.9 | 1,053.8 to 1,234.5 | 535.8 to 738.2. |
| Industry NPV (% change) | (4.0) to 0.2 | (16.3) to (8.6) | (38.3) to (27.7) | (68.6) to (56.8). |
| **Consumer Average LCC Savings (2022$)** | | | | |
| Top-Loading Ultra-Compact | n.a | n.a | n.a | n.a. |
| Top-Loading Standard-Size | $122 | $111 | $116 | $133. |
| Front-Loading Compact | 0 | 9 | 8 | 38. |
| Front-Loading Standard-Size | 26 | 46 | 15 | 49. |
| Semi-Automatic | 280 | 284 | 280 | 188. |
| Shipment-Weighted Average * | 98 | 96 | 91 | 111. |
| **Consumer Simple PBP (years)** | | | | |
| Top-Loading Ultra-Compact | n.a | n.a | n.a | n.a. |
| Top-Loading Standard-Size | 4.4 | 6.2 | 5.7 | 5.4. |
| Front-Loading Compact | 9.6 | 9.3 | 9.5 | 8.0. |
| Front-Loading Standard-Size | 0.9 | 1.4 | 1.6 | 1.7. |
| Semi-Automatic | 0.5 | 0.5 | 0.5 | 0.6. |
| Shipment-Weighted Average * | 3.6 | 4.9 | 4.6 | 4.4. |
| **Percent of Consumers that Experience a Net Cost** | | | | |
| Top-Loading Ultra-Compact | n.a | n.a | n.a | n.a. |
| Top-Loading Standard-Size | 16% | 27% | 28% | 26%. |
| Front-Loading Compact | 0% | 21% | 22% | 35%. |
| Front-Loading Standard-Size | 1% | 2% | 20% | 16%. |
| Semi-Automatic | 0% | 0% | 0% | 0%. |
| Shipment-Weighted Average * | 12% | 20% | 25% | 23%. |

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

* Weighted by shares of each product class in total projected shipments in 2027 except for TSL 2 (the Recommended TSL).

** For TSL 2 (the Recommended TSL), shipment-weighted averages are weighted by shares of each product class in total projected shipments in 2028.

DOE first considered TSL 4, which represents the max-tech efficiency levels for all product classes. Specifically for top-loading standard-size RCWs, DOE's expected design path for TSL 4 (which represents EL 4 for this product class) incorporates the use of a direct drive motor, stainless steel basket and more robust suspension and balancing systems (as methods for enabling faster spin speeds), a wash plate (as a means for enabling reduced water levels), reduced hot and warm wash water temperatures compared to temperatures available on baseline units, spray rinse, the fastest achievable spin speeds, and an increase in tub size compared to the baseline (as a means for reducing energy and water use on a per-pound of clothing basis).[17] Among these design options, use of a direct drive motor, stainless steel basket and more robust suspension and balancing systems, reduced wash water temperatures, and fastest achievable spin speeds reduce energy use only; spray rinse reduces

[17] As discussed in the direct final rule published elsewhere in this issue of the **Federal Register**, DOE's direct final rule analysis indicates that an increase in tub capacity is not required to achieve EL 5; however, manufacturers are currently implementing this design option in EL 5 models currently available on the market.

water use only; and the wash plate and increase in tub size reduce both energy and water use together.[18]

For front-loading standard-size RCWs, DOE's expected design path for TSL 4 (which represents EL 4 for this product class) incorporates the use of the most efficient available direct drive motor, the implementation of advanced sensors, the fastest achievable spin speeds, and lower cold water volume (but with no change to total hot water use). Among these design options, the direct drive motor, more advanced sensors, and faster spin speeds reduce energy use only; whereas the lower cold water volume reduces water use only.

TSL 4 would save an estimated 2.12 quads of energy and 2.73 trillion gallons of water, an amount DOE considers significant. Under TSL 4, the net present value (''NPV'') of consumer benefit would be $8.76 billion using a discount rate of 7 percent, and $21.12 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 55.77 million metric tons (''Mt'') of carbon dioxide (''$CO_2$''), 10.33 thousand tons of sulfur dioxide (''$SO_2$''), 123.66 thousand tons of nitrogen oxides (''$NO_X$''), 0.07 tons of mercury (''Hg''), 554.46 thousand tons of methane (''$CH_4$''), and 0.38 thousand tons of nitrous oxide (''$N_2O$''). The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average social cost of GHG (''SC–GHG'') at a 3-percent discount rate) at TSL 4 is $3.38 billion. The estimated monetary value of the health benefits from reduced $SO_2$ and $NO_X$ emissions at TSL 4 is $2.65 billion using a 7-percent discount rate and $6.10 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced $SO_2$ and $NO_X$ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is $14.79 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $30.59 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 4, the average life-cycle costs (''LCC'') impact is a savings of $133 for top-loading standard-size, $38 for front-loading compact, $49 for front-loading standard-size, and $188 for semi-automatic clothes washers. The simple payback period is 5.4 years for top-loading standard-size, 8.0 years for front-loading compact, 1.7 years for front-loading standard-size, and 0.6 years for semi-automatic clothes washers. The fraction of consumers experiencing a net LCC cost is 26 percent for top-loading standard-size, 35 percent for front-loading compact, 16 percent for front-loading standard-size, and zero percent for semi-automatic clothes washers. For the top-loading standard-size product class, which represents 71 percent of the market, TSL 4 would increase the first cost by $166, in comparison to an installed cost of $690 for baseline units. For the front-loading standard-size product class, which represents 25 percent of the market, TSL 4 would increase the first cost by $93, compared to an installed cost of $1,027 for baseline units. At TSL 4, the standard for top-loading ultra-compact RCWs is at the baseline, resulting in no LCC impact, no simple PBP, and no consumers experiencing a net LCC cost. Additionally, as a result of lower costs associated with well water and septic tanks in rural areas, about 40 percent of well-water households would experience a net LCC cost at TSL 4.

At TSL 4, the projected change in industry net present value (''INPV'') ranges from a decrease of $1,172.0 million to a decrease of $969.6 million, which correspond to a decrease of 68.6 percent and 56.8 percent, respectively. The loss in INPV is largely driven by industry conversion costs as manufacturers work to redesign their portfolios of model offerings and re-tool entire factories to comply with amended standards at this level. Industry conversion costs could reach $1,321.2 million at this TSL.

Conversion costs at max-tech are significant, as nearly all existing RCW models would need to be redesigned to meet the required efficiencies. Currently, approximately 4 percent of RCW annual shipments meet the max-tech levels. For top-loading standard-size RCWs, which DOE projects will account for 71 percent of annual shipments in 2027, less than 1 percent of current shipments meet this level. Of the nine original equipment manufacturers (''OEMs'') offering top-loading standard-size products, one OEM offers five basic models (representing approximately 1 percent of all top-loading standard-size basic models) that meet the efficiencies required by TSL 4. The remaining eight OEMs would need to overhaul their existing platforms and make significant updates to their production facilities. Those manufacturers may need to incorporate increased tub capacities, wash plate designs, direct drive motors, reinforced wash baskets, robust suspension and balancing systems, and advanced sensors. These product changes require significant investment. In interviews, several manufacturers expressed concerns about their ability to meet existing market demand given the required scale of investment, redesign effort, and 3-year compliance timeline.

At TSL 3 and higher, manufacturers expressed concerns and presented data regarding potential impacts to product performance, including wash temperatures, cleaning and rinsing performance, and fabric care. At TSL 4, such concerns and uncertainties would be further exacerbated. Consumers that experience any such negative impacts on product performance could potentially alter their usage patterns, for example by using more energy-intensive settings more frequently (*e.g.,* Extra-Hot temperature setting); using more water-intensive cycle options (*e.g.,* Deep Fill option; extra rinse cycles); using non-regulated cycles (*e.g.,* Heavy Duty cycle); or re-washing clothing that has not been cleaned sufficiently. Such changes to consumer usage patterns may counteract the energy and water savings that DOE has estimated would be achieved at TSL 4. For these reasons, DOE cannot be certain that the designs associated with TSL 4 efficiencies would not negatively impact certain aspects of standard-size RCW performance and consequently may jeopardize the energy and water savings that would be achieved at these efficiency levels. DOE emphasizes that its findings in this regard are based on the data available at this time and are predicated on the current state of clothes washer technology. Additional data that could become available, as well as future advances in washing technologies and design strategies, could alleviate any such concerns or uncertainties regarding product performance and could lead DOE to reach a different conclusion in a future rulemaking.

Based upon the above considerations, the Secretary tentatively concludes that at TSL 4 for RCWs, the benefits of energy and water savings, positive NPV of consumer benefits, and emission reductions would be outweighed by the potential for negative consumer utility impacts, which may jeopardize the energy and water savings that would be achieved at TSL 4, and the impacts on manufacturers, including the large

[18] As discussed in the direct final rule published elsewhere in this issue of the **Federal Register**, because the energy used to heat the water consumed by the RCW is included as part of the EER energy use metric, technologies that decrease hot water use also inherently decrease energy use.

potential reduction in INPV. DOE estimated the potential loss in INPV to be as high as 68 percent. The potential losses in INPV are primarily driven by large conversion costs that must be made ahead of the compliance date. At max-tech, manufacturers would need to make significant upfront investments to update nearly all product lines and manufacturing facilities. Manufacturers expressed concern that they would not be able to complete product and production line updates within the 3-year conversion period. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which represents the ENERGY STAR Most Efficient level for the front-loading product classes, the CEE Tier 1 level for the top-loading standard-size product class, and a gap fill level for the semi-automatic product classes.[19] Specifically, for top-loading standard-size RCWs, DOE's expected design path for TSL 3 (which represents EL 3 for this product class) incorporates many of the same technologies and design strategies as described for TSL 4. At TSL 3, top-loading standard-size units would incorporate a direct drive motor, stainless steel basket and more robust suspension and balancing systems (as methods for enabling faster spin speeds), a wash plate (as a means for enabling reduced water levels), and spray rinse, consistent with TSL 4. Models at TSL 3 would also incorporate slightly reduced hot wash water temperatures compared to temperatures available on baseline units, faster spin speeds compared to the baseline (although not as fast as TSL 4), and an increase in tub size compared to the baseline (as a means for reducing energy and water use on a per-pound of clothing basis).[20] Among these design options, use of a direct drive motor, stainless steel basket and more robust suspension and balancing systems, reduced wash water temperatures, and faster spin speeds reduce energy use only; spray rinse reduces water use only; and the wash plate and increase in tub size reduce both energy and water use together.

For front-loading standard-size RCWs, DOE's expected design path for TSL 3 (which represents EL 3 for this product class) incorporates the use of the most efficient direct drive motor available, spin speeds that are faster than the baseline level but not as fast as at TSL 4, and lower water volume (but with no change to total hot water heating). Among these design options, the direct drive motor and faster spin speeds reduce energy use only; whereas the lower water volume reduces water use only.

TSL 3 would save an estimated 1.34 quads of energy and 2.33 trillion gallons of water, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $5.96 billion using a discount rate of 7 percent, and $14.68 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 31.22 Mt of $CO_2$, 6.97 thousand tons of $SO_2$, 65.47 thousand tons of $NO_X$, 0.05 tons of Hg, 294.14 thousand tons of $CH_4$, and 0.24 thousand tons of $N_2O$. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 3 is $1.89 billion. The estimated monetary value of the health benefits from reduced $SO_2$ and $NO_X$ emissions at TSL 3 is $1.58 billion using a 7-percent discount rate and $3.53 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced $SO_2$ and $NO_X$ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is $9.43 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $20.10 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 3, the average LCC impact is a savings of $116 for top-loading standard-size, $8 for front-loading compact, $15 for front-loading standard-size, and $280 for semi-automatic clothes washers. The simple payback period is 5.7 years for top-loading standard-size, 9.5 years for front-loading compact, 1.6 years for front-loading standard-size, and 0.5 years for semi-automatic clothes washers. The fraction of consumers experiencing a net LCC cost is 28 percent for top-loading standard-size, 22 percent for front-loading compact, 20 percent for front-loading standard-size, and zero percent for semi-automatic clothes washers. For the top-loading standard-size product class, TSL 3 would increase the first cost by $160, in comparison to an installed cost of $690 for baseline units. For the front-loading standard-size product class, TSL 3 would increase the first cost by $78, compared to an installed cost of $1,027 for baseline units. At TSL 3, the standard for top-loading ultra-compact RCWs is at the baseline, resulting in no LCC impact, no simple PBP, and no consumers experiencing a net LCC cost. Overall, across all product classes, around 25 percent of consumers would experience a net LCC cost at TSL 3. DOE estimates that about 16 percent of low-income households would experience a net LCC cost at TSL 3, and as a result of having generally smaller households and lower annual usage, about 33 percent of senior-only households would experience a net LCC cost at TSL 3. Additionally, as a result of lower costs associated with well water and septic tanks in rural areas, about 41 percent of well-water households would experience a net LCC cost at TSL 3.

At TSL 3, the projected change in INPV ranges from a decrease of $654.1 million to a decrease of $473.3 million, which correspond to a decrease of 38.3 percent and 27.7 percent, respectively. The loss in INPV is largely driven by industry conversion costs as manufacturers work to redesign their portfolios of model offerings and update production facilities to comply with amended standards at this level. Industry conversion costs could reach $724.6 million at this TSL.

For top-loading standard-size products, approximately 3 percent of shipments meet TSL 3. Of the nine OEMs offering top-loading standard-size products, two OEMs offer 20 basic models (representing approximately 4 percent of all top-loading standard-size basic models) that meet the efficiencies required by TSL 3. At this level, the remaining seven manufacturers would likely implement largely similar design options as at TSL 4, but to a lesser extent for the increase in tub size and hardware changes associated with faster spin speeds (*e.g.,* reinforced wash baskets, robust suspension and balancing systems, and advanced sensors)—which are faster than the baseline level but not as fast as TSL 4. Although top-loading standard-size RCW manufacturers indicated that meeting TSL 3 efficiencies would require a less-extensive redesign than meeting TSL 4 efficiencies, these

[19] As discussed in the direct final rule published elsewhere in this issue of the **Federal Register**, tables in section IV.C.2.b of that direct final rule provide the ENERGY STAR Most Efficient and CEE Tier 1 equivalencies between the current metrics (IMEF and IWF) and the new metrics (EER and WER) for the top-loading and front-loading standard size product classes, respectively.

[20] As discussed in the direct final rule published elsewhere in this issue of the **Federal Register**, DOE's direct final rule analysis indicates that an increase in tub capacity is not required to achieve EL 3; however, manufacturers are currently implementing this design option in EL 3 models currently available on the market.

product changes would still require significant investment.

As discussed above, manufacturers expressed concerns and presented data regarding potential impacts to product performance, including wash temperatures, cleaning and rinsing performance, and fabric care. DOE's analysis of third-party clothes washer performance ratings as well as DOE's own performance testing on a representative sample of top-loading standard-size and front-loading standard-size RCWs suggested that TSL 3 can be achieved with key performance attributes (*e.g.,* wash temperatures, stain removal, mechanical action, and cycle duration) that are largely comparable to the performance of lower-efficiency units available on the market today. However, manufacturers presented additional data suggesting that other attributes of clothes washer performance not specifically evaluated by DOE may be negatively impacted at TSL 3 for particularly heavily soiled clothing loads, given current design technologies and approaches. For these reasons, DOE cannot be certain that the designs associated with TSL 3 efficiencies would not negatively impact certain aspects of standard-size RCW performance and consequently may jeopardize the energy and water savings that would be achieved at these efficiency levels. As with TSL 4, DOE emphasizes that its findings in this regard are based on the data available at this time and are predicated on the current state of clothes washer technology. Additional data that could become available, as well as future advances in washing technologies and design strategies, could alleviate any such concerns or uncertainties regarding product performance and could lead DOE to reach a different conclusion in a future rulemaking.

Based upon the above considerations, the Secretary tentatively concludes that at TSL 3 for RCWs, the benefits of energy and water savings, positive NPV of consumer benefits, and emission reductions would be outweighed by the potential for negative consumer utility impacts, which may jeopardize the energy and water savings that could be achieved at TSL 3, and the impacts on manufacturers, including the large potential reduction in INPV. DOE estimates the potential loss in INPV to be as high as 38 percent. The potential losses in INPV are primarily driven by large conversion costs associated with redesigning top-loading standard-size RCWs that must be made ahead of the compliance date. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which corresponds to the TSL recommended in the Joint Agreement (the ''Recommended TSL'') and which also represents the ENERGY STAR v.8.1 level for the top-loading and front-loading standard-size product classes, the ENERGY STAR Most Efficient level for the front-loading compact, and a gap fill level for the semi-automatic product classes.[21] DOE's expected design path for top-loading standard-size RCWs at the Recommended TSL (which represents EL 2 for this product class) incorporates a direct drive motor, stainless steel basket and more robust suspension and balancing systems (as methods for enabling faster spin speeds), and spray rinse. Models at the Recommended TSL would also require faster spin speeds compared to the baseline (although not as fast as at TSL 3), lower water volume (but with no change to total hot water heating energy), and may include an increase in tub size compared to the baseline (as a potential means for reducing energy and water use on a per-pound of clothing basis).[22] Among these design options, use of a direct drive motor, stainless steel basket and more robust suspension and balancing systems, and faster spin speeds reduce energy use only; spray rinse reduces water use only; and the lower water volume reduces water use only. Any potential increase in tub size would reduce both energy and water use together.

For front-loading standard-size RCWs, DOE's expected design path for the Recommended TSL (which represents EL 2 for this product class) incorporates the use of a direct drive motor, spin speeds that are faster than the baseline level but not as fast as at TSL 3, and lower water volume (but with no change to total hot water heating energy). Among these design options, the direct drive motor and faster spin speeds reduce energy use only; whereas the lower water volume reduces water use only.

The Recommended TSL would save an estimated 0.67 quads of energy and 1.89 trillion gallons of water, an amount DOE considers significant. Under the Recommended TSL, the NPV of consumer benefit would be $3.28 billion using a discount rate of 7 percent, and $8.71 billion using a discount rate of 3 percent.

The cumulative emissions reductions at the Recommended TSL are 13.96 Mt of $CO_2$, 3.65 thousand tons of $SO_2$, 27.74 thousand tons of $NO_X$, 0.02 tons of Hg, 124.57 thousand tons of $CH_4$, and 0.12 thousand tons of $N_2O$. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at the Recommended TSL is $0.84 billion. The estimated monetary value of the health benefits from reduced $SO_2$ and $NO_X$ emissions at the Recommended TSL is $0.73 billion using a 7-percent discount rate and $1.62 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced $SO_2$ and $NO_X$ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at the Recommended TSL is $4.85 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at the Recommended TSL is $11.18 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At the Recommended TSL, the average LCC impact is a savings of $111 for top-loading standard-size, $9 for front-loading compact, $46 for front-loading standard-size, and $284 for semi-automatic clothes washers. The simple payback period is 6.2 years for top-loading standard-size, 9.3 years for front-loading compact, 1.4 years for front-loading standard-size, and 0.5 years for semi-automatic clothes washers. The fraction of consumers experiencing a net LCC cost is 27 percent for top-loading standard-size, 21 percent for front-loading compact, 2 percent for front-loading standard-size, and zero percent for semi-automatic clothes washers. For the top-loading standard-size product class, The Recommended TSL would increase the first cost by $146, in comparison to an installed cost of $687 for baseline units in 2028. For the front-loading standard-size product class, the Recommended TSL would increase the first cost by $67, compared to an installed cost of $1,021 for baseline units in 2028. At the Recommended TSL, the standard for top-loading ultra-compact RCWs is at

[21] As discussed in the direct final rule published elsewhere in this issue of the **Federal Register**, tables in section IV.C.2.b of that direct final rule provide the ENERGY STAR v.8.1 and ENERGY STAR Most Efficient equivalencies between the current metrics (IMEF and IWF) and the new metrics (EER and WER) for the top-loading and front-loading standard size product classes, respectively.

[22] As discussed in the direct final rule published elsewhere in this issue of the **Federal Register**, DOE's direct final rule analysis indicates that an increase in tub capacity is not required to achieve EL 2; however, manufacturers are currently implementing this design option in EL 2 models currently available on the market.

the baseline, resulting in no LCC impact, no simple PBP, and no consumers experiencing a net LCC cost. Overall, across all product classes, around 20 percent of consumers would experience a net LCC cost at the Recommended TSL. DOE estimates that about 12 percent of low-income households would experience a net LCC cost at the Recommended TSL, and as a result of smaller households and lower annual usage, about 26 percent of senior-only households would experience a net LCC cost at the Recommended TSL. Additionally, as a result of lower costs associated with well water and septic tanks in rural areas, about 37 percent of well-water households would experience a net LCC cost at the Recommended TSL.

At the Recommended TSL, the projected change in INPV ranges from a decrease of $278.3 million to a decrease of $146.9 million, which corresponds to decreases of 16.3 percent and 8.6 percent, respectively. Industry conversion costs could reach $320.0 million at this TSL.

At this level, many existing top-loading standard-size products would need to be redesigned to meet the Recommended TSL efficiencies; however, there are a wide range of top-loading standard-size models currently available on the market due to manufacturers' participation in the ENERGY STAR program. Currently, approximately 49 percent of RCW shipments meet the Recommended TSL efficiencies, including approximately 31 percent of all top-loading standard-size shipments. Of the nine OEMs with top-loading standard-size products, six OEMs offer 166 basic models (representing approximately 30 percent of all top-loading standard-size basic models) that meet the Recommended TSL efficiencies. These six OEMs that currently offer top-loading standard-size RCW models that meet the Recommended TSL efficiencies collectively account for over 95 percent of overall top-loading standard-size RCW shipments. At this level, a substantial number of front-loading standard-size products are available on the market due to manufacturers' participation in the ENERGY STAR program. Currently, approximately 92 percent of front-loading standard-size shipments meet the Recommended TSL. Of the seven OEMs with front-loading standard-size products, six OEMs offer 169 basic models (representing approximately 89 percent of all front-loading standard-size basic models) that meet the Recommended TSL efficiencies.

For all TSLs considered in this proposed rule—except for the Recommended TSL—DOE is bound by the 3-year lead time requirements in EPCA when determining compliance dates (*i.e.,* compliance with amended standards required in 2027). For the Recommended TSL, DOE's analysis utilized the March 1, 2028, compliance date specified in the Joint Agreement as it was an integral part of the multi-product joint recommendation. A 2028 compliance year provides manufacturers additional flexibility to spread capital requirements, engineering resources, and conversion activities over a longer period of time depending on the individual needs of each manufacturer. Furthermore, these delayed compliance dates provide additional lead time and certainty for suppliers of components that improve efficiency.

At the Recommended TSL, DOE's data demonstrates no negative impact on consumer utility for both top-loading and front-loading RCWs. Manufacturers did not provide any specific data nor express any specific concerns regarding clothes washer performance at the Recommended TSL. In addition, in the second joint statement from the same group of stakeholders that submitted the Joint Agreement states that the DOE's test data and industry experience agrees that the recommended standard level for clothes washer can maintain good cleaning performance and do not preclude the ability to provide high wash temperatures.[23] Based on the information available, DOE concludes that no lessening of product utility or performance would occur at the Recommended TSL.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at a standard set at the Recommended TSL for RCWs would be economically justified. At the Recommended TSL, the average LCC savings for all product classes is positive. An estimated 27 percent of top-loading standard-size users, 21 percent of front-loading compact, 2 percent of front-loading standard-size, and zero percent of semi-automatic clothes washer consumers experience a net cost. At the Recommended TSL, the positive average LCC savings across all product classes and cost savings for approximately two-thirds of RCWs consumers, outweigh the negative average LLC savings of $20 for well-water households and the 37 percent of these households that might experience a net cost. DOE notes that its analysis ensures that the financial implications for households with wells and/or septic systems are comprehensively incorporated into the national LCC analysis. In addition, the FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At the Recommended TSL, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 11 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at the Recommended TSL are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $ 0.84 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $ 1.62 billion (using a 3-percent discount rate) or $ 0.73 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the amended energy conservation standards, DOE notes that as compared to TSL 4 and TSL 3, the Recommended TSL has a lower maximum decrease in INPV and lower manufacturer conversion costs.

Accordingly, the Secretary has tentatively concluded that the Recommended TSL would offer the maximum improvement in efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy.

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

While DOE considered each potential TSL under the criteria laid out in 42 U.S.C. 6295(o) as discussed in the preceding paragraphs, the Recommended TSL for RCWs proposed

[23] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

in this NOPR is part of a multi-product Joint Agreement covering six rulemakings (RCWs; consumer clothes dryers; consumer conventional cooking products; dishwashers; refrigerators, refrigerator-freezers, and freezers; and miscellaneous refrigeration products). The signatories indicate that the Joint Agreement for the six rulemakings should be considered as a joint statement of recommended standards, to be adopted in its entirety. (Joint Agreement, No. 505 at p. 3) As discussed in section V.B.2.e of the direct final rule published elsewhere in this issue of the **Federal Register**, many RCW OEMs also manufacture consumer clothes dryers; consumer conventional cooking products; dishwashers; refrigerators, refrigerator-freezers, and freezers; and miscellaneous refrigeration products. Therefore, there are potential integrated benefits to the Joint Agreement. Rather than requiring compliance with five amended standards in a single year (2027),[24] the negotiated multi-product Joint Agreement staggers the compliance dates for the five amended standards over a 4-year period (2027–2030). DOE understands that the compliance dates recommended in the Joint Agreement would help reduce cumulative regulatory burden by allowing greater flexibility in the allocation of resources to comply with multiple concurrent amended standards and by aligning compliance dates for products that are typically designed or sold as matched pairs (*i.e.,* clothes washers and clothes dryers). The Joint Agreement also provides additional years of regulatory certainty for manufacturers and their suppliers while still achieving the maximum improvement in energy efficiency that is technologically feasible and economically justified.

The proposed energy conservation standards for RCWs, which are expressed in EER and WER, are shown in Table III.3.

TABLE III.3—PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

| Product class | Minimum energy efficiency ratio (lb/kWh/cycle) | Minimum water efficiency ratio (lb/gal/cycle) |
|---|---|---|
| Automatic Clothes Washers: | | |
| Top-Loading Ultra-Compact (less than 1.6 ft³ capacity) | 3.79 | 0.29 |
| Top-Loading Standard-Size (1.6 ft³ or greater capacity) | 4.27 | 0.57 |
| Front-Loading Compact (less than 3.0 ft³ capacity) | 5.02 | 0.71 |
| Front-Loading Standard-Size (3.0 ft³ or greater capacity) | 5.52 | 0.77 |
| Semi-Automatic Clothes Washers | 2.12 | 0.27 |

*B. Annualized Benefits and Costs of the Proposed Standards*

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

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

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced $NO_X$ and $SO_2$ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $530.1 million per year in increased equipment costs, while the estimated annual benefits are $853.9 million in reduced equipment operating costs, $46.9 million in climate benefits, and $71.9 million in health benefits. In this case, the net benefit would amount to $442.5 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $513.1 million per year in increased equipment costs, while the estimated annual benefits are $998.9 million in reduced operating costs, $46.9 million in climate benefits, and $90.3 million in health benefits. In this case, the net benefit would amount to $623.0 million per year.

TABLE III.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (RECOMMENDED TSL) FOR RESIDENTIAL CLOTHES WASHERS

[2028–2057]

| | Million 2022$/year | | |
|---|---|---|---|
| | Primary estimate | Low-net-benefits estimate | High-net-benefits estimate |
| **3% discount rate** | | | |
| Consumer Operating Cost Savings | 998.9 | 957.2 | 1,020.9 |
| Climate Benefits * | 46.9 | 45.2 | 47.5 |
| Health Benefits ** | 90.3 | 87.1 | 91.6 |
| Total Benefits † | 1,136.1 | 1,089.5 | 1,160.0 |
| Consumer Incremental Product Costs ‡ | 513.1 | 551.8 | 468.6 |
| Net Benefits | 623.0 | 537.7 | 691.4 |

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

TABLE III.4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (RECOMMENDED TSL) FOR RESIDENTIAL CLOTHES WASHERS—Continued

[2028–2057]

| | Million 2022$/year | | |
|---|---|---|---|
| | Primary estimate | Low-net-benefits estimate | High-net-benefits estimate |
| Change in Producer Cash Flow (INPV ‡‡) | (27)–(14) | (27)–(14) | (27)–(14) |
| **7% discount rate** | | | |
| Consumer Operating Cost Savings | 853.9 | 821.2 | 871.7 |
| Climate Benefits * (3% discount rate) | 46.9 | 45.2 | 47.5 |
| Health Benefits ** | 71.9 | 69.6 | 72.8 |
| Total Benefits † | 972.6 | 935.9 | 992.0 |
| Consumer Incremental Product Costs ‡ | 530.1 | 564.6 | 489.5 |
| Net Benefits | 442.5 | 371.3 | 502.5 |
| Change in Producer Cash Flow (INPV ‡‡) | (27)–(14) | (27)–(14) | (27)–(14) |

**Note:** This table presents the costs and benefits associated with RCWs shipped in 2028–2057. These results include consumer, climate, and health benefits that accrue after 2057 from the products shipped in 2028–2057. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2023* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of the direct final rule published elsewhere in this issue of the **Federal Register**. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

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

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

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

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

†† Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. *See* sections IV.F and IV.H of the direct final rule published elsewhere in this issue of the **Federal Register**. DOE's national impact analysis includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the product and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (MIA). *See* section IV.J of the direct final rule published elsewhere in this issue of the **Federal Register**. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. The annualized change in INPV is calculated using the industry weighted average cost of capital value of 9.3 percent that is estimated in the MIA (*see* chapter 12 of the direct final rule TSD for a complete description of the industry weighted average cost of capital). For RCWs, the annualized change in INPV ranges from −$27 million to −$14 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. *See* section V.C of the direct final rule published elsewhere in this issue of the **Federal Register**. DOE is presenting the range of impacts to the INPV under two manufacturer markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of the direct final rule published elsewhere in this issue of the **Federal Register** to provide additional context for assessing the estimated impacts of this proposed rule to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the annualized change in INPV into the annualized net benefit calculation for this proposed rule, the annualized net benefits, using the primary estimate, would range from $596 million to $609 million at 3-percent discount rate and would range from $415 million to $428 million at 7-percent discount rate. Parentheses ( ) indicate negative values.

## IV. Public Participation

### *A. Submission of Comments*

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

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

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment.

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

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

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

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

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

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

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

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

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

### *B. Public Meeting*

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

## V. Severability

DOE proposes adding a new paragraph (ii) into section 10 CFR 430.32(g)(2) to provide that each energy and water conservation for each RCW category is separate and severable from one another, and that if any energy or water conservation standard is stayed or determined to be invalid by a court of competent jurisdiction, the remaining standards shall continue in effect. This severability clause is intended to clearly express the Department's intent that should an energy or water conservation standard for any product class be stayed or invalidated, the other conservation standards shall continue in effect. In the event a court were to stay or invalidate one or more energy or water conservation standards for any product class as finalized, the Department would want the remaining energy conservation standards as finalized to remain in full force and legal effect.

## VI. Procedural Issues and Regulatory Review

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

### *A. Review Under the Regulatory Flexibility Act*

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

For manufacturers of RCWs, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (*See* 13 CFR part 121.) The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support-table-size-standards.* Manufacturing of RCWs is classified under NAICS 335220, ''Major Household Appliance Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category.

#### 1. Description of Reasons Why Action Is Being Considered

EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(g)(2) and (9)(A)), and directs DOE to conduct future rulemakings to

determine whether to amend these standards. (42 U.S.C. 6295(g)(4) and (9)(B)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) This proposed rulemaking is in accordance with DOE's obligations under EPCA.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

In light of the above and the requirements under 42 U.S.C. 6295(p)(4)(A)–(B), DOE is issuing this NOPR proposing energy conservation standards for RCWs. These standard levels were submitted jointly to DOE on September 25, 2023, by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility.[25] This letter, titled ''Energy Efficiency Agreement of 2023'' (hereafter, the ''Joint Agreement'' [26]), recommends specific energy conservation standards for RCWs that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o).

2. Objectives of, and Legal Basis for, Rule

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include RCWs, the subject of this document. (42 U.S.C. 6292(a)(7)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(g)(2) and (9)(A)), and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4) and (9)(B))

3. Description and Estimated Number of Small Entities Regulated

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. DOE conducted a market survey to identify potential small manufacturers of RCWs. DOE began its assessment by reviewing DOE's CCD,[27] California Energy Commission's Modernized Appliance Efficiency Database System,[28] ENERGY STAR's Product Finder data set,[29] individual company websites, and prior RCW rulemakings to identify manufacturers of the covered product. DOE then consulted publicly available data, such as manufacturer websites, manufacturer specifications and product literature, import/export logs (*e.g.,* bills of lading from Panjiva [30]), and basic model numbers, to identify original equipment manufacturers (''OEMs'') of RCWs. DOE further relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports [31]) to determine company location, headcount, and annual revenue. DOE also asked industry representatives if they were aware of any small manufacturers during manufacturer interviews. DOE screened out companies that do not offer products covered by this proposed rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 22 OEMs that sell covered RCWs in the United States. Of the 22 OEMs identified, DOE determined that one company qualifies as a small business and is not foreign-owned and operated.

In support of the March 2023 NOPR, DOE reached out to the small business and invited participation in a voluntary interview. The small business did not respond to DOE's interview request. DOE also requested information about small businesses and potential impacts on small businesses while interviewing large manufacturers.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

DOE is proposing TSL 2 in this NOPR. As stated in the previous section, DOE identified one OEM that qualifies as a small business. This small business manufactures one top-loading standard-size clothes washer model for residential use. DOE identified this manufacturer through the prior rulemaking analysis. 77 FR 32307. There is limited public information about the energy and water efficiency of this small business's RCW model. Furthermore, DOE's review of the product suggests that the manufacturer would likely need to make significant investments to redesign the product to meet this efficiency level. Therefore, DOE is unable to conclude that the proposed rule would not have a ''significant impact on a substantial number of small entities.''

5. Duplication, Overlap, and Conflict with Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, represented by TSL 2. In reviewing alternatives to the proposed standards, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy and water savings. TSL 1 achieves 13 percent lower energy savings and 38

[25] The signatories to the Joint Agreement include AHAM, American Council for an Energy-Efficient Economy, Alliance for Water Efficiency, Appliance Standards Awareness Project, Consumer Federation of America, Consumer Reports, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company. Members of AHAM's Major Appliance Division that manufacture the affected products include: Alliance Laundry Systems, LLC; Asko Appliances AB; Beko US Inc.; Brown Stove Works, Inc.; BSH Home Appliances Corporation; Danby Products, Ltd.; Electrolux Home Products, Inc.; Elicamex S.A. de C.V.; Faber; Fotile America; GE Appliances, a Haier Company; L'Atelier Paris Haute Design LLG; LGEUSA; Liebherr USA, Co.; Midea America Corp.; Miele, Inc.; Panasonic Appliances Refrigeration Systems (PAPRSA) Corporation of America; Perlick Corporation; Samsung Electronics America Inc.; Sharp Electronics Corporation; Smeg S.p.A; Sub-Zero Group, Inc.; The Middleby Corporation; U-Line Corporation; Viking Range, LLC; and Whirlpool Corporation.

[26] The Joint Agreement is available in the docket at *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0505.*

[27] U.S. Department of Energy's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed June 29, 2023).

[28] California Energy Commission's Modernized Appliance Efficiency Database System is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed June 29, 2023).

[29] U.S. Environmental Protection Agency's ENERGY STAR Product Finder is available at *www.energystar.gov/productfinder/* (last accessed June 29, 2023).

[30] S&P Global. Panjiva Market Intelligence is available at *panjiva.com/import-export/United-States* (last accessed June 30, 2023).

[31] D&B Hoovers subscription login is accessible at: *app.dnbhoovers.com/* (last accessed November 1, 2023).

percent lower water savings compared to the energy and water savings at TSL 2.

Based on the presented discussion, establishing standards at TSL 2 balances the benefits of the energy savings at TSL 2 with the potential burdens placed on RCW manufacturers, including small business manufacturers. Accordingly, DOE does not propose one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the direct final rule TSD.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

## VII. Approval of the Office of the Secretary

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

### List of Subjects in 10 CFR Part 430

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

### Signing Authority

This document of the Department of Energy was signed on February 29, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 1, 2024.

**Treena V. Garrett,**

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

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

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

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

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

* * * * *

(g) *Clothes washers.* (1) Clothes washers manufactured on or after January 1, 2018, shall have an Integrated Modified Energy Factor no less than, and an Integrated Water Factor no greater than:

| Product class | Integrated modified energy factor (cu.ft./kWh/cycle) | Integrated water factor (gal/cycle/cu.ft.) |
|---|---|---|
| (i) Top-loading, Compact (less than 1.6 ft³ capacity) | 1.15 | 12.0 |
| (ii) Top-loading, Standard (1.6 ft³ or greater capacity) | 1.57 | 6.5 |
| (iii) Front-loading, Compact (less than 1.6 ft³ capacity) | 1.13 | 8.3 |
| (iv) Front-loading, Standard (1.6 ft³ or greater capacity) | 1.84 | 4.7 |

(2) Clothes washers manufactured on or after March 1, 2028:

(i) Shall have an Energy Efficiency Ratio and a Water Efficiency Ratio no less than:

| Product class | Energy efficiency ratio (lb/kWh/cycle) | Water efficiency ratio (lb/gal/cycle) |
|---|---|---|
| (A) Automatic Clothes Washers: | | |
| (*1*) Top-Loading Ultra-Compact (less than 1.6 ft³ capacity) | 3.79 | 0.29 |
| (*2*) Top-Loading Standard-Size (1.6 ft³ or greater capacity) [1] | 4.27 | 0.57 |
| (*3*) Front-Loading Compact (less than 3.0 ft³ capacity) [2] | 5.02 | 0.71 |
| (*4*) Front-Loading Standard-Size (3.0 ft³ or greater capacity) [3] | 5.52 | 0.77 |
| (B) Semi-Automatic Clothes Washers | 2.12 | 0.27 |

[1] The energy conservation standards in this table do not apply to top-loading standard-size clothes washers with an average cycle time less than 30 minutes.

[2] The energy conservation standards in this table do not apply to front-loading clothes washers with a capacity greater than or equal to 1.6 ft³ and less than 3.0 ft³ with an average cycle time of less than 45 minutes.

[3] The energy conservation standards in this table do not apply to front-loading standard-size clothes washers with an average cycle time less than 45 minutes.

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

* * * * *

[FR Doc. 2024–04737 Filed 3–14–24; 8:45 am]

**BILLING CODE 6450–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2024–0517; Airspace Docket No. 23–AGL–41]**

**RIN 2120–AA66**

## Amendment of Very High Frequency Omnidirectional Range (VOR) Federal Airways V–233 and V–420; Gaylord, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Very High Frequency Omnidirectional Range (VOR) Federal Airways V–233 and V–420 in the vicinity of Gaylord, MI. The amendments are due to the planned decommissioning of the VOR portion of the Gaylord, MI (GLR), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Gaylord VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Comments must be received on or before April 29, 2024.

**ADDRESSES:** Send comments identified by FAA Docket No. FAA–2024–0517 and Airspace Docket No. 23–AGL–41 using any of the following methods:

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

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

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

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the National Airspace System (NAS) as necessary to preserve the safe and efficient flow of air traffic.

### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

### Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

### Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

**Background**

The FAA is planning to decommission the VOR portion of the Gaylord, MI, VOR/DME in December 2024. The Gaylord VOR is one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** on July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Gaylord, MI, VOR/DME is planned to be decommissioned, the DME portion of the NAVAID is being retained to support current and future NextGen PBN flight procedure requirements.

The VOR Federal airways affected by the Gaylord VOR decommissioning are V–233 and V–420. With the planned decommissioning of the Gaylord VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, the proposed modifications to the affected airways would result in both airways being shortened.

To address these proposed modifications, instrument flight rules (IFR) traffic could use adjacent VOR Federal Airways V–78, V–193, V–320, and V–609 or request and receive air traffic control (ATC) radar vectors to fly around or through the affected area. Additionally, IFR pilots operating aircraft equipped with Area Navigation (RNAV) capabilities could also use RNAV route T–265 or navigate point-to-point using the existing fixes that would remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected VOR Federal airways could also take advantage of the adjacent air traffic service routes or ATC services listed previously.

**The Proposal**

The FAA is proposing an amendment to 14 CFR part 71 by amending VOR Federal Airways V–233 and V–420 due to the planned decommissioning of the VOR portion of the Gaylord, MI, VOR/DME. The proposed airway actions are described below.

*V–233:* V–233 currently extends between the Spinner, IL (SPI), VOR/Tactical Air Navigation (VORTAC) and the Roberts, IL (RBS), VOR/DME; and between the Mount Pleasant, MI (MOP), VOR/DME and the Pellston, MI (PLN), VORTAC. The FAA proposes to remove the airway segment between the Mount Pleasant VOR/DME and the Pellston VORTAC. As amended, the airway would be changed to extend between the Spinner VORTAC and the Roberts VOR/DME.

*V–420:* V–420 currently extends between the Green Bay, WI (GRB), VORTAC and the Alpena, MI (APN), VORTAC. The FAA proposes to remove the airway segment between the Traverse City, MI (TVC), VOR/DME and the Alpena VORTAC. As amended, the airway would be changed to extend between the Green Bay VORTAC and the Traverse City VOR/DME.

The NAVAID radials listed in the V–233 description in the regulatory text of this notice of proposed rulemaking are unchanged and stated in degrees True north.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

* * * * *

**V–233 [Amended]**

From Spinner, IL; INT Spinner 061° and Roberts, IL, 233° radials; to Roberts.

* * * * *

**V–420 [Amended]**

From Green Bay, WI; to Traverse City, MI.

* * * * *

Issued in Washington, DC, on March 12, 2024.

**Frank Lias,**

*Manager, Rules and Regulations Group.*

[FR Doc. 2024–05544 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–13–P

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2024–0543; Airspace Docket No. 24–ASO–8]**

**RIN 2120–AA66**

## Amendment of Class E Airspace; Covington, KY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the Class E airspace at Covington, KY. The FAA is proposing this action as the result of an airspace review conducted due to the decommissioning of the Cincinnati very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of various airports would also be updated to coincide with the FAA's aeronautical database. This action will bring the

airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

**DATES:** Comments must be received on or before April 29, 2024.

**ADDRESSES:** Send comments identified by FAA Docket No. FAA–2024–0543 and Airspace Docket No. 24–ASO–8 using any of the following methods:

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

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

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

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

**SUPPLEMENTARY INFORMATION:**

## Authority for This Rulemaking

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

## Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

## Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

## Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

## The Proposal

The FAA is proposing to amend 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within a 8.8-mile (decreased from a 10.5-mile) radius of Cincinnati Municipal Airport/Lunken Field, Cincinnati, OH; and within 2 miles each side of the 021° bearing from the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius from the Cincinnati Municipal Airport/Lunken Field to 12.3 miles north of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 062° bearing from the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of Cincinnati Municipal Airport/Lunken Field to 11 miles northeast of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 201° bearing from Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of Cincinnati Municipal Airport/Lunken Field to 11.7 miles south of Cincinnati Municipal Airport/Lunken Field; removing the Cincinnati NDB and associated extensions from the airspace legal description as they are no longer needed; removing the Cincinnati-Blue Ash Airport and associated airspace as the airport has closed and the airspace

is no longer needed; removing the cities associated with the airports to comply with changes to FAA Order JO 7400.2P, Procedures for Handling Airspace Matters; and updating the geographic coordinates of the Cincinnati/Northern Kentucky International Airport, Covington, KY, and the name of the Cincinnati Municipal Airport/Lunken Field (previously Cincinnati Municipal Airport-Lunken Field) to coincide with the FAA's aeronautical database.

The FAA is proposing this action as the result of an airspace review conducted due to the decommissioning of the Cincinnati VOR as part of the VOR MON Program and to support IFR operations.

### Regulatory Notices and Analyses

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

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

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

* * * * *

**ASO KY E5 Covington, KY [Amended]**

Cincinnati/Northern Kentucky International Airport, KY
(Lat 39°02′56″ N, long 84°40′04″ W)
Cincinnati Municipal Airport/Lunken Field, OH
(Lat 39°06′12″ N, long 84°25′07″ W)
Clermont County Airport, OH
(Lat 39°04′42″ N, long 84°12′37″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Cincinnati/Northern Kentucky International Airport; and within an 8.8-mile radius of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 021° bearing from the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of the Cincinnati Municipal Airport/Lunken Field to 12.3 miles north of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 062° bearing of the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of Cincinnati Municipal Airport/Lunken Field to 11 miles northeast of Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 201° bearing from the Cincinnati Municipal Airport/Lunken Field extending from the 8.8-mile radius of the Cincinnati Municipal Airport/Lunken Field to 11.7 miles south of Cincinnati Municipal Airport/Lunken Field; and within a 6.8-mile radius of Clermont County Airport.

* * * * *

Issued in Fort Worth, Texas, on March 11, 2024.

**Steven T. Phillips,**

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

[FR Doc. 2024–05424 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2024–0542; Airspace Docket No. 24–AGL–8]**

**RIN 2120–AA66**

## Amendment of Class D and Class E Airspace; Cincinnati, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend the Class D and Class E airspace at Cincinnati, OH. The FAA is proposing this action as the result of an airspace review conducted as part of the decommissioning of the Cincinnati very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. This action would also update the name of the airport to coincide with the FAA's aeronautical database. This action will bring the airspace into compliance with FAA orders and support instrument flight rule (IFR) procedures and operations.

**DATES:** Comments must be received on or before April 29, 2024.

**ADDRESSES:** Send comments identified by FAA Docket No. FAA–2024–0542 and Airspace Docket No. 24–AGL–8 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.
* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

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

### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post 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–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

### Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

### Incorporation by Reference

Class D and E airspace is published in paragraphs 5000 and 6002 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

### The Proposal

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

Modifying the Class D airspace within a 4.2-mile (increased from a 4.1-mile) radius of Cincinnati Municipal Airport/Lunken Field, Cincinnati, OH; and within 2 miles each side of the 024° bearing from the airport extending from the 4.2-mile radius to 5.9 miles northeast of the airport; and within 2 miles northwest and 1.7 miles southeast of the 064° bearing from the airport extending from the 4.2-mile radius to 5.3 miles northeast of the airport; and within 2.1 miles each side of the 204° bearing from the airport extending from the 4.2-mile radius to 6.2 miles southwest of the airport; and within 2 miles northwest and 1.7 miles southeast of the 244° bearing from the airport extending from the 4.2-mile radius to 5.2 miles southwest of the airport; updating the name of the airport (previously Cincinnati Municipal Airport Lunken Field) to coincide with the FAA's aeronautical database; and replacing the outdated terms ''Notice to Airmen'' and ''Airport/Facility Directory'' with ''Notice to Air Missions'' and ''Chart Supplement'';

And modifying the Class E surface airspace to within a 4.2-mile (increased from a 4.1-mile) radius of Cincinnati Municipal Airport/Lunken Field, Cincinnati, OH; and within 2 miles each side of the 024° bearing from the airport extending from the 4.2-mile radius to 5.9 miles northeast of the airport; and within 2 miles northwest and 1.7 miles southeast of the 064° bearing from the airport extending from the 4.2-mile radius to 5.3 miles northeast of the airport; and within 2.1 miles each side of the 204° bearing from the airport extending from the 4.2-mile radius to 6.2 miles southwest of the airport; and within 2 miles northwest and 1.7 miles southeast of the 244° bearing from the airport extending from the 4.2-mile radius to 5.2 miles southwest of the airport; updating the name of the airport (previously Cincinnati Municipal Airport Lunken Field) to coincide with the FAA's aeronautical database; and replacing the outdated terms ''Notice to Airmen'' and ''Airport/Facility Directory'' with ''Notice to Air Missions'' and ''Chart Supplement''.

This action is the result of an airspace review conducted as part of the decommissioning of the Cincinnati VOR as part of the VOR MON Program and to support IFR operations at this airport.

### Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February

26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**AGL OH D Cincinnati, OH [Amended]**

Cincinnati Municipal Airport/Lunken Field, OH

(Lat 39°06′12″ N, long 84°25′07″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.2-mile radius of the Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 024° bearing from the airport extending from the 4.2-mile radius to 5.9 miles northeast of the airport; and within 2 miles northwest and 1.7 miles southeast of the 064° bearing from the airport extending from the 4.2-mile radius to 5.3 miles northeast of the airport; and within 2.1 miles each side of the 204° bearing from the airport extending from the 4.2-mile radius to 6.2 miles southwest of the airport; and within 2 miles northwest and 1.7 miles southeast of the 244° bearing from the airport extending from the 4.2-mile radius to 5.2 miles southwest of the airport excluding that airspace within the Covington, KY, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

*Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.*

* * * * *

**AGL OH E2 Cincinnati, OH [Amended]**

Cincinnati Municipal Airport/Lunken Field, OH

(Lat 39°06′12″ N, long 84°25′07″ W)

That airspace within a 4.2-mile radius of the Cincinnati Municipal Airport/Lunken Field; and within 2 miles each side of the 024° bearing from the airport extending from the 4.2-mile radius to 5.9 miles northeast of the airport; and within 2 miles northwest and 1.7 miles southeast of the 064° bearing from the airport extending from the 4.2-mile radius to 5.3 miles northeast of the airport; and within 2.1 miles each side of the 204° bearing from the airport extending from the 4.2-mile radius to 6.2 miles southwest of the airport; and within 2 miles northwest and 1.7 miles southeast of the 244° bearing from the airport extending from the 4.2-mile radius to 5.2 miles southwest of the airport excluding that airspace within the Covington, KY, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in Fort Worth, Texas, on March 11, 2024.

**Steven T. Phillips,**

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

[FR Doc. 2024–05425 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2024–0383; Airspace Docket No. 24–ASO–02]**

**RIN 2120–AA66**

## Amendment of Class D Airspace; Fayetteville, NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes amending Class D airspace extending upward from the surface for Simmons Army Air Field, Fort Liberty, NC, updating the geographic coordinates, and amending verbiage in the description.

**DATES:** Comments must be received on or before April 29, 2024.

**ADDRESSES:** Send comments identified by FAA Docket No. FAA–2024–0383 and Airspace Docket No. 24–ASO–02 using any of the following methods:

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

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

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

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

FAA Order JO 7400.11H Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**FOR FURTHER INFORMATION CONTACT:** Justin T. Rhodes, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5478.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class D airspace in Fort Liberty, NC. An airspace evaluation determined that this update is necessary to support IFR operations in the area.

## Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the proposal's overall regulatory, aeronautical, economic, environmental, and energy-related aspects. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only once if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives and a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

*Privacy:* In accordance with 5 U.S.C. 553(c), the DOT solicits comments from the public to improve its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

## Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except for Federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except on federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

## Incorporation by Reference

Class D airspace designations are published in Paragraph 5000 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, effective September 15, 2023. These updates will be published in the next FAA Order JO 7400.11 update. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

## The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class D airspace by excluding 1,400 feet MSL from the vertical limits (previously ''including''), updating the airport's geographic coordinates, and replacing ''Notice to Airmen'' with ''Notice to Air Mission'' in the description.

Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

## Regulatory Notices and Analyses

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

## Environmental Review

This proposal will be subject to an environmental analysis per FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' before any final regulatory action by the FAA.

## Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**ASO NC D Simmons AAF, NC [Amended]**

Simmons AAF, NC

(Lat. 35°07′55″ N, long. 78°56′10″ W)

That airspace extending upward from the surface to but not including 1,400 feet MSL within a 3.9-mile radius of Simmons AAF, excluding the portion northwest of a line extending from lat. 35°11′47″ N, long. 78°55′36″ W; to lat. 35°06′16″ N, long. 79°00′31″ W, excluding the portion within the Fayetteville, NC, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Mission. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on March 7, 2024.

**Andreese C. Davis,**

*Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2024–05405 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–13–P

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1512**

**[CPSC Docket No. CPSC–2024–0008]**

## Electric Bicycles; Advance Notice of Proposed Rulemaking; Request for Comments and Information

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Consumer Product Safety Commission (CPSC or Commission) is considering developing a rule to address the risk of injury associated with electric bicycles (e-bikes). This advance notice of proposed rulemaking (ANPR) initiates a rulemaking proceeding under the Consumer Product Safety Act (CPSA) and the Federal Hazardous Substances Act (FHSA). We invite comments concerning the risk of injury associated with mechanical hazards of e-bikes, potential regulatory alternatives, the economic impacts of various approaches, existing voluntary standards, and plans to develop new standards to address these risks.

**DATES:** Comments must be received by May 14, 2024.

**ADDRESSES:** Submit comments, identified by Docket No. CPSC–2024–0008, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by email, except as described below.

*Mail/Hand Delivery/Courier/Confidential Written Submissions:* CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

*Instructions:* All submissions received must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit through this website: Confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

*Docket:* For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* insert docket number CPSC–2024–0008 into the ''Search'' box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Mella, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2537; fax (301) 869–0294; email *lmella@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The purpose of this ANPR is to collect information related to potential regulatory requirements to address the risk of injury associated with mechanical hazards of e-bikes.[1] Electrical hazards such as those related to batteries are not within the scope of this ANPR. CPSC is separately working to address those hazards for e-bikes and other micromobility products.[2]

An e-bike is a bicycle equipped with an electric motor. E-bikes are sold and marketed for adults and children. CPSC is aware of an increasing trend of injuries and deaths from falls and collisions associated with e-bikes. CPSC estimates there were 53,100 emergency department (ED)-treated injuries from 2017 to 2022 associated with e-bikes.[3]

Currently, CPSC has a mandatory standard for bicycles and low-speed e-bikes under the FHSA at 16 CFR part 1512. ASTM also has voluntary standards for bicycles, but they are not specific to e-bikes. Existing international standards for e-bikes under the International Organization for Standardization (ISO) and European Standards (EN) only apply to a subset of e-bike products.

The Commission invites the public to review this ANPR and submit information and comments that would assist the Commission as it considers regulatory options to reduce the risk of injury associated with mechanical hazards of e-bikes.

### II. Statutory Authority

CPSC regulates bicycles under the FHSA (15 U.S.C. 1261 *et seq.*), at 16 CFR part 1512, *Requirements for Bicycles.*[4] In 2002, Congress added to the CPSA section 38, which states that low-speed e-bikes are subject to CPSC's FHSA bicycle regulation. 15 U.S.C. 2085(a). Pursuant to section 38, the Commission amended its bicycle regulation so that the existing requirements for solely human powered bicycles also apply to low-speed e-bikes. 68 FR 7,072 (Feb. 12, 2003); 16 CFR 1512.2(a). The Commission did not make any other changes or additions. *Id.* Section 38 defines a low-speed e-bike as a ''two or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.'' 15 U.S.C. 2085(b), 16 CFR 1512.2(a)(2). Low-speed e-bikes that do not comply with 16 CFR part 1512 are ''hazardous substances'' under section 2(f)(1)(D) of the FHSA and are also ''banned hazardous substances'' under section 2(q)(1)(A) of the FHSA. 15 U.S.C. 1261(f)(1)(D), 1261(q)(1)(A), 16 CFR 1500.18(a)(12).

Section 38(c) of the CPSA allows the Commission to promulgate new or revised requirements as necessary and appropriate for low-speed e-bikes by amending its current FHSA regulation. The Commission may also, under the FHSA, adopt separate requirements for children's e-bikes. 15 U.S.C. 1261(f)(1)(D), 1262(e). Section 3 of the FHSA specifies the procedure the Commission follows to issue FHSA regulations. First, the Commission may commence the rulemaking by issuing an

[1] On March 5, 2024, the Commission voted (4–0) to publish this advance notice of proposed rulemaking.

[2] U.S. Consumer Product Safety Comm'n, *Operating Plan Fiscal Year 2024* (Nov. 2023) *https://www.cpsc.gov/content/FY-2024-Operating-Plan.*

[3] U.S. Consumer Product Safety Comm'n, *Micromobility Products-Related Deaths, Injuries, and Hazard Patterns: 2017–2022,* (Sept. 2023), *https://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Micromobility-Information-Center.*

[4] ''Bicycle'' is defined in the regulation as: ''(1) A two-wheeled vehicle having a rear drive wheel that is solely human-powered; (2) A two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.'' 16 CFR 1512.2(a).

ANPR, which must: identify the article or substance to be regulated and the nature of the risk of injury; summarize regulatory alternatives; describe relevant existing standards and explain why the Commission preliminarily believes that they do not eliminate or adequately reduce the risk of injury; and invite comments or suggested standards from the public. 15 U.S.C. 1262(f). Then, after considering any comments submitted in response to the ANPR, the Commission may issue a proposed rule in accordance with section 3(h) of the FHSA and a final rule under section 3(i) of the FHSA. 15 U.S.C. 1262(h), (i). Alternatively, the Commission may initiate the rulemaking by issuing a Notice of Proposed Rulemaking (NPR) in the first instance. *Id.* 1262(h).

The Commission also has authority to regulate e-bikes under the CPSA as ''consumer products.'' [5] 15 U.S.C. 2052(a)(5). Any such regulation could include low-speed e-bikes, which are specifically designated to be consumer products by section 38(a) of the CPSA, 15 U.S.C. 2085(a), as well as e-bikes that fall outside section 38 (*i.e.,* higher speed e-bikes), as long as they are not ''motor vehicles'' under 49 U.S.C. 30102(a)(7).[6] *Id.* 2052(a)(5)(C). Alternatively, the Commission could issue a CPSA standard specific to children's e-bikes.

Sections 7 and 9 of the CPSA set out the procedure the Commission must follow to issue a consumer product safety standard under section 38. 15 U.S.C. 2056, 2058. As in a FHSA rulemaking, the Commission has the option of beginning with an ANPR that identifies the product and the nature of the risk of injury associated with the product, summarizes the regulatory alternatives considered by the Commission, and provides information about any relevant existing standards and a summary of the reasons the Commission believes they would not eliminate or adequately reduce the risk of injury. *Id.* 2058(a). Any ANPR also must invite comments concerning the risk of injury and regulatory alternatives and invite the public to submit an existing standard or a statement of intent to modify or develop a voluntary standard to address the risk of injury. *Id.* Having begun with this ANPR, the Commission will next decide whether to proceed with a proposed rule under section 9(c) of the CPSA and a final rule under section 9(f) of the CPSA. 15 U.S.C. 2058(c), (f).

## III. The Product

An e-bike is a bicycle with an electric motor. An e-bike may be powered partially or fully by the motor. Normally, the bicycle is equipped with pedal assist, a throttle, or both. An e-bike with pedal assistance activates the electric motor while the rider is pedaling to provide more torque than the rider would normally create on their own. An e-bike with a throttle activates the electric motor when the rider depresses the throttle to propel the bike forward without relying on pedal assistance. Generally, the throttle is a thumb-operated device mounted on the handlebar. Similar to non-powered bicycles, e-bikes are generally sold and marketed for specific applications, such as use in a city (on sidewalks), for commuting, and for off-road use on bike paths, and trails. E-bikes currently must meet the requirements of 16 CFR part 1512 if they meet the definition of a ''low-speed electric bicycle'' in 15 U.S.C. 2085(b) and ''bicycle'' in 16 CFR 1512.2(a)(2).

As defined in part 1512.2(a)(2), a low-speed e-bike's motor is restricted to less than 750 watts (1 h.p.) and to a ''maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.'' However, this definition does not specify a limit on the speed for a low-speed e-bike when it is pedal-assisted. Other bicycles marketed as e-bikes have motors of 750 watts or more and can power the e-bike at speeds of 20 mph or more without pedal assistance. CPSC has the authority to regulate all these products as long as they are not ''motor vehicles,'' as defined at 49 U.S.C. 30102(a)(7) (*i.e.,* a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways).

Some e-bikes are marketed and intended for use by children. These include electric balance bikes, which are a type of e-bike mostly marketed for younger children. Although an electric balance bike does not have pedals, the electric motor assists the rider with propulsion, which is accomplished by the rider pushing their feet against the ground instead of pedaling. These e-bikes are designed to help children learn balance and coordination.

The scope of this rulemaking is limited to e-bikes and does not include gas powered bicycles and non-powered bicycles, or battery powered ride-on toys subject to the mandatory Toy standard.[7]

## IV. Risk of Injury or Death

### *A. Data on Non-Fatal Injuries*

CPSC reviewed data from its report, ''Micromobility Products-Related Deaths, Injuries, and Hazard Patterns: 2017—2022,'' [8] (2023 Micromobility Report) to identify incidents involving a mechanical hazard associated with e-bike use. In the report, based on the incident data from the National Electronic Injury Surveillance System (NEISS),[9] staff estimated 53,100 injuries associated with riding e-bikes, between 2017 and 2022. Staff estimated that e-bike related incidents comprise 15 percent of the overall micromobility injury estimate in that timeframe. Staff estimated that ED-treated injuries for e-bikes increased from 3,538 to 24,335 injuries from 2017 to 2022.

Using the 2023 Micromobility Report, staff also identified 30 other incidents associated with e-bikes that were reported through the Consumer Product Safety Risk Management System (CPSRMS).[10] Most of these incidents involved crank arm and/or pedal

[5] ''Consumer product'' is defined to include ''any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—''motor vehicle'' as defined by 49 U.S.C. 30102(a)(7). 15 U.S.C. 2052(a)(5).

[6] A ''motor vehicle'' is defined as ''a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.'' 49 U.S.C. 30102(a)(7).

[7] ASTM F963–17, *Standard Consumer Safety Specification for Toy Safety.* 16 CFR part 1250.

[8] U.S. Consumer Product Safety Comm'n, *Micromobility Products-Related Deaths, Injuries, and Hazard Patterns: 2017–2022,* (Sept. 2023), *https://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Micromobility-Information-Center.*

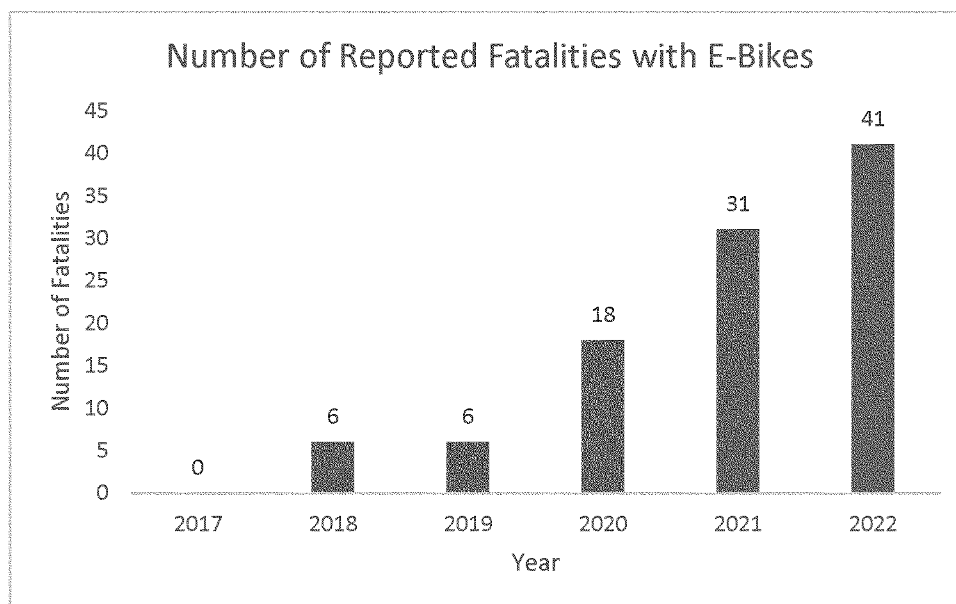
[9] NEISS is the source of the injury estimates; it is a statistically valid injury surveillance system. NEISS injury data are gathered from emergency departments of about 100 hospitals, with 24-hour emergency departments and at least six beds, selected as a probability sample of all U.S. hospitals. The surveillance data gathered from the sample hospitals enable the CPSC to make timely national estimates of the number of injuries associated with specific consumer products.

[10] CPSRMS includes data primarily from three groups of sources: incident reports, death certificates, and in-depth follow-up investigation reports. A large portion of CPSRMS consists of incident reports from: consumer complaints; media reports; medical examiner or coroner reports; retailer or manufacturer reports (incident reports received from a retailer or manufacturer involving a product they sell or make); safety advocacy groups; law firms; and federal, state, or local authorities. It also contains death certificates that CPSC purchases from all 50 states, based on selected external cause of death codes (ICD–10). The third major component of CPSRMS is the collection of in-depth follow-up investigation reports. Based on the incident reports, death certificates, or NEISS injury reports, CPSC Field staff conduct in-depth investigations (on-site, telephone, or online) of incidents, deaths, and injuries, which are then stored in CPSRMS.

detachments and tire failures. Some incidents involved brake failures and wheel detachments. A few included incidents involved rider stability, broken frame, motor shutoff, unintended acceleration, and an issue with the chain and throttle.

*B. Fatality Data*

CPSC is aware of 100 fatalities associated with mechanical hazards involving e-bikes that occurred from 2017 through 2022, as shown below. These e-bike fatalities increased from zero deaths in 2017 to 41 deaths in 2022.




**Number of Reported Fatalities Associated with E-Bikes from 2017 to 2022.**

Of the total fatalities, only 16 incidents had helmet information. In 13 of these 16 incidents, the rider was not wearing a helmet, and in three of the 16 incidents, the rider was reported to be wearing a helmet. Staff's review of the 100 fatalities indicates that most involved collisions with motor vehicles, and some involved falls and control issues including collision with fixed objects or the curb. Others involved collision with pedestrians, which include incidents with e-bike rider deaths and pedestrian deaths. One fatality involved rider ejection and impact with the pavement.

*C. Hazard Patterns*

The data on fatal and non-fatal incidents indicate that collisions and falls are the predominant hazards associated with e-bikes. Based on this data, CPSC preliminarily determines that areas of e-bike design that may contribute to a risk of injury due to collisions and falls include the following:

- conspicuity of e-bikes to pedestrians and operators of other vehicles (*e.g.,* visibility and audibility of the rider and e-bike);
- size and weight of the e-bike and rider (*e.g.,* ease of maintaining balance and maneuvering the e-bike);
- speed and acceleration of e-bikes (*e.g.,* how propulsion of the e-bike affects the rider's control of the vehicle, how it relates to their expectations, and whether the rider is subject to situations that involve a higher level of risk due to the speed and acceleration);
- braking of e-bikes (*e.g.,* impacts of heavier product weight and frequency of high-speed braking on braking performance);
- bicycle component durability (*e.g.,* impacts of heavier product weight and reasonably foreseeable use on brake component wear, pedal/crank arm assemblies, and wheel/tire assemblies);
- structural integrity of e-bike frames, especially folding bikes (*e.g.,* impacts of heavier product weight and how reasonably foreseeable use affects the frame); and
- helmet performance (*e.g.,* impacts at high-speed).

**V. Existing Safety Standards**

*A. Mandatory Standard*

CPSC codified its mandatory standard for bicycles, part 1512, in 1974 (39 FR 26100 (Jul. 16, 1974)), with amendments in 1978 (43 FR 60034 (Dec. 22, 1978)), 1980 (45 FR 82625 (Dec. 16, 1980)), 1981 (46 FR 3203 (Jan. 14, 1981)), 1995 (60 FR 62989 (Dec. 8, 1995)), 2003 (68 FR 7072 (Feb. 12, 2003)), (68 FR 52690 (Sept. 5, 2003)), and 2011 (76 FR 27882 (May 13, 2011)). Part 1512 includes mechanical requirements for bicycles and low-speed e-bikes. Therefore, low-speed e-bikes are currently required to meet the same mechanical requirements as non-electrical bicycles which include:

- 1512.5 Braking system
- 1512.6 Steering system
- 1512.7 Pedals
- 1512.8 Drive chain
- 1512.10 Tires
- 1512.11 Wheels
- 1512.16 Reflectors

Part 1512 establishes the minimum performance requirements that all bicycles must meet to ensure an adequate braking stopping distance and to prevent product failures that may lead to a hazard such as a loss of control. As noted, part 1512 does not account for the impacts associated with the e-bikes solely powered by electric motors.

*B. U.S. Voluntary Standards*

No U.S. voluntary standards have specific mechanical requirements applicable to e-bikes. ASTM standards include requirements for bicycle frames and forks based on usage of the bicycle (on roads, trails, off-road trails, etc.) but do not have specific requirements for e-bikes because the ATSM definition of bicycle is limited to those ‘‘solely

human powered,'' as described in ASTM F2043–13 (2018), *Standard Classification for Bicycle Usage.*

ASTM F2680 (2017), *Standard Test Methods and Specifications for Bicycle Manually Operated Front Wheel Retention Systems,* and ASTM F2793 (2023), *Standard Specification for Bicycle Grips,* do not specify a bicycle category; therefore, the requirements in these standards may apply to e-bikes. However, because these standards were developed solely for human-powered bikes, they may not be adequate to address characteristics that are unique to e-bikes.

*C. International Voluntary Standards*

The applicable international standard for e-bikes is the International Organization for Standardization (ISO)'s ISO/TS 4210–10:2020, *Cycles—Safety Requirements for Bicycles—Part 10: Safety requirements for electrically power assisted cycles (EPACs).* The ISO standard specifies the safety and performance requirements for the design, marking, assembly, and testing of two wheeled electrically power assisted cycles (EPACs). ISO defines an EPAC as a cycle equipped with pedals and an auxiliary electric motor, which cannot be propelled exclusively by means of this auxiliary electric motor. An electrically power assisted bicycle is a pedal-assisted e-bike. The standard includes, but is not limited to the following mechanical requirements:

- 7.2 Brakes—Heat-resistance test
- 7.3 Handlebar and stem assembly—Lateral bending test
- 7.4 Handlebar stem—Forward bending test
- 7.5 Handlebar to handlebar stem—Torsional security test
- 7.6 Handlebar and stem assembly—Fatigue test
- 7.7 Frame—Impact test (falling mass)
- 7.8 Frame and front fork assembly—Impact test (falling frame)
- 7.9 Frame—Fatigue test with horizontal forces

CPSC is also aware of two European standards (EN) titled EN 15194:2017+A1:2023, *Cycles—Electrically power assisted cycles—EPAC Bicycles,* and EN 17404:2022, *Cycles—Electrically power assisted cycles—EPAC Mountain bikes.* The EN standards are intended to cover EPACs that have a maximum continuous rated power of 0.25 kW, which is progressively reduced and finally cut off as the EPAC reaches a speed of 25 km/h (15.5 mph), or sooner, if the cyclist stops pedaling. EN standards are intended to cover common significant hazards, hazardous situations, and other issues related to e-bikes by establishing minimum performance requirements. Both standards include but are not limited to the following mechanical requirements:

- 4.3.5 Brakes
- 4.3.6 Steering
- 4.3.7 Frames
- 4.3.8 Front fork
- 4.3.9 Wheels and wheel/tyre assembly
- 4.3.10 Rims, tyres and tubes
- 4.3.12 Pedals and pedal/crank drive system
- 4.3.19 Lighting systems and reflectors

*C. Adequacy of Existing Mandatory and Voluntary Standards in Addressing Injuries*

Based on the increasing injuries and fatalities associated with e-bikes, and hazards associated with collision and falls, the Commission preliminarily assesses that the current mandatory and voluntary standards do not eliminate or adequately reduce the risk of injury identified or associated with e-bikes.

Because the requirements in the existing mandatory standard were developed for non-powered bicycles that are lighter in weight than e-bikes, they are not likely to adequately address hazards associated with e-bikes. The mandatory standard, moreover, only covers e-bikes with fully operable pedals and powered by electric motors less than 750 watts and whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

Domestic voluntary standards do not apply to e-bikes or do not account for characteristics that are unique to e-bikes. As a result, domestic voluntary standards appear inadequate to address the mechanical hazards posed by e-bikes.

International standards do not cover e-bikes that can be exclusively propelled by an electric motor or e-bikes with a maximum speed over 15.5 mph. Therefore, international standards also appear inadequate to address the mechanical hazards posed by e-bikes.

## VI. Regulatory Alternatives

The Commission is considering one or more of the following alternatives to address the risk of injury associated with e-bikes:

*A. Revised Mandatory Standard Under the FHSA*

Under the FHSA, the Commission could amend part 1512 by specifying additional requirements that low-speed bicycles must meet. The FHSA also allows the Commission to regulate mechanical hazards associated with children's e-bikes as a ''toy or other article intended for use by children.'' 15 U.S.C. 1262(e)(1). Therefore, the Commission also could issue a rule specifically for children's e-bikes, including electric balance bikes, under section 3(e)(1) of the FHSA or revise part 1512 to specify requirements for children's e-bikes, including electric balance bikes.

Under the FHSA, the Commission must invite any person to submit to the Commission an existing standard or a portion of a standard as a proposed regulation under section 2(q)(1) or section 3(e) and (f) of the FHSA, or a statement of intention to modify or develop a voluntary standard to address the risk of injury together with a description of a plan to modify or develop the standard. 15 U.S.C. 1262(f)(5), (6). If the Commission determines that any standard submitted in response to this invitation would eliminate or adequately reduce the risk of injury if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission) as a regulation under the FHSA, the Commission may publish the standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed regulation. 15 U.S.C. 1262(g)(1).

*B. Mandatory Standards Under the CPSA*

Under sections 7 and 9 of the CPSA, the Commission could proceed with a rulemaking to establish product safety requirements for e-bikes to address the risk of injury associated with collision and fall hazards. 15 U.S.C. 2056(a). Such a standard could regulate higher speed e-bikes, including electric balance bikes, that are outside the definition of a ''low-speed electric bicycle'' in 15 U.S.C. 2085(b) and that are not motor vehicles under 49 U.S.C. 30102(a)(7). The Commission could also issue a product safety standard specifically for children's e-bikes, including children's electric balance bikes, as a separate set of requirements. For any mandatory rule, the Commission could issue a rule that focuses on performance requirements only, or both performance and labeling requirements and/or instructions to address collision and fall hazards associated with e-bikes.

The Commission could issue a rule under the FHSA or the CPSA or under both statutes. The Commission is interested in comments on the approaches described above, as well as any other suggestions to develop a

mandatory standard to address the risk of injury associated with e-bikes. To issue a mandatory standard, the Commission would need to assess the costs and benefits of the requirements. 15 U.S.C. 2058(f).

*C. Reliance on Voluntary Standards*

Alternatively, the Commission could continue to work to develop more effective voluntary standard requirements to address injuries associated with e-bikes. However, as stated in section V of this preamble, the Commission preliminarily determines that the existing standards do not adequately address hazards unique to e-bikes.

*D. Non-Regulatory Actions*

The Commission could take no regulatory action and instead continue to rely on corrective actions under the FHSA or the CPSA. For example, under section 15 of the FHSA, the Commission could continue to enforce its current FHSA low-speed e-bike regulation.

The Commission could also continue to rely on recalls, both voluntary and mandatory, to address hazards associated with e-bikes instead of promulgating a mandatory rule under the FHSA or section 15 of the CPSA. However, recalls are not likely to be as effective at reducing the risk of injury as a mandatory standard for several reasons. Recalls generally only apply to an individual manufacturer and product. Therefore, recalls are unlikely to address injuries that appear systematic, as they do for e-bikes. Product recalls occur only after consumers have purchased and used such products and have been exposed to the hazard to be remedied by the recall. Additionally, recalls can only address products that are already on the market and cannot prevent unsafe products from entering the market. To be effective, recalls also require consumer compliance.

*E. Public Education*

Finally, the Commission could issue news releases and other informational materials warning consumers about the hazards associated with e-bikes. As with recalls, this alternative is not likely to be as effective in reducing the risk of injury as a mandatory standard.

## VII. Request for Comments

This ANPR is the first step in a proceeding that could result in amended or new mandatory regulations to address mechanical hazards associated with e-bikes. For the purpose of these questions, e-bikes include electric balance bikes. The Commission requests comment on all aspects of this ANPR, and specifically requests comment regarding:

*A. Statutory Requirements*

In accordance with section 9(a) of the CPSA and section 3(f) of the FHSA, we invite comments on:

1. The risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.
2. Any existing standard or portion of a standard that could be issued as a proposed regulation.
3. A statement of intention to modify or develop a voluntary standard to address the risk of injury identified in this notice together with a description of a plan (including a schedule) to modify or develop the standard.

*B. Information Specific to E-bikes*

4. Which e-bikes should the Commission include or exclude from the rulemaking and why?
5. How broadly should the Commission define e-bikes (beyond low-speed e-bikes) to reflect recent developments in the product category? For example, we can include all e-bikes except for those that meet the definition of a motor vehicle in 49 U.S.C. 30102(a)(7).
6. What are some relevant factors we should consider in the definition of an e-bike (*e.g.,* weight, throttle capabilities, pedal-assist capabilities, speed governors, motor power (watts) and batteries).
7. What other definitions should the Commission consider? For example, currently there is an e-bike classification system adopted in some states and local jurisdictions. Is an existing or newly developed classification system for e-bikes appropriate for Commission regulations, and if so, how should CPSC regulations relate to the classification system?
8. Under the internationally recognized EN standard EPACs (*i.e.,* e-bikes) are defined to have a ''maximum continuous rated power of 0.25 kW, of which the output is progressively reduced and finally cut off as the EPAC reaches a speed of 25 km/h (15.5 mph), or sooner, if the cyclist stops pedaling.'' Is there any evidentiary basis for using this definition in a safety standard, and are there others in use elsewhere in the world that CPSC should consider as a model?

*C. Information on Usage and Incidents*

As e-bikes continue to grow in popularity, CPSC is refining its data collection and studies to analyze the incidents of injuries and fatalities associated with e-bikes. We invite you to submit comments and information concerning the following:

9. Studies, tests, or surveys performed to analyze e-bike usage, such as rider demographics, steering and handling, effects of braking and acceleration on control, frequency and duration of use, typical and maximum speeds, use terrains, use on wet surfaces, use in times of limited visibility, typical amount and weight of cargo, use with passengers, previous experience with bicycles, and use and efficacy of protective equipment or other protective technology that is integral to the e-bike.
10. Any studies or analyses of e-bike usage that would lead to riskier behavior in comparison to non-powered bikes, *e.g.,* use in traffic at higher speeds, accessibility to speed and hills.
11. The impact of the weight of an e-bike on its stability, including how it varies at different speeds and its effect on the potential risks of injury.
12. How does higher weight and speed of e-bike compared to a non-powered bicycle affect the potential for injury?
13. Studies or other available research efforts that contribute to the understanding of injury and mechanical hazard patterns (such as collisions, falls, rider behavior, control, speed, helmet usage, environment, etc.) and risks associated with e-bikes in the U.S. or in other countries where e-bikes are widely used.
14. What hazard patterns or stability concerns, if any, are particularly associated with three-wheeled e-bikes?
15. What are the developmental capabilities of children to understand and operate e-bikes, including electric balance bikes, and how does that relate to maximum speeds of the products?
16. What are the injury risks associated with electric balance bikes and how should they be addressed?
17. Studies or other available research or information on conspicuity enhancements available for e-bikes or bicycles and their effectiveness in collision avoidance.
18. What distinguishes an off-road e-bike versus an on-road e-bike?
19. Do consumers use off-road e-bikes, capable of speeds over 28 mph, on road?

*D. Potential Requirements and Voluntary Standards*

20. E-bikes are currently required to meet the same mechanical requirements as non- electric bicycles. Are there aspects of e-bikes that require different regulatory requirements than those applicable to non-electric bicycles?
21. Do e-bikes, due to their heavier weight or other factors, need different

performance requirements for braking, particularly for disc brakes, which are used in e-bikes but are not included in the current bicycle standards?

22. Do e-bikes need different frame or other component requirements than non-powered bicycles?

23. What different performance standards, if any, should be required for three-wheeled e- bikes?

24. What requirements, if any, should the Commission consider for conspicuity, such as lights or other visibility and audibility of e-bikes? If so, what factors should the Commission take into consideration?

25. Is it appropriate to have marking, labeling, instructional literature, and/or packaging requirements specific to e-bikes (especially for new riders)? If so, what are some important points that the Commission should include?

26. What should the Commission consider setting, if any, as minimum and/or maximum limits for acceleration?

27. What, if any, product weight requirements or limitations should the Commission consider for e-bikes?

28. What, if any, maximum and minimum width for e-bike tires should the Commission consider for e-bikes?

29. E-bikes are widely promoted and even subsidized by communities seeking to encourage adoption of sustainable forms of transportation. What performance requirements and warnings can help protect the safety of consumers, especially new riders (including seniors) and parents who are purchasing e-bikes for children?

30. Are there any performance requirements that should be implemented specifically for children's e-bikes such as speed, power, brakes, structural integrity, and conspicuity? If so, what should the age ranges be for those requirements?

31. CPSC is aware of ASTM work item, ASTM WK88946, *New Specification for Electric Powered Balance Bike.* Do electric balance bikes need different performance requirements than other e-bikes?

32. Should there be requirements such as: maximum speed; speed, weight, and throttle capabilities; pedal assist capabilities; or speed governors?

33. Other than the types of requirements noted above, what performance requirements should be considered to mitigate e-bike injuries and deaths?

34. What technologies exist to protect e-bike riders before, during, or after a collision—and how do those technologies affect the risks to riders?

35. Should there be maximum speed requirements for e-bikes intended for off-road use?

36. Should there be different protective gear recommendations for e-bikes that are applicable to both children and adults, such as helmets?

37. What other domestic standards, state, and local requirements apply to e-bikes and how should the Commission assess the adequacy of any such standards?

38. What other international standards govern e-bikes and how do those standards compare to current U.S. voluntary standards and statutory requirements?

*E. Market Information*

39. What percentage or share of the market or how many products are solely human powered, low-speed e-bikes, versus higher speed e-bikes and children's e-bikes including electric balance bikes?

40. How prevalent are three-wheeled e-bikes as a percentage or share of the market?

41. Under the existing bicycle industry classification system for e-bikes, what is the breakdown of e-bikes sold (*i.e.,* Class 1, 2, and 3)? What information is there on e- bikes outside of the classification system or on children's e-bikes?

42. What types of safety equipment are consumers purchasing with e-bikes?

43. How many additional manufacturer labor hours (if any) are required to assemble/install safety equipment (signal lights, taillights, headlights, reflectors)?

44. How much additional time (if any) is required to manufacture an e-bike as compared to a non-powered bike?

45. How many e-bike conversion kits are sold per year in the U.S.?

46. Are e-bikes with higher top speeds (over 28 mph) marketed for off-road use currently being used on public roads, streets, or highways?

*F. Economic Impacts*

47. What are the potential benefits of a rule that would require warnings or instructions specific to e-bikes?

48. What are the potential benefits of a rule that would establish additional performance requirements for low-speed e-bikes or new performance requirements for non-low speed e-bikes or specifically for children's e-bikes, including electric balance bikes?

49. What are the potential costs and benefits associated with a mandatory rule for e-bikes?

50. What is the potential impact on small entities of a rule based on the options presented above?

51. What is the typical difference in cost to produce solely human-powered bikes, low- speed e-bikes, higher speed e-bikes, and children's e-bikes?

52. What is the manufacturer's cost to produce various safety features, including research and development costs, and components?

Comments and other submissions should be submitted in accordance with the instructions provided above. All comments and other submissions must be received by May 14, 2024.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2024–05472 Filed 3–14–24; 8:45 am]

BILLING CODE 6355–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R10–OAR–2023–0600; FRL–11593–03–R10]**

### Air Plan Approval; OR; Regional Haze Plan for the Second Implementation Period; Extension of the Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of the comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending the comment period for the proposed rulemaking entitled ''Air Plan Approval; OR; Regional Haze Plan for the Second Implementation Period'' that published in the **Federal Register** on February 23, 2024. The comment period is scheduled to close on March 25, 2024. However, in response to requests for additional time to develop and submit comments on the proposed rulemaking, the EPA is extending the comment period for an additional 30 days through April 24, 2024.

**DATES:** The comment period for the proposed rulemaking published February 23, 2024 (89 FR 13622), is extended. Comments must be received on or before April 24, 2024.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–R10–OAR–2023–0600, 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:** Jeff Hunt, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–0256 or *hunt.jeff@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in the **Federal Register** of February 23, 2024 (89 FR 13622) (FRL–11593–01–R10) for 30 days, from March 25, 2024, to April 24, 2024.

This extension is in response to requests that the EPA received which asked for additional time to develop and submit comments on the proposed rulemaking. After considering several factors, the EPA believes it is appropriate to extend the comment period for 30 days to give stakeholders additional time to review the documents and prepare comments. As discussed in the **Federal Register** document of February 23, 2024 (89 FR 13622 (FRL–11593–01–R10)), the EPA is proposing approval of the regional haze state implementation plan revision submitted by Oregon on April 29, 2022, as supplemented on November 22, 2023, as satisfying applicable requirements under the Clean Air Act and the EPA's Regional Haze Rule for the program's second implementation period. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

**List of Subjects in 40 CFR Part 52**

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

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

Dated: March 8, 2024.

**Casey Sixkiller,**

*Regional Administrator, Region 10.*

[FR Doc. 2024–05510 Filed 3–14–24; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR PART 52

**[EPA–R05–OAR–2020–0055; FRL–11687–03–R5]**

### Air Plan Approval; Ohio; Withdrawal of Technical Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending the comment period for a proposed rule published February 22, 2024.

**DATES:** The comment period is extended to April 24, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0055 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* Additional instructions to comment can be found in the notice of proposed rulemaking published February 22, 2024 (89 FR 13304).

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On February 22, 2024, EPA proposed to determine that its November 19, 2020, final action to remove the Air Nuisance Rule (ANR) from the Ohio State Implementation Plan using the Clean Air Act error correction provision was in error, and to correct that action by reinstating the ANR as part of the Ohio SIP. In response to a request in a public comment, EPA is extending the comment period for 30 days.

Dated: March 8, 2024.

**Debra Shore,**

*Regional Administrator, Region 5.*

[FR Doc. 2024–05448 Filed 3–14–24; 8:45 am]

**BILLING CODE 6560–50–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 84

**[Docket No. CDC–2024–0005; NIOSH–351]**

**RIN 0920–AA83**

### Approval Tests and Standards for Combination Unit Respirators

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Health and Human Service (HHS) proposes to amend regulatory requirements that would be used by the Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH) to test and approve combination unit respirators. This rulemaking would establish this new class of respiratory protective device, combination unit respirators (CURs), by incorporating by reference the performance requirements established in the National Fire Protection Association (NFPA) voluntary consensus standard NFPA 1987, Standard on Combination Unit Respirator Systems for Tactical and Technical Operations.

**DATES:** Comments must be received by May 14, 2024. Comments on the information collection approval request sought under the Paperwork Reduction Act must be received by May 14, 2024.

**ADDRESSES:**

*Written comments:* Comments, including those related to the Paperwork Reduction Act, may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to the docket.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 1090 Tusculum Avenue, Cincinnati, OH 45226.

*Instructions:* All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2024–0005; NIOSH–351) or Regulation Identifier Number (0920–AA83) for this rulemaking. All relevant comments, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Do not submit comments by email. CDC does not accept comments by email. For detailed instructions on submitting public comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Peterson, NIOSH National Personal Protective Technology Laboratory (NPPTL), Pittsburgh, PA; (412) 386–6111 (this is not a toll-free number); email to *NIOSHregs@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation**

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Any information in comments or supporting materials that is confidential or inappropriate for public disclosure

should not be included. HHS will carefully consider all comments submitted in preparation of the final rule and may revise the final rule as appropriate.

## II. Statutory Authority

Pursuant to the Occupational Safety and Health (OSH) Act of 1970 (Pub. L. 91–596), the Organic Act of 1910 (Pub. L. 179), and the Federal Mine Safety and Health Act of 1977 (Pub. L. 91–173 (codified at 30 U.S.C. 842(h), 844, 957)), NIOSH is authorized to approve respiratory equipment used in mines and other workplaces for the protection of employees potentially exposed to hazardous breathing atmospheres. The Occupational Safety and Health Administration (OSHA) requires U.S. employers to supply NIOSH Approved® [1] respirators to their employees whenever the employer requires the use of a respirator (29 CFR 1910.134(d)(1)). The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs agencies to use voluntary consensus standards, instead of government-unique publications, when it is practical and consistent with law.

## III. Background

The NIOSH Respirator Approval Program approves respiratory protective devices pursuant to the performance standards in 42 CFR part 84, *Approval of Respiratory Protective Devices.* A combination unit respirator is a respiratory protective device that employs the technology of at least two different types of respiratory protective devices, with one being an open-circuit self-contained breathing apparatus (SCBA) [2] and at least one other method being air-purifying or powered air-purifying,[3] and that allows the wearer to select the operating mode. Despite the current lack of a NIOSH approval standard for CURs, they are used today in military, law enforcement, and some industrial settings where the versatility of these devices allows users to perform in various hazardous environments. A CUR allows the worker to carry or wear one respirator into an environment in which the hazards are either unknown or might change rapidly, and to readily switch between types of respiratory protection after assessing their individual risk.

Regulations in 42 CFR part 84 do not currently allow for NIOSH approval of a single respirator unit for more than one respirator class where the user can select the appropriate level of protection required from within a single respirator system. With this rulemaking, HHS proposes to establish performance standards for NIOSH approval of CURs in a new part 84, subpart P, by incorporating by reference the performance requirements in Chapter 7 of NFPA 1987, *Standard on Combination Unit Respirator Systems for Tactical and Technical Operations,* 2023 edition.[4]

### *A. Background and History*

NIOSH has explored and discussed the need to develop a regulatory standard for NIOSH approval of combination unit respirators with manufacturers and other interested parties since at least 2006, while developing performance requirements for chemical, biological, radiological, and nuclear (CBRN) protections. The conceptual requirements for the CBRN CUR were presented to obtain initial comments from manufacturers and other interested parties during an October 12, 2006, public meeting.[5] Using this input, NIOSH identified the need to promulgate a CUR performance standard in part 84. A public meeting dedicated to discussion of a combination respirator standard was held in December 2010; participants expressed their support for a standard that recognizes each type of respiratory protection comprising the combination.[6]

NIOSH conducted a respirator manufacturers' meeting [7] and a stakeholder webinar [8] in March 2015 to solicit additional stakeholder input regarding CUR research needs. It then engaged the National Academies Institute of Medicine (IOM) to examine aspects of CUR technology, use, and the development of a performance standard. In April 2015, IOM convened a public workshop, sponsored by NIOSH, on the development of a CUR performance standard.[9] The workshop engaged OSHA, NFPA, and CUR manufacturers and users, including presenters and participants engaged in law enforcement, fire service, mining, military, and hazardous waste remediation. The CUR users and manufacturers gave presentations to attendees, after which the workshop participants, speakers, and committee members met in breakout groups to define priorities in three areas: research, standards and regulations, and training needs and hazard assessment. Participants discussed the unique attributes of CURs and expressed concern about a disconnect between OSHA and NIOSH regulations.[10] Specifically, in 29 CFR 1910.134(d)(3)(i)(A), OSHA established its assigned protection factors (APFs) standard and requires that for a combination respirator ''employers must ensure that the assigned protection factor is appropriate to the mode of operation in which the respirator is being used.'' [11]

In contrast, in 42 CFR 84.63(b), NIOSH classifies combination respirators ''by the type of respirator in the combination which provides the least protection to the user.'' So, for example, pursuant to § 84.63(b), a respirator that combines an air-purifying mode (APF=50) and an open-circuit self-contained mode (APF=10,000) will be classified by NIOSH as an air-purifying respirator, the least protective of the two modes. Thus, if OSHA requires that the hazards at a specific worksite necessitate respiratory protection with an APF of 10,000, then the employer cannot use the combined air-purifying/open-circuit SCBA

[1] NIOSH Approved® (NIOSH Approved) is a certification mark of the U.S. Department of Health and Human Services (HHS) registered in the United States and several international jurisdictions.

[2] An open-circuit SCBA is designed for use during entry into and escape from or escape only from hazardous atmospheres. Oxygen is supplied to the wearer and the wearer's exhalations are vented to the atmosphere and are not rebreathed. *See* 42 CFR part 84, subpart H.

[3] Air-purifying respirators (APRs) ''utilize the wearer's negative inhalation pressure to draw the ambient air through the air-purifying filter elements (filters) to remove particulates from the ambient air. They are designed for use as respiratory protection against atmospheres with particulate contaminants at concentrations that are not immediately dangerous to life or health and that contain adequate oxygen to support life.'' Powered air-purifying respirators (PAPRs) use a blower to move air through the filters. *See* 42 CFR part 84, subpart K.

[4] *See https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1987.*

[5] NIOSH Docket Number 082 [Oct. 2006], Combination Units—SCBA/PAPR/APR, *http://www.cdc.gov/niosh/docket/archive/docket082.html.*

[6] NIOSH Docket Number 082–A [Dec. 2010], Chemical, Biological, Radiological and Nuclear (CBRN) Combination Respirator Unit (CRU), *http://www.cdc.gov/niosh/docket/archive/docket082A.html.*

[7] NIOSH–NPPTL [Feb. 3, 2015], Letter to All Respirator Manufacturers, Subject: Implementation Plan for the Respirator Certification Fees, *https://www.cdc.gov/niosh/npptl/resources/pressrel/letters/Manufacturers/pdfs/lttr-02032015-508.pdf.*

[8] NIOSH–NPPTL [Feb. 18, 2015], Webinar Concerning Standard for Performance Requirements of the Combination Unit Respirator, *https://www.cdc.gov/niosh/npptl/resources/pressrel/letters/interestedparties/pdfs/lttr-02182015-508.pdf.*

[9] *https://www.nationalacademies.org/our-work/developing-a-performance-standard-for-combination-unit-respirators-a-workshop*

[10] Institute of Medicine of the National Academies [2015], *Developing a Performance Standard for Combination Unit Respirators—Workshop in Brief; https://nap.nationalacademies.org/read/21765/chapter/1.*

[11] OSHA's regulation requires employers to use the APFs to select a respirator that meets or exceeds the required level of employee protection.

respirator approved by NIOSH at the least protective level (in this example, 50) because the APF for air-purifying respirators is insufficient to meet the needs of the worksite.

After the IOM published its workshop summary in June 2015, NIOSH determined there were no existing CUR performance standards that met the needs identified by the workshop participants. At that time, NIOSH considered the following alternative approaches to address those needs:

(1) develop the CUR performance standard and promulgate the standard into 42 CFR part 84;

(2) collaborate with a voluntary consensus standards development organization, such as NFPA, to develop the CUR performance standard and incorporate it into 42 CFR part 84 by reference; or

(3) develop the base respiratory protection requirements and collaborate with a standards development organization to develop additional unique requirements, such as communication and tactical equipment interoperability, to meet the needs of user groups for incorporation by reference into 42 CFR part 84.

NIOSH evaluated these options and considered both the formal request from a representative of the Federal Bureau of Investigation (FBI) and a subsequent Interagency Board endorsement letter of the FBI's request to the NFPA to develop CUR performance standards.[12] NIOSH determined that collaborating with NFPA to develop and adopt a CUR performance standard provided the most effective outcome for users and was the most efficient use of NIOSH resources. In a letter dated June 22, 2015, NIOSH endorsed the FBI's request that NFPA develop a CUR performance standard. In August 2015, NFPA responded to the FBI request by assigning this new project to the Technical Committee on Tactical and Technical Operations Respiratory Protection Equipment. User groups and CUR manufacturers participated throughout the NFPA CUR standard development process, and unique requirements such as communication and tactical equipment interoperability requirements were incorporated into the consensus standard to meet the needs of specific user groups. NIOSH provided additional expertise to conduct research, fully participated on the NFPA technical committee, and devoted agency resources to conduct the necessary research and development testing and evaluation to support NFPA in developing the CUR standard.

[12] *See supra* note 4 at 1.

*B. Scope of the Proposed Rulemaking*

This rulemaking proposes a new 42 CFR part 84, subpart P to create a new respirator class, combination unit respirators, which are respirators capable of protecting wearers (a) in open-circuit SCBA-mode during either entry into or escape from immediately dangerous to life or health (IDLH) environments, and (b) in air-purifying or powered air-purifying mode during entry into non-IDLH environments and escape from non-IDLH or IDLH environments. The combination unit respirator allows the wearer to select the operating mode and thus change from one APF to another as necessary.

*C. Need for Rulemaking*

Providing a mechanism to allow manufacturers to obtain NIOSH approvals of respirators conforming to the proposed standard for the new CUR class in subpart P would benefit those workers and employers who encounter various types of hazardous exposures and currently rely on multiple types of NIOSH Approved respiratory protective devices in the course of their duties on OSHA-regulated worksites. The flexibility provided using one NIOSH Approved respirator that can perform multiple functions might also benefit employers by allowing them to purchase fewer respirators, which NIOSH expects will result in cost savings. This rulemaking would also benefit employers who are required by OSHA to provide workers with NIOSH Approved respirators but currently use CURs that do not have NIOSH approval; HHS assumes that, as a result of this rulemaking, employers will choose to purchase NIOSH Approved products, allowing them to come into compliance with OSHA rules. Moreover, the proposed new subpart P would bring the regulations in 42 CFR part 84 into alignment with the OSHA APF standard 29 CFR 1910.134(d)(3)(i)(A), discussed above, allowing employers to purchase CURs rated at more than one APF.

This rulemaking would benefit approval holders that currently produce combination unit respirators, and new CUR manufacturers that would enter the NIOSH Approved CUR market if such approval were to become available. By promulgating this rule, HHS would be removing a barrier that currently prevents CUR manufacturers from accessing the market demand for NIOSH Approved respirators. Adding a new subpart P to part 84 would allow manufacturers to apply for and obtain NIOSH approval of CURs capable of allowing the wearer to switch between operational modes, which can be identified by more than one APF.

This rulemaking also proposes the revision of an existing definition in 42 CFR 84.2 and the addition of two new terms to reflect NIOSH's ongoing and evolving relationship with business entities that produce and sell respirators. HHS proposes revising the existing definition of the term ''applicant'' to clarify the role and responsibilities of those parties who submit an application for NIOSH approval of a product's design, performance, configuration management, manufacture, quality, and support. A new definition of the term ''approval holder'' would be added to the existing definitions section. The terms ''applicant'' and ''approval holder'' would replace the term ''manufacturers'' throughout part 84, as appropriate, to reflect the fact that seeking and maintaining NIOSH approval includes more than the manufacturing of the respirator or respirator components. An approval holder has at least one respirator approval on the NIOSH Certified Equipment List (CEL), a directory of NIOSH Approved respirators, which would also be defined in § 84.2. The CEL is regularly updated as respirator approvals are added, made obsolete, or otherwise changed in status. The CEL is available in a searchable database at *https://wwwn.cdc.gov/niosh-cel/.*

*D. Effects of Rulemaking on Federal Agencies*

The proposed rule would not require OSHA to make any changes to 29 CFR 1910.134, the OSHA respiratory protection requirements. The proposed rule is expected to benefit Federal law enforcement agencies and military branches whose members currently rely on CURs that are not NIOSH Approved respirators. The performance requirements proposed in this rulemaking are designed to protect workers relying on CURs for their survival in IDLH atmospheres better than combination respirators approved pursuant to 42 CFR 84.63(b) or CURs not approved to any performance standard.

**IV. Incorporation by Reference**

With this rulemaking, HHS proposes to incorporate by reference the CUR performance requirements in Chapter 7 of NFPA 1987, *Standard on Combination Unit Respirator Systems for Tactical and Technical Operations,* 2023 edition, into a new part 84, subpart P. NFPA 1987 specifies the minimum requirements for the design,

performance, testing, and certification of new combination unit respirator systems. Only the NFPA 1987, Chapter 7, respiratory performance requirements are incorporated into part 84, subpart P. NFPA 1987, 2023 edition, is reasonably available to interested parties. Interested parties may purchase a copy from NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101, *www.nfpa.org.* All NFPA codes and standards can be viewed at no cost at *nfpa.org/docinfo.*

**V. Summary of Proposed Rule**

For the reasons discussed above, HHS proposes the following changes to 42 CFR part 84.

*Section 84.2 Definitions*

HHS proposes the addition of two new definitions to the existing Definitions section in 84.2: ''approval holder'' and ''NIOSH Certified Equipment List (CEL).'' An approval holder is an applicant who has at least one NIOSH Approved respirator on the NIOSH Certified Equipment List, which is the directory of NIOSH Approved respirators. Finally, HHS proposes a revision to the existing term ''applicant,'' to clarify that the applicant is the entity that maintains and demonstrates responsibility for, and control of, product design, performance, configuration management, manufacture, quality, and support. Throughout part 84, the words ''manufacturer,'' ''manufacturers,'' and ''manufacturer's'' would be replaced with variations of ''applicant'' and ''approval holder,'' as appropriate.

*Section 84.63 Test Requirements; General*

Existing § 84.63(b) allows the combination of two or more classes of respirators and requires the resulting combination respirator to meet the minimum requirements for each class of respirator in the combination. Each resulting combination respirator will be classified by the class of respirator in the combination that provides the least amount of protection to the wearer. Paragraph (b) would be revised to clarify that CURs approved under the proposed new subpart P would be excepted from this general rule.

*Section 84.400 Combination Unit Respirators (CUR); Description*

In a new subpart P, a new § 84.400 would describe that CURs are intended to protect wearers using the CUR (a) in open-circuit SCBA-mode during either entry into or escape from immediately dangerous to life or health (IDLH) environments, and (b) in air-purifying or powered air-purifying mode during entry into non-IDLH environments and escape from non-IDLH or IDLH environments.

*Section 84.401 Technical Specifications and Performance Requirements*

A new § 84.401(a) would incorporate by reference the performance requirements established in Chapter 7 of NFPA 1987, *Standard on Combination Unit Respirator Systems for Tactical and Technical Operations,* 2023 edition. Tables in paragraphs (a)(1), (2), (3), and (4) would specify the NFPA 1987 performance requirements for CUR systems, including the CUR open-circuit self-contained mode, the powered air-purifying mode, and the air-purifying mode. The incorporation of NFPA 1987 would establish systems evaluation and minimum performance requirements for each operational mode providing respiratory protection, including air-purifying, powered air-purifying, and open-circuit self-contained breathing apparatus; the ability to safely switch operational modes; universal emergency breathing safety system; end-of-service-time indicator; and for assessing the chemical, biological, radiological, and nuclear performance of the CUR. A new paragraph (b) would stipulate that the 42 CFR part 84 provisions prevail in the event that there is a conflict with the requirements of NFPA 1987.

*Section 84.402 General Construction and Approval Requirements*

A new § 84.402(a) would specify that CURs are required to meet the minimum construction requirements in subpart G of part 84. Paragraph (b) would specify that the prospective approval holder must concurrently submit the device to an organization accredited to ISO/IEC 17065, *Conformity Assessment—Requirements for Bodies Certifying Products, Processes and Services,* for NFPA 1987 certification. The conformity assessment body will assess those requirements in NFPA 1987 that are not incorporated by reference into 42 CFR part 84, subpart P. NIOSH approval is contingent upon the applicant receiving NFPA 1987 certification from a conformity assessment body. The certification letter issued by the conformity assessment body will be issued concurrent with the NIOSH National Personal Protective Technology Laboratory approval letter.

*Updates to Internal References*

In §§ 84.30, 84.50, 84.51, 84.52, 84.53, 84.60, 84.63, 84.64, 84.65, the text would be edited to point to the technical standards in subparts H through the proposed new subpart P.

**VI. Regulatory Impact Analyses**

HHS has examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

*A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review)*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Executive Order 14094 entitled ''Modernizing Regulatory Review'' (hereinafter, the Modernizing E.O.) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case. A

regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with significant effects as per section 3(f)(1) ($200 million or more in any 1 year).

This proposed rule has been determined not to be a ''significant regulatory action'' under section 3(f) of E.O. 12866. The rulemaking is intended to remove regulatory barriers to the manufacturing, labeling, and selling of new CUR designs with NIOSH approval that include both open-circuit self-contained breathing apparatus and either air-purifying or powered air-purifying respirator capabilities. This rulemaking would give applicants the option to seek NIOSH approval of CURs meeting the performance requirements in chapter 7 of NFPA 1987, *Standard on Combination Unit Respirator Systems for Tactical and Technical Operations,* 2023 edition, incorporated by reference into a new 42 CFR part 84, subpart P. NIOSH approval would be contingent on concurrent NFPA 1987 certification from the certification body.

Costs

This rule would not impose any mandatory costs on the public and would benefit applicants who choose to develop a product under these new technical requirements and the employers who purchase CURs. HHS estimates the fees associated with CUR approvals, including applications, site qualifications, and testing fees, pursuant to 42 CFR part 84, subpart C—Fees and Fee Schedule B—Application-Based Fees in part 84, appendix B. Because CUR-specific testing fees must be added to Fee Schedule B by rulemaking,[13] until HHS can conduct such a rulemaking, fees associated with those tests would be assessed pursuant to § 84.24, which authorizes NIOSH to

> conduct or cause to be conducted any additional examinations, inspections, or tests it deems necessary to determine the quality and effectiveness of any respirator submitted to NIOSH for the purposes of seeking a certificate of approval.

CUR-specific testing fees would be charged under the New and Unspecified Tests category of Fee Schedule B, allowing the NIOSH Respirator Approval Program to recoup $500 per day plus the actual cost of non-NIOSH staff (typically medical staff and test subjects), which is roughly equivalent to the actual costs of those tests. The application plus NIOSH testing and evaluation fees are estimated to be $15,600 in total.

The costs associated with the CBRN chemical warfare agent (CWA) tests, which NIOSH requires to be conducted by the U.S. Army Combat Capabilities Development Command (DEVCOM), Chemical Biological Center (CBC), are estimated to cost $101,000. These fees are established by CBC.

Fees associated with the independent certification body NFPA 1987 certification will be assessed by the certification body utilized. HHS estimates that NFPA 1987 certification will cost $90,000 for initial testing and evaluation and $42,000 annually thereafter. Finally, HHS estimates that the application itself will take an average of 240 hours to complete, costing applicants approximately $11,374 per application (*see* Section V.C., below).

In addition to the one-time cost of a new NIOSH approval, pursuant to Respirator Certification Fee Schedule A—Annual (Fixed) Fees, the annual NIOSH approval maintenance costs to maintain one approval are estimated to be $10,691.

In total, HHS estimates that the initial cost of a new CUR approval application submitted to NIOSH will be $217,974. HHS further estimates that the total cost of maintaining a NIOSH CUR approval will be $52,691. *See* Table 1.

TABLE 1—ESTIMATED COST OF NIOSH CUR APPROVAL

[2023$]

| Fees | Estimated first-year costs for 1 approval | Estimated annual costs for 1 approval |
|---|---|---|
| NIOSH approval, Fee Schedule A | | $10,691 |
| NIOSH approval, Fee Schedule B | $15,600 | |
| Application paperwork burden | 11,374 | |
| CBRN testing by DEVCOM | 101,000 | |
| NFPA 1987 certification | 90,000 | |
| NFPA 1987 certification annual fee | | 42,000 |
| Total | 217,974 | 52,691 |

Benefits

HHS anticipates that the benefits of this rulemaking far outweigh the costs to applicants of obtaining NIOSH CUR approval. CURs without NIOSH approval currently cost from $7,500 to $12,000; HHS does not have information about the potential cost of NIOSH Approved CURs but expects CUR approval holders to recoup the full cost of the NIOSH approval and profit from the sale of CURs to end users.

Moreover, this rulemaking would open up a new market segment to approval holders, allowing them to sell NIOSH Approved CURs to employers who are only able to purchase NIOSH Approved respirators as well as those who currently use non-NIOSH Approved CUR but wish to use NIOSH Approved respirators. Such employers are likely to include State and local law enforcement agencies in states that have an OSHA-approved State Plan, Department of Defense contractors, and private businesses where workers encounter hazards in industrial settings.

HHS expects that employers who must supply workers on OSHA-regulated jobsites with more than one type of NIOSH Approved respirator to protect them from more than one type of inhalational hazard would see a cost savings when those respirators are replaced with one NIOSH Approved CUR. Employers may also save resources by reducing employee trainings on multiple types of respirators.

Finally, the performance requirements proposed in this rulemaking are designed to protect workers relying on CURs for their survival in IDLH atmospheres better than combination respirators approved pursuant to 42 CFR 84.63(b) or CURs that are not approved to any performance standard. CURs approved under this new subpart will

[13] 42 CFR part 84, Appendix B.

demonstrate that the NIOSH Approved CUR maintains a minimum level of protection when the modes of protection are switched by the user, as needed to perform their work. The concurrent NFPA 1987 approval issued by NIOSH and the ISO 17065 certification body ensures minimum performance is demonstrated for the respiratory and non-respiratory requirements needed to protect these users. Although HHS lacks information on the number of workers annually who rely on a CUR for their survival and the quantifiable benefit they would derive from this rule, HHS anticipates that the use of NIOSH Approved CURs will result in cost savings associated with reducing illness, death, or disability resulting from work in IDLH atmospheres.

HHS encourages submission to the docket of any information or data that would inform our understanding of the impact of this rulemaking on regulated entities.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The Secretary certifies that this proposed rule would have ''no significant economic impact upon a substantial number of small entities'' within the meaning of the RFA. HHS estimates that two manufacturers considered to be small businesses are currently producing combination unit respirators used in military, law enforcement, and some industrial settings. HHS expects that any economic burden accrued through compliance with this rulemaking would not disproportionately or unfairly impact small CUR manufacturers and that any such burden would be offset by economic gains from compliance with the new CUR performance standard.

*C. Paperwork Reduction Act*

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. The Office of Management and Budget (OMB) has already approved the information collection and recordkeeping requirements for certification and approval of respiratory protective devices under OMB Control Number 0920–0109, *Information Collection Provisions in 42 CFR Part 84—Tests and Requirements for Certification and Approval of Respiratory Protective Devices* (expiration date March 31, 2024). Due to this proposed rule, which would allow for the NIOSH approval of respirators in a new class, combination unit respirators, there is likely to be a change in burden in the approved collection of information.

Comments are invited 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; (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. Written comments must be received within 60 days of the publication of this notice. The addition of additional paperwork requirements resulting from this proposed rule will increase the burden associated with the addition of a new 42 CFR part 84, subpart P.

Based on known manufacturers of combination unit respirators on the market, NIOSH estimates that up to 5 respirator manufacturers may submit approximately 15 applications for CUR approvals to the National Personal Protective Technology Laboratory from April 2024 to April 2025. Each application is expected to require an average of 240 hours to complete and maintain.

Accordingly, NIOSH expects 3,600 burden hours to be attributed to applications for CUR approvals under the new subpart P. NIOSH estimates an average hourly wage rate of $47.39 for industrial engineers.[14]

| Section | Title | Number of respondents | Average responses per respondent | Average burden per response (hr) | Total burden (hr) |
|---|---|---|---|---|---|
| 84.400 | Combination unit respirators (CUR); description | 5 | 3 | 240 | 3,600 |

| Section | Title | Total burden hours (from above) | Estimated hourly wage rate | Total cost of hour burden |
|---|---|---|---|---|
| 84.400 | Combination unit respirators (CUR); description | 3,600 | $47.39 | $170,604 |

*D. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and on the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $177 million. This proposed rule does not mandate any requirements for State, local, or tribal governments, or for the private sector, and this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $177 million in any 1 year.

*E. Executive Order 12988 (Civil Justice Reform)*

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. This proposed rule has been

[14] U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2022: 1702112 Industrial Engineers, https://www.bls.gov/oes/current/oes172112.htm.*

reviewed carefully to eliminate drafting errors and ambiguities.

*F. Executive Order 13132 (Federalism)*

HHS has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

*G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)*

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this proposed rule on children. HHS has determined that the proposed rule would have no environmental health and safety effect on children.

*H. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

In accordance with Executive Order 13211, HHS has evaluated the effects of this proposed rule on energy supply, distribution, or use, and has determined that the proposed rule will not have a significant adverse effect.

*I. Plain Writing Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal government administers or enforces. HHS has attempted to use plain language in issuing the notice of proposed rulemaking consistent with the Federal Plain Writing Act guidelines but notes that these standards are technical in nature.

**List of Subjects in 42 CFR Part 84**

Fees, Incorporation by reference, Labeling, Laboratories, Mine safety and health, Occupational safety and health, Personal protective equipment, Respirators.

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR part 84 as follows:

## PART 84—APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

■ 1. The authority citation for Part 84 continues to read as follows:

**Authority:** 29 U.S.C. 651 *et seq.*, and 657(g); 30 U.S.C. 3, 5, 7, 811, 842(h), 844.

## Subpart A—General Provisions

■ 2. Amend § 84.2 by revising the definition for ''Applicant'' and adding the definitions for ''Approval holder'' and ''NIOSH Certified Equipment List'' in alphabetical order to read as follows:

### § 84.2 Definitions.

*Applicant* means an individual, partnership, company, corporation, association, or other organization that controls the design, manufactures, and controls the assembly of a respirator and who seeks to obtain a certificate of approval for such respirator. The applicant demonstrates responsibility for, and control of, product design, performance, configuration management, manufacture, quality, and support. The applicant may be an existing approval holder.

* * * * *

*Approval holder* means an applicant who has successfully received and maintains at least one approval currently listed on the NIOSH Certified Equipment List. The approval holder maintains responsibility for, and control of, product design, performance, configuration management, quality, and support.

* * * * *

*NIOSH Certified Equipment List (CEL)* means a directory maintained by NIOSH of respirators which have been granted approval.

* * * * *

## Subpart B—Application for Approval

### § 84.10 [Amended]

■ 3. Amend § 84.10(d) by replacing ''manufacturers'' with ''approval holders''.

## Subpart C—Fees

### § 84.22 (c) [Amended]

■ 4. Amend § 84.22(c) by removing ''manufacturer'' and adding in its place ''applicant or approval holder''.

## Subpart D—Approval and Disapproval

### § 84.30 [Amended]

■ 5. Amend § 84.30(a) by removing ''H through L'' and adding in its place ''H through P''.

## Subpart F—Classification of Approved Respirators; Scope of Approval; Atmospheric Hazards; Service Time

### § 84.50 [Amended]

■ 6. Amend § 84.50 by removing ''G through L'' and adding in its place ''G through P''.

### § 84.51 [Amended]

■ 7. Amend § 84.51 by removing ''H through L'' and adding in its place ''H through P''.

### § 84.52 [Amended]

■ 8. Amend § 84.52 by removing ''H through L'' and adding in its place ''H through P''.

### § 84.53 [Amended]

■ 9. Amend § 84.53(a) by removing ''H through L'' and adding in its place ''H through P''.

## Subpart G—General Construction and Performance Requirements

### § 84.60 [Amended]

■ 10. Amend § 84.60(a) by removing ''H through O'' and adding in its place ''H through P'' and (b) by removing ''H through L'' and adding in its place ''H through P''.

### § 84.63 [Amended]

■ 11. Amend § 84.63 by:

■ A. In paragraphs (a) and (c) remove ''H through O'' and add in its place ''H though P''.

■ B. In paragraph (b) removing the phrase ''except as specified in § 84.70(b)(2)'' and adding in its place the phrase ''except as specified in § 84.70(b)(2) and subpart P''.

### § 84.64 [Amended]

■ 12. Amend § 84.64 by removing ''H through O'' and adding in its place ''H through P''.

### § 84.65 [Amended]

■ 13. Amend § 84.65 by removing ''H through O'' and adding in its place ''H through P''.

## Subpart J—Supplied-Air Respirators

### § 84.149 [Amended]

■ 14. In § 84.149, amend paragraph (b) by removing ''manufacturer'' and adding in its place ''applicant'' and amend paragraph (d)(2) by removing ''manufacturer's'' and adding in its place ''applicant's''.

## Subpart K—Air-Purifying Particulate Respirators

### § 84.171 [Amended]

■ 15. Amend § 84.171(b) by removing ''The respirator manufacturer, as part of the application for certification,'' and adding in its place ''The applicant''.

### § 84.172 [Amended]

■ 16. Amend § 84.172(b) by removing ''manufacturer'' and adding in its place ''applicant''.

## Subpart N—Special Use Respirators

### § 84.252 [Amended]

■ 17. Amend § 84.252 by removing ''manufacturer's'' and removing ''a manufacturer'' and adding in its place ''an applicant''.

### § 84.257 [Amended]

■ 18. Amend § 84.257(a) by removing ''manufacturer's'' and adding in its place ''approval holder's''.

## Subpart O—Closed-Circuit Escape Respirators

### § 84.301 [Amended]

■ 19. Amend § 84.301(c) by removing ''manufacturer-requested'' and adding in its place ''approval holder-requested''.

### § 84.302 [Amended]

■ 20. Amend § 84.302(a)(2) and (c) by removing ''manufacturer'' and adding in its place ''applicant''.

### § 84.304 [Amended]

■ 21. Amend § 84.304(a)(3) and (c) by removing ''manufacturer'' and adding in its place ''applicant''.

### § 84.305 [Amended]

■ 22. Amend § 84.305(d) by removing ''manufacturer's'' and adding in its place ''applicant's''.

### § 84.306 [Amended]

■ 23. Amend § 84.306(b)(1) by removing ''manufacturer'' and adding in its place ''applicant''.

### § 84.309 [Amended]

■ 24. Amend § 84.309(d) by removing ''manufacturer'' and adding in its place ''applicant''.

■ 25. Add subpart P to read as follows:

## Subpart P—Combination Unit Respirators

Sec.

84.400 Combination unit respirators (CUR); description.
84.401 Technical specifications and performance requirements.
84.402 General construction and approval requirements.

### § 84.400 Combination unit respirators (CUR); description.

(a) Combination unit respirators including all completely assembled respirators are designed for use as respiratory protection during:

(1) Entry into or escape from atmospheres immediately dangerous to life or health, when active in the open-circuit self-contained operational mode, and

(2) Entry into atmospheres not immediately dangerous to life or health, or escape only from hazardous atmospheres containing adequate oxygen to support life when active in the air-purifying or powered air-purifying operational mode.

(b) A respirator that meets the minimum requirements for such respirators set forth in this subpart will be classified as a combination unit respirator.

### § 84.401 Technical specifications and performance requirements.

(a) Combination unit respirators must meet those respiratory protection performance requirements established in NFPA 1987, *Standard on Combination Unit Respirator Systems for Tactical and Technical Operations,* 2023 edition, specified in paragraphs (a)(1), (2), (3), and (4) of this section. Accordingly, the NFPA 1987 performance requirements in Chapter 7, specified in paragraphs (a)(1), (2), (3,), and (4), are incorporated by reference into this section and have been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the National Institute for Occupational Safety and Health (NIOSH) and at the National Archives and Records Administration (NARA). Contact NIOSH at National Personal Protection Technology Laboratory, P.O. Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236. To arrange for an inspection at NIOSH, call 412–386–6111 or email *PPEConcerns@cdc.gov.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the National Fire Protection Association at: phone: 800–344–3555; email: *custserv@nfpa.org;* website: *https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1987.*

(1) CUR system performance requirements:

| NFPA 1987 performance requirements | NFPA 1987 section |
|---|---|
| (i) Chemical Agent Permeation and Penetration Resistance against Distilled Sulfur Mustard (HD) and Sarin (GB) Performance Requirements | 7.1.1 |
| (ii) Laboratory Respiratory Protection Level (LRPL) | 7.1.2 |
| (iii) Flexible Facepiece Lens Abrasion Resistance Performance | 7.1.5 |

(2) CUR/open-circuit self-contained mode performance requirements:

| NFPA 1987 performance requirements | NFPA 1987 section |
|---|---|
| (i) Service Time Performance | 7.2.2 |
| (ii) Human Subject Performance Test for Low-Temperature Operations | 7.2.3 |
| (iii) Human Subject Performance Tests During Physical Exertions | 7.2.4 |
| (iv) Integrity of Couplings Performance | 7.2.5 |
| (v) CUR Standby Air Supply Airflow Performance | 7.2.6 |
| (vi) CUR Connection to a Standby Air Source Performance | 7.2.7 |
| (vii) CUR Air Flow Capabilities in Event of Second-Stage Regulator Failure Performance | 7.2.8 |
| (viii) CUR Gauge Accuracy Performance | 7.2.9 |

(3) CUR/powered air-purifying mode performance requirements:

| NFPA 1987 performance requirements | NFPA 1987 section |
|---|---|
| (i) PAPR Airflow Performance | 7.3.1 |
| (ii) PAPR Silica Dust Loading Performance | 7.3.2 |
| (iii) Airflow Resistance Performance in Breath-Responsive, Powered Air-Purifying Respirators | 7.3.3 |
| (iv) PAPR Performance with the Blower Off | 7.3.4 |

(4) CUR/air-purifying mode performance requirements:

| NFPA 1987 performance requirements | NFPA 1987 section |
|---|---|
| (i) Breathing Resistance | 7.4.1 |
| (ii) Hydration Leakage | 7.4.2 |
| (iii) Canister Test Challenge and Test Breakthrough Concentrations | 7.4.3 |
| (iv) Particulate/Aerosol Canister | 7.4.4 |
| (v) Low-Temperature/Fogging | 7.4.5 |
| (vi) ESLI Drop Test for Canisters | 7.4.6 |
| (vii) ESLI Test for Canisters | 7.4.7 |

(b) To the extent there is a conflict between the terms or provisions of NFPA 1987 and this part, the provisions of this part control.

**§ 84.402 General construction and approval requirements.**

(a) Each CUR must meet the minimum construction requirements set forth in subpart G of this part.

(b) Applications for NFPA 1987 certification must be submitted to a conformity assessment body accredited to ISO/IEC 17065, *Conformity Assessment—Requirements for Bodies Certifying Products, Processes and Services,* at the same time the CUR approval application is submitted to NIOSH. NIOSH approval is contingent upon and will be issued in conjunction with NFPA 1987 certification.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2024–03849 Filed 3–14–24; 8:45 am]

**BILLING CODE 4163–18–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

**[IB Docket Nos. 22–271, 22–272; FCC 24–21; FR ID 207048]**

## Space Innovation; Facilitating Capabilities for In-Space Servicing, Assembly, and Manufacturing

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) adopted a Notice of Proposed Rulemaking that seeks comment on a proposed new framework for licensing space stations engaged in in-space servicing, assembly, and manufacturing (ISAM).

**DATES:** Comments are due on or before April 29, 2024. Reply comments are due on or before May 29, 2024.

**ADDRESSES:** You may submit comments, identified by IB Docket Nos. 22–271 and 22–272, by any of the following methods:

- *Electronic Filers.* Comments may be filed electronically using the internet by accessing the ECFS, *http://apps.fcc.gov/ecfs.*
- *Paper Filers.* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

*Persons with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

**FOR FURTHER INFORMATION CONTACT:** Jameyanne Fuller, Space Bureau, Satellite Programs and Policy Division, 202–418–0945, *jameyanne.fuller@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), in IB Docket Nos. 22–271 and 22–272; FCC 24–21, adopted February 15, 2024, and released February 16, 2024. The full text of this document is available at *https://docs.fcc.gov/public/attachments/FCC-24-21A1.pdf.*

### Ex Parte Presentations

The Commission will treat this proceeding as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different

deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

**Paperwork Reduction Act**

The Notice of Proposed Rulemaking contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4)), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

**Providing Accountability Through Transparency Act**

The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of the Notice of Proposed Rulemaking is available at *https://www.fcc.gov/proposed-rulemakings.*

**Initial Regulatory Flexibility Analysis**

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the proposed rule and policy changes contained in the Notice of Proposed Rulemaking. The IRFA is set forth in Appendix B of the NPRM and a summary is included in the Procedural Matters section below. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Notice of Proposed Rulemaking indicated on the **DATES** section of this document and must have a separate and distinct heading designating them as responses to the IRFA.

**Synopsis**

1. In the Notice of Proposed Rulemaking (NPRM), the Commission seeks comment on several proposed changes to part 25 of the Commission's rules to create a new framework to license in-space servicing, assembly, and manufacturing, or ''ISAM'' space stations, thereby supporting the development of these novel space activities. Specifically, the NPRM proposes to include a new definition of ''ISAM space station'' in § 25.103 of the Commission's rules drawn from the definition in the ISAM National Strategy and proposes a new § 25.126 to the Commission's rules to aggregate requirements that all applicants for an ISAM space station license or market access grant must fulfill and to enumerate the exemptions from other portions of part 25 to which applicants would be entitled. It also seeks comments on whether other rule changes might be necessary to support the development of the ISAM industry. Additionally, it proposes to retain the same orbital debris mitigation requirements for ISAM operators as for other space station operators and proposes to review ISAM operators' requests for frequency use on a case-by-case basis.

**I. Introduction**

2. The Commission continues its efforts to promote United States leadership in space by adopting the NPRM to propose a new framework for licensing space stations engaged in ISAM. Space capabilities are expanding, opening novel economic and scientific opportunities, and providing new tools for sustainable use of space. Effective and efficient use of radiofrequency communications will enable these new capabilities and the rules proposed are designed to facilitate and support their growth. The NPRM reflects the input of commenters from the Commission's Notice of Inquiry (NOI) on ISAM, 87 FR 56365 (September 14, 2022), which sought comment regarding where the industry is today, how the Commission can best support its sustainable development, and what tangible economic and societal benefits may result from these capabilities. Taking these comments into account, the Commission proposes to create a new framework to license ISAM space stations, thereby supporting the development of these novel space activities. As the ISAM industry continues to develop, the Commission envisions taking additional steps as needed to foster innovation and growth in this field.

**II. Background**

3. ISAM refers to a set of capabilities used on-orbit, on the surface of space objects and celestial bodies, and in transit between these regimes. The ''servicing'' aspect of ISAM includes activities such as the in-space inspection, life extension, repair, refueling, or alteration of a spacecraft after its initial launch, which includes but is not limited to: visually acquire, rendezvous and/or proximity operations, docking, berthing, relocation, upgrading, repositioning, undocking, unberthing, release and departure, reuse, orbit transport and transfer, and timely debris collection and removal. These activities typically include the process of maneuvering close to and operating in the near vicinity of the ''client'' spacecraft, a set of activities often referred to as rendezvous and proximity operations (RPO). The term ''servicing'' is also used to describe transport of a spacecraft from one orbit to another, as well as debris collection and removal. ''Assembly'' refers to the construction of a space system using pre-manufactured components, and ''manufacturing'' is the transformation of raw or recycled

materials into components, products, or infrastructure in space.

4. On August 5, 2022, the Commission adopted the ISAM NOI. It sought comment on spectrum needs and allocations; licensing processes in general and specifically for satellite servicing operations, assembly, manufacturing, and other activities; and international licensing considerations. Twenty-four comments were filed by ISAM operators, satellite operators, industry groups, and government agencies, ten parties filed reply comments, and a number of parties also submitted ex parte filings on the record.

5. *Prior Actions Involving ISAM Activities.* While many commercial ISAM activities are still at an early stage, the Commission, in coordination with NTIA where operations were in frequency bands shared with the federal government, has issued licenses for space stations conducting several types of ISAM activities, including the following: licensing of SpaceLogistics, LLC's (SpaceLogistics) Mission Extension Vehicle–1 (MEV–1) and Mission Extension Vehicle–2 (MEV–2); granting an experimental license to SpaceIce to investigate freeze-casting, a processing technique used to create a wide range of materials like ceramics, metals, polymers, and composites, among others, in the microgravity environment; authorizing U.S. earth station communications to support Astroscale Ltd.'s ELSA-d testing of spacecraft capabilities for orbital debris removal; and granting an experimental license to NanoRacks LLC for communications to demonstrate metal-cutting in space.

6. Topics related to ISAM capabilities have also been raised in other Commission rulemaking proceedings. In the ongoing rulemaking to update the orbital debris rules, Mitigation of Orbital Debris in the New Space Age, the Commission sought comment on a variety of rule changes, including, for example, whether it should update rules specifically to address RPO. The Commission ultimately adopted a requirement that space station applicants disclose whether a space station is capable of, or will be, performing proximity operations, noting that this disclosure would identify situations where such operations are planned and provide a vehicle for further review of those operations. At the time, the Commission noted the evolving and developing nature of RPO and accordingly found that adoption of more specific technical or operational requirements would be premature. The Commission also sought comment on the role of spacecraft retrieval, also referred to as active debris removal (ADR), as a debris mitigation strategy in certain circumstances and concluded that this was also an area where it would be premature to establish more detailed regulations.

7. *State of the ISAM Industry.* The ISAM NOI sought information on the state of the industry for ISAM operations. Astroscale notes that more than 102 companies have undertaken ISAM projects or research, that 18 of those have either partially or fully operational ISAM capabilities, and that 40 expect to be ready within the next 5 years. Operators describe their specific work developing servicing spacecraft, orbital transfer vehicles (OTVs), life extension vehicles, end-of-life servicing spacecraft, refueling depots, space situational awareness spacecraft, commercial inhabitable space stations, lunar landers, and spacecraft conducting science experiments and manufacturing in microgravity. While Aerospace Corporation (Aerospace) sees a ''chicken and egg'' problem regarding a lack of serviceable satellites and a lack of servicers, it notes that SpaceLogistic's MEVs that operate on vehicles not designed for servicing have significantly reduced this barrier and finds the mix of old and new satellites will expand ISAM servicing opportunities and draw in more satellite and ISAM providers. NTIA highlights two previous successful ISAM-related demonstrations by the Defense Advanced Research Projects Agency (DARPA) and NASA's Double Asteroid Redirection Test (DART) to support planetary protection.

## III. Discussion

### *A. Scope of FCC Regulations*

8. The NOI queried how the FCC could support ISAM activities, noting that the ISAM National Strategy calls for the U.S. domestic regulatory regime to be updated to facilitate ISAM activities. The Commission issues the NPRM in line with that call, while recognizing that the Commission, with over 50 years of expertise in regulating satellites, is one of several government agencies charged with regulation and oversight of commercial activities in space.

9. The Commission's authority under the Communications Act allows the licensing of ISAM space stations under its existing rules, including rules that consider public interest factors. The Commission expects to continue to rely on the expertise of its fellow agencies as appropriate and note that its regulations on these issues are evolving in tandem with other government efforts. The Commission also recognizes that the United States' regulatory regime for achieving compliance with its obligations under Article VI of the Outer Space Treaty contemplates multiple agencies authorizing and supervising the activities of non-governmental entities in space.

10. *Planetary Protection.* The NOI discussed the issue of planetary protection, given that some recent ISAM-related license applications are focused on lunar activities and beyond. Several commenters suggest the Commission consider working with other agencies on planetary protection issues instead of separately considering or taking action in this proceeding. The Commission plans to continue to support other agencies' efforts to develop and implement planetary protection policies. The Commission tentatively concludes that its proposed licensing framework for ISAM space stations should not include independent review and action from the Commission on applicants' planetary protection plans. The Commission seeks comment on how to ensure that applicants work with NASA and other relevant agencies to address planetary protection guidance and policy considerations. The Commission expects that various applications might require planetary protection considerations, such as small spacecraft applications. The Commission has previously ensured that applicants work with other federal agencies to consider planetary protection.

### *B. Licensing Framework for ISAM Space Stations*

11. The NOI sought information on the best approaches to licensing ISAM activities. As discussed in greater detail below, the Commission proposes to modify its rules to create a licensing framework specific to ISAM space stations within its part 25 rules for licensing commercial space stations. The Commission also proposes to apply its existing orbital debris mitigation requirements to ISAM space stations and to address the spectrum needs of ISAM operators on a case-by-case basis. At the same time, the Commission proposes to maintain its part 5 experimental licensing rules as an option for licensing ISAM space stations not providing commercial service.

### *C. Licensing Rules for ISAM Space Stations*

12. *Commercial Readiness of ISAM activities.* The NOI sought comment on possible approaches for licensing different types of ISAM operations, including servicing, assembly, manufacturing, and ADR. The record demonstrates that various ISAM

operations are developing at different rates. Some commenters recommend that the Commission develop rules specific to categories of ISAM activities that are at a high level of technological readiness, like servicing, while adopting broad performance-based regulations that could apply to categories of ISAM activities that are still developing and could become more common in the future, like assembly and manufacturing. The Commission agrees with commenters that communications operations of certain ISAM activities may need to be regulated differently, but do not propose separate rules for different types of ISAM activities at this time. Instead, the Commission proposes to move forward by creating a new framework for applications for U.S. authorizations or grants of market access that applies broadly to space stations associated with all activities that fit within the proposed definition of ISAM. Unless indicated otherwise, when the Commission refers to the term license or licensee in this summary and in the Notice of Proposed Rulemaking, the Commission also includes market access grants or grantees. This proposed approach will allow applicants for any type of ISAM activity to apply for a U.S. license or market access grant pursuant to these new rules and will provide a framework to support future regulations for specific ISAM activities that may be necessary as the industry develops. The Commission seeks comment on whether there are different factors of servicing, assembly, or manufacturing activities that necessitate specific rules or a specific framework at this time.

13. *Licensing ISAM Space Stations Through Part 5 and Part 25.* Commenters note that ISAM remains nascent, and it may be five to ten years before the industry generally shifts toward requiring part 25 licensing for commercial space stations (rather than part 5 licensing for experimental space stations, which remains an important licensing avenue for operators as ISAM technology develops). Some commenters suggest updating the part 5 rules ''to more readily enable ISAM operations.'' Others caution against rule updates to part 5, explaining that ''[c]hanging the Part 5 rules would pose an unnecessary drain on FCC resources and take years to complete.'' The Commission notes that several ISAM space stations have successfully received experimental licenses through the part 5 process, and therefore, it does not propose to modify the part 5 experimental license rules at this time. The Commission proposes to continue to utilize both part 5 and part 25 licensing in appropriate circumstances to provide radiofrequency licensing to support ISAM development. and seek comment on this proposal.

14. *Definition of ISAM Space Station.* As an initial matter, the Commission proposes to include a definition of ''ISAM space station'' in § 25.103 of the Commission's rules. The Commission proposes that operators wishing to apply using its proposed framework for ISAM space stations must plan to operate space stations that fit this definition, although space stations that fall within the definition would not be precluded from applying through its regular part 25 rules or through its existing processes for small satellites or small spacecraft. The Commission proposes to define ''ISAM space station'' as follows: ''A space station that has the primary purpose of conducting in-space servicing, assembly, and/or manufacturing activities used on-orbit, on the surface of celestial bodies, and/or in transit between these regimes. Servicing activities include but are not limited to in-space inspection, life-extension, repair, refueling, alteration, and orbital transfer of a client space object, including collection and removal of debris on orbit. Assembly activities involve the construction of space systems in space using pre-manufactured components. Manufacturing activities involve the transformation of raw or recycled materials into components, products, or infrastructure in space.'' The Commission notes that this definition is drawn from the definition of ISAM in the ISAM National Strategy. The Commission seeks comment on this proposed definition. Specifically, should the Commission further define ''primary purpose'' and, if so, how? Are there ISAM activities that would not be included in this definition? Conversely, is this definition so broad that it risks creating confusion as to whether more traditional space stations are included and, if so, how should it be tightened?

15. *Proposed § 25.126.* In general, the Commission proposes to require applicants for authorization for ISAM space stations to comply with the rules of either its regular part 25 licensing process or its streamlined processes for small satellites and small spacecraft, with some exemptions. The Commission notes that ISAM technologies are still nascent, and it views its proposed approach to regulating ISAM space stations as iterative, developing with the capabilities and needs of the industry. The Commission believes licensing ISAM space stations under its current rules, including rules for applications for grants of market access and rules for modifications to operations, and reviewing ISAM applications on a case-by-case basis, will allow us to address the particular needs of ISAM space station operations of different durations and in different orbits. The Commission believes this proposed approach will provide the industry with flexibility while ISAM capabilities develop. The Commission also believes this approach will allow the Commission to continue to develop a record on ISAM while gaining more experience licensing radiofrequency use for ISAM space stations, allowing the Commission to be in the best position to propose additional rule modifications if needed for ISAM space stations in the future. The Commission seeks comment on this approach.

16. The Commission proposes to create a new § 25.126—Applications for ISAM Space Stations—to aggregate the requirements applicants for ISAM space stations must fulfill and enumerate the exemptions from the Commission's typical processes they are entitled to. The Commission believes creating a new rule section specific to ISAM space stations will make the process transparent for the industry, providing applicants for authorization for ISAM space stations one rule section that details the application process and clearly indicates the other rule sections with which applicants must comply. The Commission proposes that applicants that fit within its proposed definition of ''ISAM space station,'' detailed above, would be able to use the proposed framework in § 25.126. The Commission proposes that operators of ISAM space stations could apply for both U.S. authorizations and grants of U.S. market access using the proposed framework in this section. The Commission seeks comment on this general approach.

17. Specifically, the proposed new § 25.126 would require applicants to submit a comprehensive proposal for Commission evaluation on Form 312, Main Form, and Schedule S, as described in § 25.114(a) through (c), consistent with the Commission's regular part 25 licensing and small satellite and small spacecraft licensing requirements. The Commission proposes to allow ISAM space station operators to continue to apply under the small satellite and small spacecraft streamlined processes, provided they satisfy all the requirements of each respective process. The Commission proposes that ISAM space stations that do not meet the criteria for the small satellite or small spacecraft processes

would continue to be subject to the remaining licensing requirements for GSO or NGSO operators under the Commission's regular part 25 application process and therefore would be required to provide the information required by its rules with their application.

18. The Commission recognizes that radiofrequency operations for ISAM space stations seem more capable of spectrum sharing than other commercial space stations it has authorized under its part 25 rules and generally require shorter durations of intensive communications operations. The Commission therefore proposes to exempt all applications for licenses for space stations that fit its proposed definition of ISAM space stations from processing round requirements for NGSO-like operations under § 25.157 and from first-come-first-served requirements for GSO-like operations under § 25.158, provided they certify that operations of the space station(s) will be compatible with existing operations in the authorized frequency bands and submit a narrative description to demonstrate spectrum sharing capabilities are technically possible, and that the operations will not materially constrain future space station entrants from using the authorized frequency band(s). These proposals and exemption criteria would be located in new § 25.126 and the corresponding §§ 25.157 and 25.158 would be updated to reflect these exemptions. The Commission tentatively concludes that this licensing framework will allow greater flexibility for ISAM operators looking to operate as a GSO or NGSO space station while protecting future and incumbent satellite operators from interference. The Commission also proposes to include a requirement in 25.126 for ISAM operators to provide ICFS file numbers or call signs for any FCC-related applications or grants or a list of International Telecommunications Union (ITU) filings and United Nations (UN) Registration information for any related space stations not licensed or granted market access by the United States, which the Commission explains in more detail below. The Commission notes that its proposal to exempt ISAM operators from its processing round and first-come-first-served queue, given relevant showings, does not modify its obligations to coordinate authorizations with federal operators when spectrum shared by federal and nonfederal users is requested. The Commission seeks comment on these proposals. It also seeks comment regarding whether other rule changes are necessary to effectuate the proposed approaches discussed above. Commenters should specify which rules and explain the basis for recommending additional revisions.

19. *Surety bonds.* In addition to the exemptions that it proposes in 25.126, the Commission also proposes to defer the posting of surety bonds by one year after the grant of a license for ISAM operators. This proposal is consistent with the Commission's treatment of small satellites and small spacecraft. Spaceflight suggests that the policy objective underlying the Commission's surety bond requirement is to prevent operators from warehousing spectrum for years while failing to follow through on deploying their planned system, but many ISAM operators would meet these objectives without a bond requirement. Spaceflight notes that ISAM space stations are not likely to have exclusive use of spectrum and are likely to be licensed relatively close to launch, and a surety bond would be excessive for many ISAM operators and disproportionate to the cost of developing the space stations. Spaceflight says these considerations match the considerations the Commission relied on when it decided to implement a one-year grace period for filing of a bond for satellites authorized under the streamlined process for small satellites and recommends the Commission adopt a rule allowing ISAM operators to demonstrate they meet the policy objectives of the surety bond requirement in lieu of filing a surety bond. For operators that cannot make such a showing, Spaceflight suggests that the Commission allow ISAM operators one year to file a bond or meet milestone requirements, in line with the rules for streamlined small satellites and small spacecraft. Intelsat also notes that the Commission waived bond and milestone requirements for SpaceLogistics's MEV–1 servicer vehicle because MEV–1 and Intelsat's satellite were treated as one for purposes of the specific operation. While the Commission tentatively concludes that a one-year grace period for surety bonds for ISAM space stations is appropriate, it does not propose to follow Spaceflight's suggestion of allowing operators to demonstrate compliance with policy objectives of the bond requirement. The Commission believes this type of individualized showing can be handled through a waiver request, as the Commission may waive any rule for good cause shown according to 47 CFR 1.3. Specifically, the Commission proposes a one-year grace period, during which ISAM space station operators would not have to post a bond. The grace period would begin 30 days after the license is granted, since this is typically when a licensee would have to post the surety bond. If within the one-year grace period, the ISAM operator satisfies the Commission's milestone requirement, then no bond is required. This proposal is similar to the rules regarding surety bond requirements for small satellites and small spacecraft. The Commission seeks comment on these proposals.

20. *U.S.-Licensed Servicing and Client Operations.* Starfish Space recommends that client space stations being serviced should not need to obtain a license modification unless the client space station will need to use new or unlicensed frequencies during or following the servicing. For U.S.-licensed client space stations, the Commission tentatively agrees with Starfish that cases are limited where client operators should be required to modify authorizations, but it does not propose to set forth specific scenarios in which a client need not obtain a modification. While some ISAM activities, such as inspection or repair, might not result in changes that necessitate a modification, other activities, including orbital transfer or mission extension, could change the client's orbital location, which could alter the parameters of frequency operations and orbital debris mitigation information that was reviewed and authorized by the Commission. As ISAM capabilities are still developing, the Commission tentatively concludes it is in the public interest to assess whether a client space station operator should obtain a license modification on a case-by-case basis, rather than attempt to lay out all possible scenarios that would require modification. The Commission seeks comment on this approach.

21. To facilitate review of whether a client space station must seek a modification, the Commission proposes to include a requirement in its new proposed § 25.126 for ISAM space station applicants to provide a list of FCC file numbers or call signs for all related space stations, including experimental applications and grants and other applications and grants under part 25. This requirement is similar to the requirement in the Commission's streamlined process for small satellites and small spacecraft, but the Commission proposes to expand what it considers to be ''related'' applications and grants in the context of ISAM applications. It proposes that related applications and grants would include not only space stations operated by the

same operator, but could also include client space stations, space stations that have become debris the applicant seeks to remediate, and other space stations the applicant plans to interact with or collaborate with as part of its operations. The Commission proposes to require this information from all applicants that fit within its proposed definition of ISAM space stations, whether the operator is applying under the Commission's regular part 25 process or its streamlined processes under §§ 25.122 and 25.123. The Commission seeks comment on this proposal.

22. *International Servicing and Client Operations.* The NOI asked a number of questions regarding how to license ISAM space stations that may plan to interact with a non-U.S.-licensed space station. When considering U.S.-licensed space stations interacting with non-U.S. client space stations, Blue Origin asserts that the Commission should only seek the name of the client space station, its licensing administration, and associated ITU filings because the client is not seeking U.S. market access and so there should be no spectrum management concerns to address. Despite this suggestion, the Commission tentatively concludes that spectrum management may be implicated in certain cases when U.S.-licensed space stations interact with or service non-U.S. licensed space stations, given that there may be a wide range of factual scenarios, including servicing for the purpose of altering the location at which a client spacecraft operates or altering other technical characteristics of operations. The Commission also believes sufficient information concerning the proposed operations must be available to ensure that an authorization is in the public interest. For example, a servicing mission that contemplates facilitating client space station operations fundamentally inconsistent with U.S. interests, such as operations that might interfere with other U.S. satellites, should be identified in the authorization process. Likewise, the Commission does not propose to presume that client space station operators are in possession of a license, as Starfish suggests. That approach might, for example, result in the servicing mission facilitating an activity by the client satellite that has not been authorized by the administration to which it is subject. Therefore, for client space stations licensed outside of the United States, both with or without U.S. market access grants, the Commission proposes to require that the license applicant provide the client's ITU filings and UN registration information, as well as a discussion of regulatory requirements to which the client satellite and its operators are subject, and the status of any regulatory approvals required for the client satellite's participation in the servicing activity. This baseline information may also facilitate any necessary coordination with other U.S. government agencies, such as the State Department. The Commission proposes to require this information in its proposed new rules for applications for ISAM space stations to be located in § 25.126. The Commission seeks comment on these proposals.

23. *International Coordination.* Aerospace argues that it would be impractical and unreasonable to require an operator to undergo the ITU's seven-year coordination process for frequencies it will use to service a single satellite and will not use once it moves away from that satellite. Aerospace suggests that notifying the Radiocommunications Bureau at the ITU of a commercial ISAM mission would be a prudent alternative and coordination could be accomplished for TT&C operations used throughout the life of an ISAM space station. The Commission recognizes the current ITU process poses challenges to ISAM operators, but the ITU Radio Regulations are a treaty by which the United States is bound, and the Commission cannot unilaterally modify what activities and frequencies need to be coordinated with the ITU through a rulemaking process. The Commission therefore proposes not to accept Aerospace's suggestion that it simply notify the Radiocommunications Bureau at the ITU of a commercial ISAM mission instead of coordinating in accordance with ITU Radio Regulations. But the Commission does propose, as part of ongoing work on ISAM activities, to continue to coordinate with other federal agencies, including the State Department, to support international servicer-client arrangements. The Commission seeks comment on these proposals.

*D. Orbital Debris Mitigation and ISAM Space Stations*

24. The NOI sought comment on orbital debris mitigation concerns specific to ISAM activities in general. Specifically, the Commission sought comment on how ISAM activities might not fit into its current orbital debris mitigation requirements, for example by storing fuel on-orbit rather than using or depleting fuel (refueling depots), or by creating debris as byproducts of servicing or manufacturing activities, and how the Commission might modify its current orbital debris mitigation requirements to account for the additional risks that ISAM operations may pose.

25. At this time, the Commission tentatively concludes to retain the same orbital debris mitigation requirements for ISAM operators as for other space station operators. As stated in the NOI, the Commission's orbital debris mitigation requirements apply to all space station operators, including operators of ISAM space stations. The Commission notes that its current orbital debris mitigation rules are performance based, in that they require demonstration of results rather than dictating specific methods operators must use to meet those results, and so the Commission proposes that it does not need to modify its rules for ISAM communications to accommodate requests in the record for performance-based orbital debris mitigation requirements for ISAM space stations. The Commission's orbital debris mitigation requirements are also based on the United States government's Orbital Debris Mitigation Standard Practices (ODMSP) developed by NASA. The Commission therefore does not propose to modify its orbital debris rules at this time or to require additional orbital debris mitigation showings for ISAM space stations in general. Rather the Commission proposes that ISAM operators will either comply with orbital debris requirements under the regular part 25 licensing process, or under the small satellite or small spacecraft processes, if they apply under those streamlined licensing processes. The Commission proposes to include a requirement that applicants for ISAM space stations submit the orbital debris mitigation information under the rules of their chosen application process in the proposed new § 25.126, as part of the proposal to clearly lay out the application process for ISAM operators in that section. The Commission also proposes to review any applications for ISAM space stations on a case-by-case basis, just as it does with other license applications, to ensure compliance with its orbital debris mitigation requirements. The Commission believes this approach will maximize operator flexibility and therefore allow ISAM technologies and capabilities to develop while allowing the Commission to ensure continued orbital safety for all operators. The Commission seeks comment on this proposed approach.

26. ISAM Activities that May Pose Additional Risks. The Commission notes that commenters suggest that some ISAM activities, such as refueling, life extension, and orbital transfer

activities, along with assembly and manufacturing activities, might pose additional risks for creating orbital debris by way of increased risk of accidental explosions, increased risk of release of debris during normal operations, increased risk of collisions, or decreased post-mission disposal reliability, and therefore these space stations must not be held to lesser standards than other operators and must be examined closely by the Commission. It seeks comment on whether its current orbital debris mitigation rules are sufficient to protect the orbital environment from these additional risks. Are there additional specific orbital debris showings the Commission should consider for these activities?

*E. Orbital Debris Remediation Activities*

27. The NOI asked a series of questions to gain information on the state of orbital debris remediation technologies and industry development, including whether and how the Commission should consider ADR as part of an applicant's orbital debris mitigation plan and what actions the Commission could take to promote growth and innovation for ADR. The Commission agrees with commenters that ISAM activities can play a role in orbital debris remediation and space sustainability. Aerospace asserts that some ADR technologies, such as tow truck, robotics, and RPO technologies, are at a high level of readiness and reliability, while other technologies, including for capture and stabilization of debris with high spin or tumble rates, are at a much lower level of technological readiness and reliability.

28. The Commission proposes that operators engaging in ADR and similar orbital debris remediation activities could seek authorization through the same process for ISAM space stations outlined in the NPRM, including requiring space stations conducting ADR to demonstrate compliance with the Commission's orbital debris rules. The Commission seeks comment on this proposal. In particular, the Commission seeks comment on whether it should impose additional requirements on applicants for ISAM space stations conducting debris remediation activities to mitigate potential additional risks from these activities.

29. In response to the NOI's queries on whether ADR should be factored into post-mission disposal requirements or otherwise be fostered by Commission action, commenters suggest the Commission make clear that ADR is permitted as a means to demonstrate compliance with the Commission's orbital debris rules and recommend that the Commission encourage all space station operators to include navigational aids and grappling fixtures to assist with potential ADR. The Commission agrees that acknowledging third-party services as an option for post-mission disposal will likely further its goals of promoting innovation and growth of ADR and will also likely provide additional flexibility to applicants when considering their end-of-life disposal options. To date, the Commission's rules do not prescribe any particular method of end-of-life disposal of NGSO space stations, and instead the Commission reviews an applicant's orbital debris mitigation plans for such disposals on a case-by-case basis. The Commission has previously stated that it did not intend to dismiss or foreclose direct retrieval as a method of end-of-life disposal and that disposal plans involving direct retrieval would be evaluated if direct retrieval were implemented in the future. As such, the Commission does not propose to modify its rules to list ADR explicitly as a post-mission disposal method. The Commission notes that the ODMSP stresses the importance of ensuring that orbital debris remediation activities do not risk creating debris greater than the debris the operation seeks to remediate, and the Commission therefore proposes that plans to use ADR for post-mission disposal will continue to be reviewed on a case-by-case basis, including review of the risk of generating debris greater than the debris the operation seeks to remediate and human casualty risk for remediated debris disposed of through atmospheric reentry, along with compliance with the Commission's other orbital debris mitigation rules. The Commission believes its proposal to review use of ADR for post-mission disposal on a case-by-case basis is in line with its proposal to review all ISAM space stations, including ISAM space stations conducting ADR activities, on a case-by-case basis and will allow maximum flexibility for operators, thereby fulfilling the Commission's goal of promoting growth in the industry. The Commission seeks comment on this approach.

30. Additionally, the Commission believes that Aerospace's suggestion that the Commission require ADR plans as a back-up for large constellations' post-mission disposal plans has merit for consideration. In cases of large constellations, as Aerospace points out, numerous defunct satellites could be left in orbit even while meeting the Commission's current post-mission disposal requirements. Given that the technology for ADR is still nascent and developing, however, the Commission does not propose to adopt rules on this issue at this time, but it expects to consider this possibility in the future.

31. The NOI asked specifically whether an operator bond associated with removal would be an appropriate mechanism for ensuring ADR. Commenters responding to the NOI present a range of views regarding potential bonds associated with post-mission disposal reliability, from support for the proposal, to requests for further study, to concerns that a bond would chill innovation and be less effective than strong orbital debris mitigation requirements. The Commission agrees that further consideration of this issue is warranted, but as it is also continuing to consider post-mission disposal bonds in general in its orbital debris proceeding, it defers this issue as related to ISAM and debris remediation to a later time when it can consider it more fully.

32. Finally, despite the suggestions of some commenters, the Commission defers proposals to modify regulatory and application fees to appropriate regulatory or application fee proceedings in the future. The Commission is required by the Communications Act to collect application fees and regulatory fees. The Communications Act provides specific exemptions from application fees and regulatory fees. Moreover, the Commission's authority to waive application fees or regulatory fees is limited to specific instances and the Commission has consistently rejected consideration of waiving such fees for classes of applicants or regulatees. As this proceeding progresses, the Commission will propose any relevant regulatory fee or application fee updates for ISAM space stations as part of future Commission's regulatory and application fee proceedings.

*F. Radiofrequency Spectrum To Support ISAM*

33. The Commission tentatively concludes that various communication activities in support of ISAM can potentially operate within several existing service allocations, and it proposes to review ISAM operators' requests for frequency use on a case-by-case basis, consistent with its process for reviewing requests for frequency use for small satellites and small spacecraft. The Commission seeks comment on these proposals.

34. *Communication Operations and Service Allocations.* ISAM space station operations will require the use of telemetry, tracking, and command (telecommand) (TT&C), as several

commenters note. Numerous commenters also explain that ISAM space stations may, at times, require other communications for limited duration, such as video, imaging, location sensing information, other status information, and other data downlink and suggest that TT&C allocations alone will not cover all stages of most ISAM operations. Commenters also raise the need for communications between space stations, such as between a servicing space station and a client or between multiple space stations supporting a common and complex assembly or manufacturing mission and note that these communications may likely occur at low power given the proximity of the space stations involved. Commenters indicate that ISAM frequency use will need to be agile, changing to communicate with client satellites or to avoid interfering with GSO satellites as an ISAM space station transits close to the GSO arc. NTIA and Aerospace also note that ISAM space stations could utilize relay satellites or satellite networks for data downlink and other communications.

35. Numerous commenters suggest that the space operation service (defined in 47 CFR 2.1(c)), fits well with some aspects of ISAM operations, particularly TT&C needs, but several also note that the space operation bands are already encumbered by federal users and others assert that some communications needs for ISAM space stations may not fit in this service. Some suggest that space research service, fixed-satellite service (FSS), mobile-satellite service (MSS), inter-satellite service, or even Earth-exploration satellite service (EESS) allocations (all defined in § 2.1(c) of the Commission's rules), as well as experimental licensing and other flexible options could be construed to allow for certain ISAM operations. The Commission's rules define service allocations according to the ITU definitions, and the Commission relies on these definitions as it considers requests for frequency authorization as part of its licensing process. The Commission tentatively concludes that various ISAM operations could fit within numerous service allocation definitions. For example, the Commission need not read the definition of space research services, ''a radiocommunications service in which spacecraft or other objects in space are used for scientific or technological research purposes,'' to be fundamentally at odds with commercial satellite operations given that the plain language of the definition does not exclude commercially based scientific or technological research operations. Additionally, the Commission proposes that the space operation service, which is ''concerned exclusively with the operation of spacecraft, in particular space tracking, space telemetry, and space telecommand,'' need not be as narrowly construed as some commenters seem to suggest. For example, CONFERS states that the space operation service ''is not meant for downlinking ISAM payload data.'' However, the Commission tentatively concludes that at least some ISAM operations could fall within the scope of the space operation definition, especially if the data in question is related to ''the operation of spacecraft.'' At the same time, the Commission notes that certain service allocations, such as EESS which is focused on ''[i]nformation relating to the characteristics of the Earth and its natural phenomena, including data relating to the state of the environment,'' appear to be dedicated to operations that are not typically consistent with ISAM operations.

36. The Commission proposes not to limit service allocation designations that might be possible for ISAM operations so long as the requested operations can justifiably fit within the service allocation definition. As such, the Commission proposes to continue its current practice of assessing whether an applicant's proposed ISAM operations fall within the applicant's desired service allocation(s) on a case-by-case basis. This proposal is consistent with the Commission's considerations for small satellites, where the Commission recognized small satellite operators may engage in a variety of operations. Here, the Commission tentatively proposes to maintain as much flexibility as possible for ISAM operators to gain authorization for their operations so long as this does not interfere with other radiocommunications and justifiably fits within service allocation definitions. The Commission seeks comment on this proposal. The Commission also notes that current satellite services offer some flexibility of use and operation. For example, in certain cases, FSS operators are permitted to provide service to earth stations in motion (ESIM). Similarly, a single satellite constellation can be licensed to provide both FSS and MSS. Given the current state of ISAM development, and the variety of communications needs that ISAM operators may have, the Commission believes that continuing to work within available service allocations, with the modifications to the licensing process proposed in the NPRM, can address many of the frequency demands for ISAM in the near term. The Commission seeks comment on this approach.

37. *Proposed Exemptions Consistent with Spectrum Sharing Capabilities.* In keeping with its proposal to provide flexibility in considering frequency authorization, the Commission proposes to exempt applicants for ISAM space station authorizations from NGSO-like processing rounds and from the GSO-like first-come-first-served queue, which they could otherwise be subject to under the current regular part 25 satellite licensing regime. This proposal is largely consistent with the Commission's approach for NGSO small satellites and small spacecraft, which are exempt from processing rounds where spectrum sharing (that is, not materially constraining other operations in the requested frequency band(s)) is shown to be possible. Commenters have indicated that spectrum sharing is likely possible for many aspects of ISAM operations as well. However, here the Commission expands its proposal to include an exemption for GSO-like space station processes as well as NGSO because the Commission recognizes that ISAM space stations could seek to be authorized as a GSO-like space station, whereas the Commission's small satellite process focused on NGSO-only. The Commission tentatively concludes that ISAM-related communications licensing would not require processing rounds for NGSO operators or a first-come-first-served queue for GSO space stations if applicants can demonstrate that the proposed operations are technically able to share spectrum and not materially constrain future use of the band. Specific showings would be laid out in the proposed § 25.126, as described above. The Commission seeks comment on this proposal and on any alternate approaches it should consider.

38. *Authorizing Frequency Consistent with Client Space Station Allocations.* The Commission recognizes commenters' interest in the possibility of ISAM space stations receiving frequency authorization consistent with a client's authorization, also known as frequency ''piggybacking.'' Under the Commission's current rules the MEV–1 and MEV–2 licenses allowed for frequency ''piggybacking'' with the client satellite for certain frequencies. For example, MEV–1, which is attached to and provides life extension services to the Intelsat 901 satellite, is authorized to provide TT&C consistent with Intelsat 901's licensed frequencies and parameters. NTIA notes that ''[o]ne of the more straightforward opportunities for ISAM spectrum access is for ISAM

missions servicing [FSS and MSS]'' and asserts that those missions could use ''the same spectrum used by the 'client' satellite'' as was done for the MEV–1. The Commission recognizes that such an approach may only be an option for a small portion of ISAM space stations, because the space stations would need to be designed with specific communications capabilities to match operational frequencies of client or partner satellites and may likely only fit with those providing servicing missions, like life-extension and repair. CONFERS also highlights that the option of relying on client frequencies will not work for operators engaged in debris removal. Given the identified limitations on this model, the Commission does not propose ''piggybacking'' as an overall solution for ISAM-related frequency authorization; rather it notes that this option has been authorized under its existing rules in the past, without requiring a change to the Commission's rules.

39. *Specific Frequency Bands.* The Commission views its regulation of radiofrequency in support of ISAM as an iterative process, and the Commission proposes to continue case-by-case review of frequency authorization, as opposed to proposing specific frequency bands for ISAM-related communications' use. In doing so, the Commission recognizes the benefit of expanding its experience with authorizing communications operations in support of ISAM missions. The Commission believes that creating a process for operators to identify as ISAM space stations will allow the Commission to gather important data and understanding regarding the future spectrum needs of ISAM operators. Additionally, the Commission recognizes that operators are already thinking creatively about various frequencies and service allocations that may be able to accommodate ISAM communication needs, as discussed above. Many commenters responding to the NOI are in favor of identifying spectrum to support ISAM operations on a protected basis (*e.g.,* exclusive or co-primary). The Commission also notes that it deferred consideration of specific frequency bands that could be used for certain ISAM-related operations, such as RPO, from the Commission's space launch spectrum proceeding. Yet it does not wish to prematurely limit creativity and innovation for ISAM operators, and tentatively conclude that a case-by-case review will allow flexibility at this time as the Commission and other regulating bodies continue to evaluate the spectrum ecosystem holistically. The Commission's proposal to require frequency use authorization on a case-by-case basis is also consistent with its treatment of small satellite and small spacecraft, with the understanding that these operations would be carried out on a non-exclusive, shared basis, and would not cause interference to incumbent operators. The Commission therefore does not propose specific bands at this time and seeks comment on this proposal.

40. *Less Traditional Spectrum Use.* Finally, the Commission notes that innovation in spectrum use may open new pathways for ISAM-related frequency use in the future. Commenters provide a range of examples and suggestions of less traditional spectrum use, such as increased use of inter-satellite links, in-space radar systems to be used during proximity operations, and unlicensed Wi-Fi spectrum for servicer-to-client satellite communications, especially when in close proximity, *e.g.,* during docking activities. These creative suggestions are evidence of the innovative nature of ISAM operations, but the Commission tentatively concludes that these suggestions will require further study or changes at an international level, and it does not propose any changes to its current rules in relation to these novel suggestions.

*G. Digital Equity and Inclusion*

41. The NOI sought comment on ''any equity-related considerations and benefits (if any) that may be associated with the topics discussed'' in the NOI. Aerospace provided several comments addressing digital equity and inclusion in the ISAM industry. Aerospace states, ''[m]aintaining satellite connectivity that is both consistent and affordable is becoming more essential to remote regions that include tribal lands and rural areas, as well as urban centers of typically underserved populations disadvantaged by socioeconomic factors.'' The Commission agrees that promoting growth of the ISAM industry could create a safer and more sustainable space environment, which will allow for more options for broadband service for unserved and underserved areas.

42. Aerospace suggests that to promote digital equity and inclusion in the ISAM industry, the Commission should encourage inclusive business practices through incentive programs, such as reduced or waived regulatory fees and application filing fees for federally recognized small disadvantaged ISAM businesses and reduced or waived fees for debris-mitigating ISAM activities. Aerospace notes that loss of satellite connectivity caused by debris or interference could mean a complete internet blackout for rural and other unserved and underserved areas which lack ground connectivity infrastructure, and therefore the Commission should work to incentivize ISAM activities which mitigate debris. Aerospace is correct to note the importance of satellite connectivity, particularly in unserved and underserved regions, and ISAM activities, particularly servicing capabilities and debris remediation, have the potential to strengthen these networks to better serve these populations. As discussed above, however, the Commission does not propose to reduce or eliminate fees for space stations that adopt ISAM-compatible technology because the Commission is required to collect application filing and regulatory fees by Congress, and the Commission lacks authority to waive fees for whole categories of payors or to assess fees on factors other than cost of processing filings or regulatory burden.

43. Aerospace also proposes specific regulations for the FCC to consider regarding spectrum which it states would benefit unserved and underrepresented populations. Specifically, Aerospace suggests that the ''FCC could propose spectrum sharing schemes that pool spectrum for Small Disadvantaged Businesses developing or supporting ISAM technology dedicated to public interest efforts specific to underserved customers or for use by academia with underrepresented student populations.'' The Commission seeks additional comment regarding this proposal. It recognizes the Small Business Administration has regulations and programs for small disadvantaged businesses in the federal contracting space. Specifically, how might the Commission categorize ''small disadvantaged businesses'' in this context? Are there other categories of businesses, organizations, or academic institutions that such a program would be appropriate for? More broadly, how would such a program work? What would the benefits and drawbacks be?

44. Finally, Aerospace suggests that the Commission consider regulatory changes to protect educational spectrum as a public good by requiring that educational spectrum licenses only be sold to other educational entities. Aerospace also recommends the Commission limit the number of leasing agreements for spectrum to prevent hording of spectrum that could be used for ISAM operations which will benefit unserved and underserved populations, as well as regulations preventing

harmful interference to spectrum users from vulnerable groups, such as farmers, coastal fishers, and gulf states during hurricane season, relying on accurate weather data. The Commission views these suggestions to be beyond the scope of this rulemaking, which is focused on developing rules to most effectively license ISAM space stations to nurture growth in the industry and ultimately benefit the public interest, and therefore it does not propose to incorporate Aerospace's suggestions into the proposed rule changes in this proceeding.

45. ISAM is a nascent industry, and as such, the Commission is seeking additional comments on ways the Commission can continue to incentivize the growth of the ISAM industry through the proposals in the NPRM and beyond. Furthermore, as part of the Commission's continuing effort to advance digital equity for all, including people of color, people with disabilities, persons who live in rural or tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, it continues to invite comment on any equity-related considerations raised by the proposals made in the NPRM. Specifically, the Commission continues to seek comment on how the topics discussed and any related proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

## IV. Initial Regulatory Flexibility Analysis

46. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

### *A. Need for, and Objectives of, the Proposed Rules*

47. The Commission advances the leadership role of the United States in space with a new framework for licensing space stations engaged in in-space servicing, assembly, and manufacturing, known as (ISAM), proposed in the NRPM. The NPRM reflects comments the Commission received in response to a Notice of Inquiry on ISAM (ISAM NOI), which requested comment on the current state of the industry, how the Commission can best support the sustainable development of the industry, and what tangible economic and societal benefits can result from the expansion of capabilities facilitating the sustainable use of space. The Commission seeks comment on several proposals relating to changes to the Commission's rules and policies for radiofrequency communication to foster the advancement of in-space servicing, assembly, and manufacturing (ISAM) operations. The Commission believes effective radiofrequency communications will enable expansion of capabilities for space use and has proposed rules designed to facilitate and support growth.

48. The licensing framework rules the Commission proposed in the NPRM would accommodate authorization under part 25 of the Commission's rules for commercial space stations engaged in ISAM operations. Adoption of the proposed changes would modify 47 CFR part 25 of the Commission's rules to make communication authorization for ISAM missions more accessible while promoting efficient use of spectrum. The ability of ISAM space station operators to apply under the existing small satellite and small spacecraft streamlined processes would be available to ISAM space station operators that meet the requisite requirements for the applicable process. Licensing under part 5 of the Commission's experimental licensing will also continue to be an option for licensing ISAM space stations that do not provide commercial service. The Commission's proposed approach in the NPRM to license ISAM space stations under its current rules, and to review ISAM applications on a case-by-case basis, will provide the industry with flexibility while ISAM capabilities develop, and will enable the Commission to continue developing a record on ISAM while gaining further experience licensing radiofrequency use for ISAM space stations.

### *B. Legal Basis*

49. The proposed action is authorized under sections 4(i), 301, 302(a), 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302(a), 303(e), 303(f), and 303(r).

### *C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

50. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

51. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

52. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable

of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

53. The NPRM seeks public comment on proposed revisions to the Commission's rules governing satellite and earth station applications under 47 CFR part 25. Specifically, the NPRM proposes and seeks comment on several rule changes that will affect ISAM communications authorization procedures, reporting, recordkeeping, and other compliance requirements for space station operators. The Commission believes the proposed changes would decrease the burden in various regards for small entities that plan to launch and operate ISAM space stations.

54. The NPRM proposes to add a new section to the Commission's rules, § 25.126 Application for ISAM Space Stations, which clarifies application requirements for ISAM space stations in a single section. These proposals include documentation requirements largely consistent with those already established for an applicant under part 25 of the Commission's rules. In proposed § 25.126(a), applicants that meet the proposed definition of ''ISAM space station'' are directed to seek authorization and submit the requisite application information and materials either through the Commission's regular part 25 process or through the streamlined processes for small satellites and small spacecraft. As such, ISAM space station license applicants, including small entities, that also meet the requirements to seek authorization under the Commission's current streamlined processes for small satellites or small spacecraft will be able to submit the information and certification required in § 25.122 or § 25.123 rather than the regular part 25 authorization process.

55. In the new § 25.126(b), the Commission proposes to exempt small entities and other operators that meet the definition of ISAM space stations from non-geostationary orbit (NGSO) processing rounds and/or the first-come-first-served queue for geostationary orbit (GSO) operators, provided the applicant certifies that the operations of the space station(s) will be compatible with existing operations in the authorized frequency band(s), and submits a narrative to demonstrate spectrum sharing capabilities are technically possible, and that the operations will not materially constrain future space station entrants from using the authorized frequency band(s). While the exemption contains a certification and narrative submission requirement, the proposal is designed to provide more flexibility to small and other operators who may want to operate as a GSO or NGSO space station, while simultaneously providing interference protection for incumbent and future satellite operators. The proposed rule would also reduce the procedural requirements for small entities and other applicants.

56. Pursuant to proposed § 25.126(c), ISAM space station license applicants, including small entities, would need to provide the International Communications Filing System (ICFS) file number for any applications or Commission grants related to proposed operations (*e.g.,* experimental license grants, other space station or earth station applications or grants), including but not limited to client space stations, space stations that have become debris the applicant seeks to remediate, and other space stations the applicant plans to interact with or collaborate with as part of its operations. Additionally, ISAM applicants working with space stations not licensed or granted market access by the United States would need to provide relevant information related to those operations, including ITU file numbers and a narrative description. However, since the international-related filing requirements would only pertain to operators working with space stations that are not licensed or granted market access by the United States, the requirement for applicants who do not have such working relationships is largely to provide the appropriate file numbers. Therefore, the Commission does not believe the inclusion of the proposed filing requirements in § 25.126(c) will increase the procedural compliance burdens for small entities.

57. As a mechanism for fostering the growth of the burgeoning ISAM industry the licensing framework proposal includes a one-year grace period for surety bonds for small and other ISM applicants, just as the Commission has done for operators applying through the small satellite and small spacecraft rules. The Commission seeks comment on whether any of the burdens associated with complying with the filing, recordkeeping, and reporting requirements in its proposed licensing framework can be further minimized for small entities. Due to the proposed approach to license ISAM space stations under the Commission's current rules including allowing applicants to seek authorization under the Commission's current streamlined processes for small satellites or small spacecraft, the Commission does not expect that small entities will need to hire professionals to comply with any of the requirements for ISAM space station authorization. With regard to the compliance costs for small entities, at this time the Commission cannot quantify the compliance costs for small entities. The Commission therefore expects the information it received in comments to include cost and benefit analysis data which should help the Commission assess compliance costs. Industry input should also allow the Commission to identify and evaluate additional matters, and burdens relevant to small entities that may result from the proposals and inquiries it makes in this proceeding.

*E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

58. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

59. The Commission's consideration of rule revisions to reflect changes and advances in the commercial space industry includes proposals in the licensing framework that would assist in reducing the economic impact for small entities such as exempting ISAM applicants from the surety bond requirement for one year after an ISAM license is granted, and not subjecting applications for ISAM space stations to

NGSO processing round procedures or the GSO operator queue. These proposals are designed to lower the regulatory burden involved in licensing ISAM operations and reduce application processing times, thereby lessening the burden of compliance on small entities with more limited resources than larger entities. The Commission considered not providing these exemptions, which would require ISAM operators, including small entities, applying under the Commission's regular part 25 process to engage in a more lengthy and complex procedural process. ISAM applicants for example, could be placed in a processing round or required to submit requests for waiver, which the Commission believes may have a greater impact on small entities than the NPRM's proposal to exempt ISAM operators from these processes so long as they provide the requisite demonstrations for spectrum sharing. In the formulation of its surety bond requirement proposal, the Commission considered a recommendation that ISAM operators be allowed to demonstrate compliance with the policy objectives of the surety bond requirements in place of filing an actual surety bond. Implementation of this recommendation would introduce additional review into the licensing process on a larger scale than allowing individual applications to demonstrate such showings through a waiver request, which is currently an available avenue for applicants under the Commission's general waiver rules, therefore the Commission did not include this in the proposal.

60. Small entities and other operators meeting the proposed definition of an ISAM space station would be required to include some additional information with their application by providing the ICFS file numbers for related applications or grants of authority, if this proposed rule is adopted. This requirement may ultimately lower the impact on small entities and other operators however, since providing the file numbers up front could lower the need for, and costs associated with additional follow-up and review at a later stage of the application process. Similarly, the Commission believes that the proposed requirement for ISAM applicants to provide relevant international filings for related space stations not licensed or granted market access by the United States while creating some additional steps on the front end, will ultimately lead to a smoother review process for small entities and other applicants who may be servicing or partnering with foreign-licensed space stations as part of their operations.

61. Although the Commission ultimately proposed to continue the use of part 5 and 25 rules for the ISAM space station operation licensing framework, it considered various alternatives for the framework proposal. The Commission assessed for example the use of different licensing requirements for different types of ISAM activities. Rather than proposing to adopt different regulatory requirements, the Commission chose to propose a broad licensing framework for space stations that could be applicable to all activities that fall within the proposed definition of ISAM. The proposed licensing framework provides small entities and other ISAM space station applicants with several options to use to apply for authorization. The option available for small entities meeting the process requirements to utilize the Commission's existing streamlined processes for small satellites and small spacecraft as described in the NPRM should reduce the impact for these applicants because of the reduced burden of the streamlined processes. Small entities seeking Commission authorization as ISAM space station operators may already have experience, and familiarity with the existing processes, and have cost-effective and efficient internal procedures in place to execute the streamlined processes. To the extent a small entity does not meet the requirements for the streamlined processes for small satellites and small spacecraft and seeks authorization through the regular part 25 process, the proposed exemptions and reduced regulatory burdens discussed above will result in a less arduous and costly approach than would be available in the absence of the new section and other proposed rule changes. Small entities may also benefit from the continuation of the part 5 process as a means of authorization since several ISAM space stations have secured experimental licenses using this process. Similarly, the part 5 process may be of assistance to small entity ISAM applicants with an interest in market trials.

62. In response to the ISAM NOI, comments were filed involving spectrum regulation impacting small disadvantaged businesses. The Commission considered these comments which suggest the Commission propose spectrum sharing arrangements to pool spectrum impacting small disadvantaged businesses that develop, or support ISAM technology targeting underserved customers, or academic institutions with underrepresented student populations, and in the NPRM the Commission requested additional comment on this proposal, including how such arrangements would work, and the benefits and drawbacks of such arrangements. The Commission expects to consider this, and other issues discussed herein, as well as the economic impact on, and alternatives for small entities, based on its review of any comments filed in response to the NPRM and the IRFA.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

63. None.

**V. Ordering Clauses**

64. Accordingly, *it is ordered* that, pursuant to sections 4(i), 301, 302(a), 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302(a), 303(e), 303(f), and 303(r), the Notice of Proposed Rulemaking *is adopted.*

65. *It is further ordered* that, the Commission's Office of the Secretary, Reference Information Center *shall send* a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the **Federal Register**.

**List of Subjects in 47 CFR Part 25**

Administrative practice and procedure, Earth stations, Satellites

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 25 as follows:

## PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 2. Amend § 25.103 by adding the definition of ''ISAM Space station'' in alphabetical order to read as follows:

**§ 25.103 Definitions.**

* * * * *

*ISAM Space station.* A space station which has the primary purpose of conducting in-space servicing, assembly, and/or manufacturing activities used on-orbit, on the surface

of celestial bodies, and/or in transit between these regimes and which are supported by radiofrequency operations. Servicing activities include but are not limited to in-space inspection, life extension, repair, refueling, alteration, and orbital transfer of a client space object, including collection and removal of debris on orbit. Assembly activities involve the construction of space systems in space using pre-manufactured components. Manufacturing activities involve the transformation of raw or recycled materials into components, products, or infrastructure in space. ISAM space stations are eligible for authorization under the application process described in § 25.126.

* * * * *

■ 3. Add § 25.126 to read as follows:

**§ 25.126 Applications for ISAM Space stations.**

(a) This section shall only apply to applicants for ISAM space stations as defined in § 25.103. Applicants seeking authorization for ISAM space stations must submit a comprehensive proposal for Commission evaluation on FCC Form 312, Main Form and Schedule S, as described in § 25.114(a) through (c), together with the information required in § 25.114(d)(14) or, if the applicant is seeking authorization under the streamlined processes for small satellites or small spacecraft, the information required in § 25.122(c) and (d) or § 25.123(b) and (c).

(b) Applicants for ISAM space stations will not be placed in a processing round for NGSO-like operations under § 25.157 or placed in a queue for GSO-like operations under § 25.158, provided:

(1) The applicant certifies that operations of the space station(s) will be compatible with existing operations in the authorized frequency band(s) and will not materially constrain future space station entrants from using the authorized frequency band(s); and

(2) The applicant submits a narrative description of means by which requested spectrum could be shared with both current and future operators, (*e.g.,* how ephemeris data will be shared, antenna design, earth station geographic locations) thereby not materially constraining other operations in the requested frequency band(s).

(c) Applicants for ISAM space stations must also provide the following:

(1) A list of the FCC file numbers or call signs for any applications or Commission grants related to the proposed operations (*e.g.,* experimental license grants, other space station or earth station applications or grants), including but not limited to client space stations, space stations that have become debris the applicant seeks to remediate, and other space stations the applicant plans to interact with or collaborate with as part of its operations.

(2) A list of the International Telecommunications Union filings and United Nations Registration information for any space stations not licensed or granted market access by the United States that are related to the proposed operations, including but not limited to client space stations, space stations that have become debris the applicant seeks to remediate, and other space stations the applicant plans to interact with or collaborate with as part of its operations.

(3) For all related space stations included under paragraph (c)(2) of this section, a narrative description of the regulatory requirements to which these related space stations are subject and the status of licenses of these related space stations.

* * * * *

■ 4. Amend § 25.137 by revising paragraph (b) to read as follows:

**§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.**

* * * * *

(b) Any request pursuant to paragraph (a) of this section must be filed electronically through the International Communications Filing System and must include an exhibit providing legal and technical information for the non-U.S.-licensed space station of the kind that §§ 25.114, 25.122, 25.123 or § 25.126 would require in a license application for that space station, including but not limited to, information required to complete Schedule S. An applicant may satisfy this requirement by cross-referencing a pending application containing the requisite information or by citing a prior grant of authority to communicate via the space station in question in the same frequency bands to provide the same type of service.

* * * * *

■ 5. Amend § 25.157 by revising paragraph (i) to read as follows:

**§ 25.157 Consideration of applications for NGSO-like satellite operation.**

* * * * *

(i) For consideration of license applications filed pursuant to the procedures described in §§ 25.122, 25.123, or § 25.126 the application will be processed and granted in accordance with §§ 25.150 through 25.156, taking into consideration the information provided by the applicant under §§ 25.122(d), 25.123(c), or § 25.126(b) but without a processing round as described in this section and without a queue as described in § 25.158.

■ 6. Amend § 25.158, by revising paragraph (a)(2) to read as follows:

**§ 25.158 Consideration of applications for GSO-like satellite operation.**

(a) * * *

(2) The procedures prescribed in this section do not apply to an application for authority to launch and operate an ISAM space station that meets the relevant criteria in § 25.126(b). The procedures prescribed in this section also do not apply to an application for authority to launch and operate a replacement space station that meets the relevant criteria in § 25.165(e)(1) and (e)(2) and that will be launched before the space station to be replaced is retired from service or reasonable time after the loss of a space station during launch or due to premature failure in orbit.

* * * * *

■ 7. Amend § 25.165 by revising the introductory text of paragraph (a) to read as follows:

**§ 25.165 Surety bonds.**

(a) For all space station licenses issued after September 20, 2004, other than licenses for SDARS space stations, space stations licensed in accordance with §§ 25.122, 25.123, or § 25.126, and replacement space stations as defined in paragraph (e) of this section, the licensee must post a bond within 30 days of the grant of its license. Space stations licensed in accordance with §§ 25.122, 25.123, or § 25.126 must post a bond within one year plus 30 days of the grant of the license. Failure to post a bond will render the license null and void automatically.

* * * * *

[FR Doc. 2024–05389 Filed 3–14–24; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register
Vol. 89, No. 52
Friday, March 15, 2024

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 15, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Office of the Assistant Secretary for Civil Rights**

*Title:* USDA Race, Ethnicity and Gender Data Collection.

*OMB Control Number:* 0503–0019.

*Summary of Collection:* This data collection is necessary to implement sections 14006 and 14007 of the Food, Conservation, and Energy Act of 2008, 7 U.S.C. 8701 (hereafter referred to as the 2008 Farm Bill). Section 14006 of the 2008 Farm Bill establishes a requirement for the Department of Agriculture (USDA) to annually compile application and participation rate data regarding socially disadvantaged farmers or ranchers by computing for each program of the USDA that serves agriculture producers and landowners (a) raw numbers of applicants and participants by race, ethnicity, and gender (REG), subject to appropriate privacy protections, as determined by the Secretary; and (b) the application and participation rate, by race, ethnicity and gender, as a percentage of the total participation rate of all agricultural producers and landowners for each county and State in the United States. Pursuant to the authority in section 14006, the agencies of the Department of Agriculture are to collect the data and transmit it to the Secretary of Agriculture. Section 14007 requires the Department of Agriculture use the data collected in the conduct of oversight and evaluation of civil rights compliance.

*Need and Use of the Information:* Data will continue to be collected on a voluntary basis from customers at the application stage. The Natural Resources Conservation Service (NRCS) and Farm Service Agency (FSA) will continue to use a voluntary data collection form attached as a cover page to the application forms for programs that provide services to agriculture producers, farmers and ranchers. The Rural Development (RD) Mission Area currently collects customer declared REG data. The RD Agencies will continue to use its current process to collect REG data for applicants and participants. RD agencies will modify its check-list form to collect data on whether an applicant or participant is a farmer or rancher (to conform with the requirements of the Farm Bill), which will cause minimum burden. The agencies will enter the information from the forms into their electronic data systems.

*Description of Respondents:* Business or other for-profit; farms; Federal Government; State, local or Tribal government.

*Number of Respondents:* 2,011,250.

*Frequency of Responses:* Reporting: semi-Annually; annually.

*Total Burden Hours:* 67,041.

**Levi S. Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2024–05559 Filed 3–14–24; 8:45 am]

BILLING CODE 3410–9R–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Extension of Certain Timber Sale Contracts; Finding of Substantial Overriding Public Interest

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of rate redeterminations and contract extensions.

**SUMMARY:** The Chief of the Forest Service, Department of Agriculture, has determined that it is in the substantial overriding public interest (SOPI) to redetermine pulpwood rates and extend up to two years certain National Forest System timber sales and sale of property stewardship contracts. This finding applies to timber sale and sale of property stewardship contracts that were awarded before March 13, 2024, and, upon award, to contracts with a bid opening prior to March 13, 2024, subject to specified exceptions. Contracts with 20 percent or more of the included product listed as pulpwood with required removal will qualify for a pulpwood rate redetermination and may qualify for an extension under this SOPI finding. The SOPI determination is due to a combination of factors impacting the national economy and the pulp, paper, and chips markets. The intended effect of pulpwood rate redeterminations and extensions of certain timber and sale of property contracts is to allow timber purchasers and contractors time to navigate through the market conditions; to minimize contract defaults, mill closures, and bankruptcies; to sustain employment opportunities, and to minimize the

time-consuming and often difficult process of collecting default damages. Without a vibrant forest products industry, the Forest Service cannot manage the land to meet the multiple forest management and restoration objectives nationwide as intended and funded by Congress.

**DATES:** The SOPI determination was made on March 8, 2024, by the Chief of the Forest Service, Department of Agriculture.

**FOR FURTHER INFORMATION CONTACT:** Kraig Kidwell, Contracts and Appraisals Group Lead, at 541–961–2614 or by email at *kraig.kidwell@usda.gov,* or Mike Spisak, Assistant Director Forest Management, at 910–975–0114 or by email at *michael.spisak@usda.gov;* 1400 Independence Ave. SW, Mailstop 1103, Washington, DC 20250–1103. Individuals who use telecommunications devices for the hearing impaired may call 711 to reach the Telecommunications Relay Service, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The Forest Service sells timber and forest products from National Forest System lands to individuals and companies pursuant to the National Forest Management Act of 1976, 16 U.S.C. 472a (NFMA); the Stewardship End Result Contracting Projects Act, 16 U.S.C. 6591c; and implementing regulations in 36 CFR part 223. Each sale is formalized by execution of a contract for the sale of property between the timber purchaser or stewardship contractor and the Forest Service. The contract sets forth the terms of the sale including such matters as the estimated volume of timber to be removed, the period for removal, price to be paid to the Government, and road construction and logging requirements. The average sale of property contract period is approximately 3 to 4 years, although some contracts have terms up to 10 years. The contract term is established by the Forest Service based on the estimated time an average prudent timber contractor would need to mobilize and complete the timber harvest under the conditions of the contract. Paragraph 14(c) of NFMA (16 U.S.C. 472a(c)) provides that the Secretary of Agriculture shall not extend any timber sale contract period with an original term of 2 years or more unless the Secretary finds that the purchaser has diligently performed in accordance with an approved plan of operations, or that the ''substantial overriding public interest'' justifies the extension. This authority is delegated to the Chief of the Forest Service through Forest Service Manuals 2404.11 and 2453.17, referencing 36 CFR 223.32, and 36 CFR 223.31.

## Background

When members of the timber industry must decide whether to harvest timber during severely depressed markets and times of high inflation, or risk defaulting contracts, such decisions can and have led to bankruptcies, loss of infrastructure, and loss of jobs. This adversely affects stability in rural communities and the future management of National Forests as important opportunities and outlets for material disposal are lost. Providing additional contract time during significant market downturns allows timber purchasers additional flexibility to navigate the crisis and sustain long-term business viability.

On December 7, 1990, the Forest Service published a final rule (55 FR 50643) establishing procedures in 36 CFR 223.52 for extending contract termination dates in response to adverse conditions in timber markets. These procedures, known as Market Related Contract Term Additions (MRCTA), authorize extensions of timber contracts when qualifying market conditions are met. Subsequent amendments have provided that the total contract term may be extended up to 10 years as the result of MRCTA when specified criteria are met. When the MRCTA procedures were established, experience indicated that the type and magnitude of lumber market declines that would trigger market related contract term additions generally coincide with low numbers of housing starts and substantial economic dislocation in the wood products industry. MRCTA procedures were adopted by the Forest Service to avert contract defaults, mill closures, and associated impacts to dependent communities when there is a drastic decline in wood product prices (36 CFR 223.52).

In promulgating the MRCTA rule, the Department determined that a drastic reduction in wood product prices can result in a substantial overriding public interest sufficient to justify a contract term extension for existing contracts, as authorized by NFMA (16 U.S.C. 472a(c)) and existing regulations at 36 CFR 223.115(b). Most Forest Service timber sale contracts over 1-year in length include MRCTA procedures. Salvage sales and sales of products not covered in a Bureau of Labor Statistics producer price index (PPI) used to determine when MRCTA triggers are examples of contracts that do not include a MRCTA provision.

## Market Conditions

The U.S. pulp and paper industry accounts for upwards of 30 percent of the global pulp and paper production (*https://www.fortunebusinessinsights.com/north-america-pulp-and-paper-market-106617*), producing 46.66 million metric tons of pulp for paper in 2022 (*https://www.statista.com/statistics/1276346/annual-pulp-production-united-states/*). Globally, consumption of pulp for paper has tripled since the 1960s with 197.17 million metric tons of consumption in 2022, although several notable drops in consumption having occurred and recovered through this period (*https://www.statista.com/statistics/1177457/consumption-of-pulp-worldwide/*). There is a corresponding increase in the global consumption of paper and paperboard, estimated at 414.19 million metric tons and almost a 75 percent increase from 1990 levels (*https://www.statista.com/statistics/270319/consumption-of-paper-and-cardboard-since-2006/*). Although global consumption has increased, domestically the long-term trends show a 30 percent decline in use of paper and paperboard since 2000, with consumption dropping from 93.4 million metric tons to 65.76 million metric tons in 2022 (*https://www.statista.com/statistics/252710/total-us-consumption-of-paper-and-board-since-2001/*).

During the same period, the PCU3211133211135 producer price index (PPI) used to value pulp and paper has continued to trend upwards with only a few significant drops in the market that initiated market-related contract term additions or emergency rate redeterminations on Forest Service contracts, most recently during the 2009–2013 period. See *PPI industry data for Sawmills-Wood chips, excluding field chips, not seasonally adjusted* from the U.S. Bureau of Labor Statistics at *https://data.bls.gov/cgi-bin/dsrv?pc.* Following the COVID–19 pandemic, increases in paper use combined with the slow downsizing of the pulp and paper industry over time through mill closures and reductions in output have helped maintain the producer price index at high values. The preliminary January 2024 PCU3211133211135 producer price index from the U.S. Bureau of Labor Statistics is currently 143.926, down slightly from 20-year highs.

The three Bureau of Labor Statistics producer price indices the Forest Service currently uses to gauge most market conditions include Hardwood Lumber 0812, Softwood Lumber 0811,

and Chips (not field chips) PCU3211133211135, per 36 CFR 223.52. However, these indices are not able to address all forest products and market conditions. For example, biomass material, which is a large component of many stewardship contracts, is not covered by these indices. Because the indices are national in scope, they may fail to address drastic declines in local markets or products and, more importantly at this time, local and regional markets affected by mill closures, raw material delivery quotas, and reductions in finished product outputs at facilities.

As one measure of the overall timber and forest products market, beginning in the fourth quarter of 2021, the Softwood Lumber producer price index declined enough for applicable contracts to qualify for relief under Market Related Contract Term Addition (MRCTA) provisions. This trend has continued, with contracts based in the Softwood Lumber PPI qualifying for MRCTA in 9 of the last 12 consecutive quarters. In addition, contracts based in the 0811 Softwood Lumber PPI and awarded in 19 of the previous 40 months have triggered for emergency rate redeterminations, with many contracts triggering more than once. A purchaser may apply for an emergency rate redetermination if the producer price index identified in the contract has declined by 25 percent since the award date or last rate redetermination.

A similar downward trend has occurred in the Hardwood Lumber PPI beginning in the second quarter of 2018, but contracts did not begin to qualify for MRCTA until September of 2022. Since then, the Hardwood Lumber PPI has qualified for MRCTA in six consecutive quarters. In addition to the MRCTA, the Hardwood Lumber PPI met the criteria for emergency rate redeterminations for nine consecutive months in late 2021 into 2022. The hardwood market has stabilized somewhat since and not triggered additional emergency rate redeterminations, although contracts are still qualifying for the MRCTA through the most recent calendar quarter.

The last qualifying quarter for MRCTA with the PCU3211133211135 producer price index was 2013 and the last qualifying month for an emergency rate redetermination was in 2012. Due to consistent reduction in domestic paper usage and an increase in recycling, pulp and paper producers appear to be ''right sizing'' with mill closures and output reductions to keep the market resilient. The recent mill closures, and delivery quotas due to the subsequent raw material supply surplus, appears to reflect the continuous decline in pulp and paper consumption over the past 20 plus years and accelerated by inflationary pressures. Paper mills that also have historically used large quantities of new pulp fiber are now sourcing more from cheaper recycled material and very low-cost mill residuals. As noted, the gradual downsizing of the industry combined with post-pandemic increases in packaging and shipping paper has helped maintain the producer price index and finished goods markets while reducing raw material intake. This SOPI will provide a rate redetermination to offset the post-pandemic inflation costs, provide time for qualifying purchasers and contractors whose operations are disrupted by mill closures and delivery quotas, and allow time for raw material supplies to stabilize.

**Rate Redeterminations and Contract Extensions**

Pursuant to this SOPI, and as discussed herein, contracts with 20 percent or more of the Included Timber in A(T)2 identified as ''pulpwood'' at award or included through modification or agreement and appraised with product codes 02, 08, and 14, will qualify for pulpwood rate redetermination and may qualify for an extension under this SOPI finding. Extensions will be granted upon written request of the contract holder, except under the following conditions: (1) the contract holder's request includes timber and forest products in urgent need of removal due to forest health conditions or to mitigate a significant wildfire threat to a community, municipal watershed, or other critical public resource, or (2) included timber is designated by diameter and a delay in harvesting may change the treatment required under the contract because of trees growing into or outside of the specified diameter range(s). Contracts that are in breach will not qualify for relief until such breach is remedied. The percentage of included product and percentage of the contract completion is determined by the Forest Service as of the date the written request is received by the Contracting Officer. Relief will be provided to qualifying contracts in the manner described below.

*Contracts that have removed 75 percent or more of all included volume.* These contracts may receive a rate redetermination for the pulpwood product only. Rates will not be adjusted upward, only downward if a rate redetermination shows a decrease. Rates cannot be redetermined below base rates and base rates will not be adjusted. No additional time will be added to these contracts under this SOPI. Contract term extensions may be granted upon the written request of the purchaser and at the discretion of the Contracting Officer in contracts that contain provisions for contract term extension.

*Contracts that have removed 50 percent or more and less than 75 percent of all included volume.* These contracts may receive a rate redetermination for the pulpwood product only. Rates will not be adjusted upward, only downward if a rate redetermination shows a decrease. Rates cannot be redetermined below base rates and base rates will not be adjusted. Contract termination dates may be extended up to one year from the current termination date. Downpayment amounts will be recalculated, and periodic payments will be extended an equal amount of time. Timber sale contracts may be extended beyond the 10-year contract term limitation with this SOPI determination. Future Market Related Contract Term Additions may be granted following contract procedures, except that contracts will not qualify for Additions if they are extended beyond a 10-year contract term under the SOPI, pursuant to 36 CFR 223.52.

*Contracts that have removed less than 50 percent of all included volume.* These contracts may receive a rate redetermination for the pulpwood product only. Rates will not be adjusted upward, only downward if rate redetermination shows a decrease. Rates cannot be redetermined below base rates and base rates will not be adjusted. Contract termination dates may be extended up to two years from the current termination date. Downpayment amounts will be recalculated, and periodic payments will be extended an equal amount of time. Contracts can be extended beyond the 10-year contract term limitation with this SOPI determination. Future Market Related Contract Term Additions may be granted following contract procedures, except that contracts will not qualify for Additions if they are extended beyond a 10-year contract term under the SOPI, pursuant to 36 CFR 223.52.

Contracts that have received Diligent Performance Extensions in the previous 12 months will have the extension time granted under this SOPI, if any, reduced by the length of time granted for the Diligent Performance Extension. Integrated Resource Timber Contracts may require modification to mandatory stewardship projects if the rate redetermination reduces current contract value below that needed to pay for the projects. If the rate redetermination results in a deficit appraisal on the pulpwood product, the

deficit will not be offset with positive value species and the rates for pulpwood will be base rates with no change to rates for positive value species.

**Chief's Determination of Substantial Overriding Public Interest**

The Government benefits if timber contract defaults, mill closures, and bankruptcies can be avoided by granting rate redeterminations and extensions. The forest products industry is critical to addressing the wildfire crisis and meeting forest management and climate change objectives nationally, while supporting hundreds of thousands of meaningful jobs throughout the country. Having numerous economically viable timber purchasers increases competition for National Forest System timber contracts, results in higher prices paid for such timber, and allows the Forest Service to provide a continuous supply of timber to the public in accordance with the Organic Administration Act. In addition, by extending contracts and avoiding defaults, closures, and bankruptcies, the Government avoids the difficult, lengthy, expensive, and sometimes impossible process of collecting default damages.

By preventing defaults, better utilization of various forest resources (consistent with the provisions of the Multiple-Use Sustained-Yield Act of 1960) will result if contracts can be extended beyond 10 years because of this finding. Therefore, pursuant to 16 U.S.C. 472a(c), and subject to specific conditions and exceptions, I have determined that it is in the substantial overriding public interest to redetermine pulpwood rates and extend, up to two years, certain National Forest System timber sale and sale of property stewardship contracts that were awarded before March 13, 2024, or had a bid opening date prior to March 13, 2024, but have not yet been awarded.

Total contract length may exceed 10 years because of an extension under this SOPI determination. Downpayment amounts will be recalculated and any periodic payment due dates that have not been reached, as of the date the Contracting Officer receives a written request for a SOPI extension, shall be adjusted one day for each day of additional contract time granted.

To receive an extension and periodic payment deferral pursuant to this SOPI, purchasers must make a written request and agree to release the Forest Service from all claims and liability during the extension period if a contract extended pursuant to this finding is suspended, modified, or terminated in the future. The Forest Service shall continue to monitor market conditions to determine if additional relief measures may be needed in the future.

Dated: March 8, 2024.

**Randy Moore,**

*Chief, Forest Service.*

[FR Doc. 2024–05286 Filed 3–14–24; 8:45 am]

BILLING CODE 3411–15–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

**[Docket No. RUS–24–ELECTRIC–0005]**

### Notice of an Extension to a Currently Approved Information Collection

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Utilities Service's (RUS or Agency), an agency within the United States Department of Agriculture, Rural Development, intention to request an extension to a currently approved information collection package for the High Energy Costs Grants Rural Communities Program (HECG). In accordance with the Paperwork Reduction Act of 1995, the Agency invites comments on this information collection for which it intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by May 14, 2024 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Pamela Bennett, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9639. Email *pamela.bennett@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The OMB regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension of an existing collection.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RUS–24–ELECTRIC–0005. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the ''Comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, failure to provide data could result in program benefits being withheld or denied.

*Title:* High Energy Costs Grants Rural Communities.

*OMB Control Number:* 0572–0136.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The HECG Program is authorized under section 19 of the Rural Electrification Act of 1936, as amended (the RE Act) (7 U.S.C. 918a), and implemented by 7 CFR part 1709. The Agency, through the HECG program, provides grant funds to qualified types of applicants to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or

distribution facilities serving communities in which the average residential expenditure for home energy is at least 275 percent of the national average. Grants may also be used for programs that install on-grid and off-grid renewable energy systems and energy efficiency improvements in eligible communities.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 3.41 hours per response.

*Respondents:* For profit and non-profit entities, State and local governments, Indian Tribes, other Tribal entities, Alaskan Native Corporations and Individuals. See 7 CFR 1709.106.

*Estimated Number of Respondents:* 60.

*Estimated Total Annual Responses:* 344.

*Estimated Number of Responses per Respondent:* 5.73.

*Estimated Total Annual Burden on Respondents:* 1,172 hours.

Copies of this information collection can be obtained from Pamela Bennett, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9639. Email: *pamela.bennett@usda.gov.*

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

**Andrew Berke,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2024–05471 Filed 3–14–24; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Survey of Children's Health.

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 14, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* U.S. Census Bureau, Department of Commerce.

*Title:* National Survey of Children's Health.

*OMB Control Number:* 0607–0990

*Form Number(s):* NSCH–S1 (English Screener), NSCH–T1 (English Topical for 0- to 5-year-old children), NSCH–T2 (English Topical for 6- to 11-year-old children), NSCH–T3 (English Topical for 12- to 17-year-old children), NSCH–S–S1 (Spanish Screener), NSCH–S–T1 (Spanish Topical for 0- to 5-year-old children), NSCH–S–T2 (Spanish Topical for 6- to 11-year-old children), and NSCH–S–T3 (Spanish Topical for 12- to 17-year-old children).

*Type of Request:* Regular submission, Request for a Revision of a Currently Approved Collection.

*Number of Respondents:* 73,641 for the screener only and 56,649 for the combined screener and topical, for a total of 130,290 respondents.

*Average Hours per Response:* 5 minutes per screener response and 35–36 minutes per topical response, which in total is approximately 40–41 minutes for households with eligible children.

*Burden Hours:* 44,270.

*Needs and Uses:* The National Survey of Children's Health (NSCH) enables the Maternal and Child Health Bureau (MCHB) of the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) along with supplemental sponsoring agencies, states, and other data users to produce national and state-based estimates on the health and well-being of children, their families, and their communities as well as estimates of the prevalence and impact of children with special health care needs.

Data will be collected using one of two modes. The first mode is a web instrument (Centurion) survey that contains the screener and topical instruments. The web instrument first will take the respondent through the screener questions. If the household screens into the study, the respondent will be taken directly into one of the three age-based topical sets of questions. The second mode is a mailout/mailback of a self-administered paper-and-pencil interviewing (PAPI) screener instrument followed by a separate mailout/mailback of a PAPI age-based topical instrument.

The National Survey of Children's Health (NSCH) is a large-scale (sample size is approximately 375,000 addresses) national survey with approximately 292,500 addresses included in the base production survey and approximately 82,500 addresses included as part of fourteen separate state-based or region-based oversamples. As in prior cycles of the NSCH, there remain two key, non-experimental design elements. The first non-experimental design element is the use of an unconditional incentive ($5) in the initial screener and topical invitations. For the initial screener invitation, 90% of sampled addresses receive the cash incentive; the remaining 10% (the control) do not receive an incentive. This approach is used to consistently monitor the effectiveness of the cash incentive each cycle. The second non-experimental design element is a data collection procedure based on the block group-level paper-only response probability used to identify households (30% of the sample) that would be more likely to respond by paper and send them a paper questionnaire in the initial mailing and every nonresponse follow-up mailing.

The 2024 NSCH will also include a targeted secondary unconditional incentive test to encourage response from a subset of the sample that started the web questionnaire but did not finish. Prior cycles of the survey have included a $5 unconditional cash incentive with both the initial screener mailing as well as the initial paper topical mailing as outlined in the paragraph above. The incentive has proven to be a cost-effective intervention for increasing survey response and reducing nonresponse bias.

*Affected Public:* Individuals or households.

*Frequency:* The 2024 collection is the ninth administration of the NSCH. It is an annual survey, with a new sample drawn for each administration.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Census Authority: Title 13, United States Code (U.S.C.), section 8(b) (13 U.S.C. 8(b)).

*HRSA MCHB Authority:* Section 501(a)(2) of the Social Security Act (42 U.S.C. 701).

*United States Department of Agriculture Authority:* Agriculture Improvement Act of 2018, Public Law 115–334.

*United States Department of Health and Human Services' Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities Authority:* Public Health Service Act, Section 301, 42 U.S.C. 241.

*United States Department of Health and Human Services' Centers for Disease Control and Prevention,*

*National Center for Chronic Disease Prevention and Health Promotion Authority:* Sections 301(a), 307, and 399G of the Public Health Service [42 U.S.C. 241(a), 242l, and 280e–11], as amended.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0990.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2024–05609 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; State and Local Government Finance and Public Employment and Payroll Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 21, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* U.S. Census Bureau, Department of Commerce.

*Title:* State and Local Government Finance and Public Employment and Payroll Forms.

*OMB Control Number:* 0607–0585.

*Form Number(s):* E–1,E–2,E–3,E–4,E–5,E–6,E–7,E–8,E–9,E–10,F–5,F–11,F–12,F–13,F–28,F–29,F–32.

*Type of Request:* Regular submission, request for an extension, without change, of a currently approved collection.

*Number of Respondents:* 29,609.

*Average Hours per Response:* 1 hour and 50 minutes.

*Burden Hours:* 54,306.

*Needs and Uses:* The Census Bureau is requesting extension of the clearance for the Annual Survey of Public Employment & Payroll and the Annual Survey of State and Local Government Finances. The Annual Survey of Public Employment & Payroll collects State and local government data by function for full-time and part-time employees and payroll. The Annual Survey of State and Local Government Finances collect State and local government finance data including government revenue, expenditure, debt, assets, and pension systems. Data are collected for all agencies, departments, and institutions of the fifty State governments and for a sample of all local governments (counties, municipalities, townships, and special districts). Data for school districts are collected under a separate survey and are not included here.

In years ending with 2 and 7 this collection is conducted as a part of the Census of Governments. There is no difference in content collected between a Census of Governments year and non-Census year. The only difference is that in non-Census years, we only collect from a sample of the universe of State and local governments, whereas during a Census of Governments year the entire universe is collected. The upcoming three years of this clearance extension will cover the collections for fiscal years of 2023, 2024, and 2025, all of which are non-Census years.

The data are released as part of the State and Local Government Finance and Public Employment & Payroll statistical series. The collections also produce individual data products that focus on State governments, local governments, and public pensions in greater detail than the combined financial and employment series as a by-product of their collections for the combined data series. The Census Bureau provides these data to the Bureau of Economic Analysis to develop the public sector components of the National Income and Product Accounts and for constructing the functional payrolls in the public sector of the Gross Domestic Product, payroll being the single largest component of current operations. The Census Bureau also provides these data to the Federal Reserve Board for use in the Flow of Funds Accounts. Other Federal agencies that make use of the data include the Council of Economic Advisers, the Agency for Healthcare Research and Quality, the Government Accountability Office, and the Department of Justice. State and local governments and related organizations, public policy groups, public interest groups, private research organizations, and private sector businesses also use these data.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Sections 161 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0585.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2024–05560 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–11–2024]**

### Foreign-Trade Zone (FTZ) 39, Notification of Proposed Production Activity; Trina Solar US Manufacturing Module 1 LLC; (Solar Panels), Wilmer, Texas

The Dallas/Fort Worth International Airport Board, grantee of FTZ 39, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Trina Solar US Manufacturing Module 1 LLC for its facility in Wilmer, Texas under FTZ 39. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on March 12, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished

product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products are solar panels (duty-free).

The proposed foreign-status materials and components include: aluminum frames; ethylene vinyl acetate (EVA); junction boxes for voltages not exceeding 1000 volts; junction boxes for voltages exceeding 1000 volts; silica gel; assembled solar cells; unassembeled solar cells; soldiering tape; and tempered glass (duty rate ranges from duty-free to 5%). The request indicates that certain components are subject to an antidumping/countervailing duty (AD/CVD) order/investigation if imported from certain countries. The Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign (PF) status (19 CFR 146.41). The request also indicates that certain components are subject to duties under section 201 of the Trade Act of 1974 (section 201), or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 201 and section 301 decisions require subject merchandise to be admitted to FTZs in PF status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is April 24, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Kolade Osho at *Kolade.Osho@trade.gov.*

Dated: March 12, 2024.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2024–05589 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–DS–P**

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**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

**[B–60–2023]**

## Foreign-Trade Zone (FTZ) 32; Authorization of Production Activity; KMP USA LLC; (Automotive Parts); Doral, Florida

On November 13, 2023, KMP USA LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 32E, in Doral, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 82315–82316, November 24, 2023). On March 12, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: Date, March 12, 2024.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2024–05591 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–DS–P**

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**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

**[B–59–2023]**

## Foreign-Trade Zone (FTZ) 84; Authorization of Production Activity; KMP USA LLC; (Automotive Parts); Katy, Texas

On November 13, 2023, KMP USA LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 84, in Katy, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 81363—81364, November 22, 2023). On March 12, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: March 12, 2024.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2024–05590 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–DS–P**

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[C–201–861]**

## Aluminum Extrusions From Mexico: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

### Correction

In notice document 2024–05086, beginning on page 17387, in the issue of Monday, March 11, 2024, in footnote eighteen, appearing at the bottom of page 17389, ''Metaa´licas'' is corrected to read, ''Metálicas''.

[FR Doc. C1–2024–05068 Filed 3–14–24; 8:45 am]

**BILLING CODE 0099–10–D**

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[C–201–861]**

## Aluminum Extrusions From Mexico: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of aluminum extrusions from Mexico. The period of investigation is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable March 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Thomas Schauer or Christopher Williams, 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) 482–0410 or (202) 482–5166, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

This preliminary determination is made in accordance with section 703(b)

of the Tariff Act of 1930, as amended (the Act). On October 31, 2023, Commerce published in the **Federal Register** the notice of initiation of this countervailing duty (CVD) investigation.[1] On December 6, 2023, Commerce postponed the preliminary determination of this investigation until March 4, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II 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 Investigation**

The products covered by this investigation are aluminum extrusions from Mexico. For a complete description of the scope of this investigation, see Appendix I.

**Scope Comments**

In accordance with the *Preamble* to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.* , scope).[5] To date, numerous interested parties have commented on the scope of the investigation as it appeared in the *Initiation Notice*. (Separately, on February 20, 2024, the petitioners[6] proposed that Commerce modify the scope of the investigation.[7] For further discussion of this latter submission, *see* below.) All parties agree that a number of products are excluded from the scope of this investigation, and, after analyzing the comments from these parties, Commerce preliminarily finds that these products are not subject merchandise.[8] As a result, Commerce has preliminarily determined to modify the scope of this investigation to add two examples of excluded products (*i.e.,* solar panels and off-grid solar modules), as well as to exclude precision non-electrically conductive coated buss bars and precision drawn aluminum tubing. *See* the scope in Appendix I to this notice. For further discussion, *see* the Preliminary Scope Decision Memorandum.[9]

Additionally, Commerce preliminary determines that the scope language in paragraph eight of the scope as it appeared in the *Initiation Notice*, ''so long as they remain subject to the scope of such orders,'' has the potential to result in the future expansion of the scope of this order, if it is put in place. We have removed this language from the scope for the preliminary determination for this reason, and Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice* accordingly. *See* the scope in Appendix I to this notice.

Finally, as noted above, in comments dated February 20, 2024, the petitioners proposed several substantive modifications to the scope of this investigation, as well as the scope in the companion antidumping duty (AD) and CVD investigations.[10] In particular, the petitioners proposed, for the first time, that Commerce:

(1) define the term ''part or subassemblies'' as:

A part or subassembly is a product that is designed to be attached to other components to eventually form a completed product or is a product that is designed for the sole purpose of becoming part of a larger whole.

(2) add the following three-part test to determine whether products containing multiple subassemblies are excluded from the scope:

The scope also excludes merchandise containing multiple subassemblies of a larger whole with non-extruded aluminum components beyond fasteners. A covered subassembly, including any product expressly identified as subject merchandise in this scope, can only be excluded if it is fully and permanently assembled with at least one other different subassembly, and where (1) at least one of the subassemblies, if entered individually, would not itself be subject to the scope; (2) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the actual weight of the combined multiple subassemblies; and (3) the non-extruded aluminum portion (excluding any fasteners) collectively accounts for more than 50 percent of the number of pieces of the combined multiple subassemblies; and

(3) modify the definition of ''assembled merchandise'' to add the term ''fully and permanently assembled''; to add the word ''whole''; to add the phrase ''with the exception of consumable parts or material or interchangeable media or tooling''; to remove the phrase ''product or system''; and to remove the phrase ''regardless of whether the additional parts or materials are interchangeable.'' This paragraph now reads:

The scope excludes fully and permanently assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger whole and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material (with the exception of consumable parts or material or interchangeable media or tooling).

Given that these proposed modifications are complex and the petitioners requested them close in time to the CVD preliminary determination, Commerce has had insufficient time to evaluate them fully. We intend to request that the petitioners clarify certain aspects of the revised language after the issuance of this preliminary determination, and also to allow all interested parties the opportunity to comment on the proposed revisions and any clarifications provided by the

[1] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 88 FR 74433 (October 31, 2023) (*Initiation Notice*).

[2] *See Aluminum Extrusions from the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 88 FR 84788 (December 6, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of the Countervailing Duty Investigation of Aluminum Extrusions from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 88 FR at 74434.

[6] The petitioners are the U.S. Aluminum Extruders Coalition (the members of which are Alexandria Extrusion Company; APEL Extrusions; Bonnell Aluminum; Brazeway; Custom Aluminum Products; Extrudex Aluminum; International Extrusions; Jordan Aluminum Company; M–D Building Products, Inc.; Merit Aluminum Corporation; MI Metals; Pennex Aluminum; Tower Extrusions; and Western Extrusions) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

[7] *See* Petitioners'' Letter, ''Revised Scope Language,'' dated February 20, 2024 (Petitioners' February 20, 2024 Submission).

[8] These products are: (1) fully assembled solar panels; (2) fully assembled off-grid solar charging modules; (3) aluminum and copper wires produced through a casting process; (4) stationary bicycles and rowing machines that enter unassembled as a packaged combination of parts to be assembled; (5) shower hooks and other articles made from cast aluminum, even where such cast aluminum is made from re-melted aluminum that had previously been extruded; and (6) precision non-electrically conductive coated buss bars and precision drawn aluminum tubing.

[9] *See* Memorandum, ''Antidumping Duty Investigations and Countervailing Duty Investigations of Aluminum Extrusions from People's Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[10] *See* Petitioners'' February 20, 2024 Submission. We are considering all the proposed revisions to the scope and have only highlighted a few examples of these proposed revisions.

petitioners.[11] We will address these comments and make a determination as to the appropriateness of adopting the proposed languages no later than May 1, 2024, the date of the preliminary determinations in the companion less-than-fair-value investigations.

We also intend to issue our preliminary decision regarding the remaining scope comments received from interested parties in response to the comment period set forth in the *Initiation Notice* no later than May 1, 2024, and we will establish a briefing schedule to allow interested parties to comment on our preliminary scope decisions at that time.

We intend to incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation, after considering any relevant comments submitted in scope case and rebuttal briefs.[12]

**Methodology**

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.* , a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific. For a full description of the methodology underlying the preliminary determination, see the Preliminary Decision Memorandum.

**Alignment**

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent less-than-fair value (LTFV) investigation of aluminum extrusions from Mexico based on a request made by the petitioners.[13] Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than July 15, 2024, unless postponed.[14]

**All-Others Rate**

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis,* or based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated individual estimated countervailable subsidy rates for Aluminio de Baja California S.A. de C.V. (ABC) and Aluminio Texcoco S.A. de C.V. (ALUTEX). The individually calculated rate for ABC is above *de minimis* . Because the individually calculated rate for ALUTEX is *de minimis* and the other rates we assigned are based entirely under section 776 of the Act, the estimated weighted-average rate calculated for ABC is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

**Rate for Non-Responsive Companies**

Three potential producers and/or exporters of aluminum extrusions from Mexico received but did not respond to Commerce's quantity and value (Q&V) questionnaire.[15] We find that, by not responding to the Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding.[16] Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for these three companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to Commerce's Q&V questionnaire, the three companies did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the three companies will not obtain a more favorable result than had they fully complied with our request for information. For more information on the application of adverse facts available to the non-responsive companies, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Determination Memorandum.

**Preliminary Determination**

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

| Company | Subsidy rate (percent *ad valorem*) |
|---|---|
| Aluminio de Baja California S.A. de C.V.[17] | 1.68 |
| Aluminio Texcoco S.A. de C.V.[18] | 0.19 |
| Merit Aluminum Corporation | 77.82 |
| Merit Stamping | 77.82 |
| Tubos y Perfiles de Aluminio | 77.82 |
| All Others | 1.68 |

[11] *See* Memorandum,'' Scope Comment Schedule,'' dated March 1, 2024 (citing Petitioners' February 20, 2024 Submission).

[12] The deadline for interested parties to submit scope case and rebuttal briefs will be established at a later time.

[13] The petitioners are the U.S. Aluminum Extruders Coalition (the members of which are Alexandria Extrusion Company; APEL Extrusions; Bonnell Aluminum; Brazeway; Custom Aluminum Products; Extrudex Aluminum; International Extrusions; Jordan Aluminum Company; M–D Building Products, Inc.; Merit Aluminum Corporation; MI Metals; Pennex Aluminum; Tower Extrusions; and Western Extrusions) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union. *See* Petitioners'' Letter, ''Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination,'' dated February 13, 2024.

[14] *See Aluminum Extrusions from the People's Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 89 FR 11814 (February 15, 2024).

[15] *See* Memorandum, ''Quantity and Value Questionnaire Delivery Memorandum,'' dated November 13, 2023.

[16] These companies are Merit Aluminum Corporation, Merit Stamping, and Tubos y Perfiles de Aluminio.

[17] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds the following company to be cross-owned with Aluminio de Baja California S.A. de C.V.: Transformadora ABC, S.A. de C.V.

[18] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds the following companies to be cross-owned with Aluminio Texcoco S.A. de C.V.: Extrusiones Metálicas S.A. de C.V., NEO Aluminio, S.A. de C.V., and Fundi-met, S.A. de C.V.

## Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

## Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above. Because the subsidy rate for ALUTEX is *de minimis,* Commerce is directing CBP not to suspend liquidation of entries of the merchandise from this company.

## Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

## Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs related to the preliminary scope decisions made in this investigation. The deadlines to submit scope case and rebuttal briefs will be provided at a later time. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing companion AD and CVD investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[19] Interested parties who submit case briefs or rebuttal briefs in this investigation must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[20]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[21] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[22]

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 in the **Federal Register.** Requests should contain the party's name, address, telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

## U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum extrusions from Mexico are materially injuring, or threaten material injury to, the U.S. industry.

## Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: March 4, 2024.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

Appendix I—Scope of the Investigation

The merchandise subject to this investigation is aluminum extrusions, regardless of form, finishing, or fabrication, whether assembled with other parts or unassembled, whether coated, painted, anodized, or thermally improved. Aluminum extrusions are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by the Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 1 contain not less than 99 percent aluminum by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 3 contain manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contain magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The scope also includes merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) that have a magnesium content accounting for up to but not more than 2.0 percent of total materials by weight.

The country of origin of the aluminum extrusion is determined by where the metal is extruded (*i.e.,* pressed through a die).

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

[19] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[20] See 19 351.309(c)(2) and (d)(2).

[21] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[22] *See APO and Service Final Rule.*

Subject aluminum extrusions are produced and imported with a variety of coatings and surface treatments, and types of fabrication. The types of coatings and treatments applied to aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright dip), liquid painted, electroplated, chromate converted, powder coated, sublimated, wrapped, and/or bead blasted. Subject aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly, or thermally improved. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, stretch-formed, hydroformed, knurled, swedged, mitered, chamfered, threaded, and spun. Performing such operations in third countries does not otherwise remove the merchandise from the scope of the investigation.

The types of products that meet the definition of subject merchandise include but are not limited to, vehicle roof rails and sun/moon roof framing, solar panel racking rails and framing, tradeshow display fixtures and framing, parts for tents or clear span structures, fence posts, drapery rails or rods, electrical conduits, door thresholds, flooring trim, electric vehicle battery trays, heat sinks, signage or advertising poles, picture frames, telescoping poles, or cleaning system components.

Aluminum extrusions may be heat sinks, which are fabricated aluminum extrusions that dissipate heat away from a heat source and may serve other functions, such as structural functions. Heat sinks come in a variety of sizes and shapes, including but not limited to a flat electronic heat sink, which is a solid aluminum extrusion with at least one flat side used to mount electronic or mechanical devices; a heat sink that is a housing for electronic controls or motors; lighting heat sinks, which dissipate heat away from LED devices; and process and exchange heat sinks, which are tube extrusions with fins or plates used to hold radiator tubing. Heat sinks are included in the scope, regardless of whether the design and production of the heat sinks are organized around meeting specified thermal performance requirements and regardless of whether they have been tested to comply with such requirements. For purposes of the investigation on aluminum extrusions from the People's Republic of China, only heat sinks designed and produced around meeting specified thermal performance requirements and tested to comply with such requirements are included in the scope.

Merchandise that is comprised solely of aluminum extrusions or aluminum extrusions and fasteners, whether assembled at the time of importation or unassembled, is covered by the scope in its entirety.

The scope also covers aluminum extrusions that are imported with non-extruded aluminum components beyond fasteners, whether assembled at the time of importation or unassembled, that are a part or subassembly of a larger product or system. Only the aluminum extrusion portion of the merchandise described in this paragraph, whether assembled or unassembled, is subject to duties. Examples of merchandise that is a part or subassembly of a larger product or system include, but are not limited to, window parts or subassemblies; door unit parts or subassemblies; shower and bath system parts or subassemblies; solar panel mounting systems; fenestration system parts or subassemblies, such as curtain wall and window wall units and parts or subassemblies of storefronts; furniture parts or subassemblies; appliance parts or subassemblies, such as fin evaporator coils and systems for refrigerators; railing or deck system parts or subassemblies; fence system parts or subassemblies; motor vehicle parts or subassemblies, such as bumpers for motor vehicles; trailer parts or subassemblies, such as side walls, flooring, and roofings; electric vehicle charging station parts or subassemblies; or signage or advertising system parts or subassemblies. Parts or subassemblies described by this paragraph that are subject to duties in their entirety pursuant to existing antidumping and countervailing duty orders are excluded from the scope of this investigation. Any part or subassembly that otherwise meets the requirements of this scope and that is not covered by other antidumping and/or countervailing duty orders remains subject to the scope of the investigation.

The scope excludes assembled merchandise containing non-extruded aluminum components beyond fasteners that is not a part or subassembly of a larger product or system and that is used as imported, without undergoing after importation any processing, fabrication, finishing, or assembly or the addition of parts or material, regardless of whether the additional parts or material are interchangeable.

The scope also excludes merchandise containing non-extruded aluminum components beyond fasteners that is not apart or subassembly of a larger product or system that enters unassembled as a packaged combination of parts to be assembled as is for its intended use, without undergoing after importation any processing, fabrication, or finishing or the addition of parts or material, regardless of whether the additional parts or material are interchangeable. To be excluded under this paragraph, the merchandise must be sold and enter as a discrete kit on one Customs entry form.

Examples of such excluded assembled and unassembled merchandise include windows with glass, door units with door panel and glass, motor vehicles, trailers, furniture, appliances, and solar panels and solar modules.

The scope also includes aluminum extrusions that have been further processed in a third country, including, but not limited to, the finishing and fabrication processes described above, assembly, whether with other aluminum extrusion components or with non-aluminum extrusion components, or any other processing that would not otherwise remove the merchandise from the scope if performed in the country of manufacture of the in-scope product. Third country processing; finishing; and/or fabrication, including those processes described in the scope, does not alter the country of origin of the subject aluminum extrusions.

The following aluminum extrusion products are excluded: aluminum extrusions made from an aluminum alloy with an Aluminum Association series designations commencing with the number 2 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent magnesium by weight; and aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 7 (or proprietary equivalents or other certifying body equivalents) and containing in excess of 2.0 percent zinc by weight.

The scope also excludes aluminum alloy sheet or plates produced by means other than the extrusion process, such as aluminum products produced by a method of continuous casting or rolling. Cast aluminum products are also excluded. The scope also excludes unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association (not including proprietary equivalents or other certifying body equivalents) where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters (mm) or 62 mm; (2) outer diameter of 11.0 mm or 12.7 mm; and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope are extruded drawn solid profiles made from an aluminum alloy with the Aluminum Association series designation commencing with the number 1, 3, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) solid cross sectional area greater than 62.4 mm2 and less than 906 mm2, (2) minimum electrical conductivity of 58% of the international annealed copper standard (IACS) or maximum resistivity of 2.97 μΩ/cm, (3) a uniformly applied non-electrically conductive temperature-resistant coating co-extruded over characteristic (1) of either polyamide, cross-linked polyethylene, or silicone rubber material which meets the following standards: (a) Vicat A temperature threshold of >140 degrees Celsius, (b) flammability requirements of UL 94V–0, and (c) a minimum coating thickness of 0.10 mm and maximum coating thickness of 2.0 mm, with a maximum thickness tolerance of +/−0.20 mm, (4) characteristic 3 may or may not be encapsulated with a ''Precision Drawn Tubing,'' wall thicknesses less than 1.2mm, which is mechanically fixed in place, and (5) packaged in straight lengths, bent or formed and/or attached to hardware.

Also excluded from the scope are extruded tubing and drawn over a ID plug and through a OD die made from an aluminum alloy with the Aluminum Association series designation commencing with the number 3, 5, or 6 (or proprietary equivalents or other certifying body equivalents), including variants on individual alloying elements not to circumvent the other Aluminum Association series designations, which meet each of the following characteristics: (1) an outside mean diameter no greater than 30 mm with a tolerance less than or equal to +/−0.10 mm, (2) uniform wall thickness no greater than 2.7 mm with wall tolerances less than or equal to +/−0.1 mm, (3) may be coated with materials, including zinc, such that the coating material weight is no less than 3 g/m2 and no greater than 30 g/m2, and (4) packaged in continuous coils, straight lengths, bent or formed.

Also excluded from the scope of the investigation is certain rectangular wire, imported in bulk rolls or precut strips and produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire with or without rounded edges. The product is made from aluminum alloy grade 1070 or 1370 (not including proprietary equivalents or other certifying body equivalents), with no recycled metal content allowed. The dimensions of the wire are 2.95 mm to 6.05 mm in width, and 0.65 mm to 1.25 mm in thickness. Imports of rectangular wire are provided for under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7605.19.0000, 7604.10.5000, or 7616.99.5190.

Also excluded from the scope of the antidumping and countervailing duty investigations on aluminum extrusions from the People's Republic of China are all products covered by the scope of the antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China. *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30,650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30,653 (May 26, 2011) (collectively, Aluminum Extrusions from the People's Republic of China). Solely for the investigations on aluminum extrusions from the People's Republic of China, the following is an exhaustive list of products that meet the definition of subject merchandise. Merchandise that is not included in the following list that meets the definition of subject merchandise in the 2011 antidumping and countervailing duty orders on Aluminum Extrusions from the People's Republic of China remains subject to the earlier orders. No other section of this scope language that provides examples of subject merchandise is exhaustive. The following products are included in the scope of these investigations on aluminum extrusions from the People's Republic of China, whether assembled or unassembled: heat sinks as described above; cleaning system components like mops and poles; banner stands/back walls; fabric wall systems; drapery rails; side mount valve controls; water heater anodes; solar panel mounting systems; 5050 alloy rails for showers and carpets; auto heating and cooling system components; assembled motor cases with stators; louver assemblies; event décor; window wall units and parts; trade booths; micro channel heat exchangers; telescoping poles, pole handles, and pole attachments; flagpoles; wind sign frames; foreline hose assembly; electronics enclosures; parts and subassemblies for storefronts, including portal sets; light poles; air duct registers; outdoor sporting goods parts and subassemblies; glass refrigerator shelves; aluminum ramps; handicap ramp system parts and subassemblies; frames and parts for tents and clear span structures; parts and subassemblies for screen enclosures, patios, and sunrooms; parts and subassemblies for walkways and walkway covers; aluminum extrusions for LED lights; parts and subassemblies for screen, storm, and patio doors; pontoon boat parts and subassemblies, including rub rails, flooring, decking, transom structures, canopy systems, seating; boat hulls, framing, ladders, and transom structures; parts and subassemblies for docks, piers, boat lifts and mounting; recreational and boat trailer parts and subassemblies, including subframes, crossmembers, and gates; solar tracker assemblies with gears; garage door framing systems; door threshold and sill assemblies; highway and bridge signs; bridge, street, and highway rails; scaffolding, including planks and struts; railing and support systems; parts and subassemblies for exercise equipment; weatherstripping; door bottom and sweeps; door seals; floor transitions and trims; parts and subassemblies for modular walls and office furniture; truck trailer parts and subassemblies; boat cover poles, outrigger poles, and rod holders; bleachers and benches; parts and subassemblies for elevators, lifts, and dumbwaiters; parts and subassemblies for mirror and framing systems; window treatments; parts and subassemblies for air foils and fans; bus and RV window frames; sliding door rails; dock ladders; parts and subassemblies for RV frames and trailers; awning, canopy, and sunshade structures and their parts and subassemblies; marine motor mounts; linear lighting housings; and cluster mailbox systems.

Imports of the subject merchandise are primarily provided for under the following categories of the HTSUS: 7604.10.1000; 7604.10.3000; 7604.10.5000; 7604.21.0010; 7604.21.0090; 7604.29.1010; 7604.29.1090; 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 7608.10.0030; 7608.10.0090; 7608.20.0030; 7608.20.0090; 7609.00.0000; 7610.10.0010; 7610.10.0020; 7610.10.0030; 7610.90.0040; and 7610.90.0080.

Imports of the subject merchandise, including subject merchandise entered as parts of other products, may also be classifiable under the following additional HTSUS categories, as well as other HTSUS categories: 6603.90.8100; 7606.12.3091; 7606.12.3096; 7615.10.2015; 7615.10.2025; 7615.10.3015; 7615.10.3025; 7615.10.5020; 7615.10.5040; 7615.10.7125; 7615.10.7130; 7615.10.7155; 7615.10.7180; 7615.10.9100; 7615.20.0000; 7616.10.9090; 7616.99.1000; 7616.99.5130; 7616.99.5140; 7616.99.5190; 8302.10.3000; 8302.10.6030; 8302.10.6060; 8302.10.6090; 8302.20.0000; 8302.30.3010; 8302.30.3060; 8302.41.3000; 8302.41.6015; 8302.41.6045; 8302.41.6050; 8302.41.6080; 8302.42.3010; 8302.42.3015; 8302.42.3065; 8302.49.6035; 8302.49.6045; 8302.49.6055; 8302.49.6085; 8302.50.0000; 8302.60.3000; 8302.60.9000; 8305.10.0050; 8306.30.0000; 8414.59.6590; 8415.90.8045; 8418.99.8005; 8418.99.8050; 8418.99.8060; 8419.50.5000; 8419.90.1000; 8422.90.0640; 8424.90.9080; 8473.30.2000; 8473.30.5100; 8479.89.9599; 8479.90.8500; 8479.90.9596; 8481.90.9060; 8481.90.9085; 8486.90.0000; 8487.90.0080; 8503.00.9520; 8508.70.0000; 8513.90.2000; 8515.90.2000; 8516.90.5000; 8516.90.8050; 8517.71.0000; 8517.79.0000; 8529.90.7300; 8529.90.9760; 8536.90.8585; 8538.10.0000; 8541.90.0000; 8543.90.8885; 8547.90.0020; 8547.90.0030; 8708.10.3050; 8708.29.5160; 8708.80.6590; 8708.99.6890; 8807.30.0060; 9031.90.9195; 9401.99.9081; 9403.99.1040; 9403.99.9010; 9403.99.9015; 9403.99.9020; 9403.99.9040; 9403.99.9045; 9405.99.4020; 9506.11.4080; 9506.51.4000; 9506.51.6000; 9506.59.4040; 9506.70.2090; 9506.91.0010; 9506.91.0020; 9506.91.0030; 9506.99.0510; 9506.99.0520; 9506.99.0530; 9506.99.1500; 9506.99.2000; 9506.99.2580; 9506.99.2800; 9506.99.5500; 9506.99.6080; 9507.30.2000; 9507.30.4000; 9507.30.6000; 9507.30.8000; 9507.90.6000; 9547.90.0040; and 9603.90.8050.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

## Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Injury Test
IV. Use of Facts Otherwise Available and Adverse Inferences
V. Subsidies Valuation
VI. Analysis of Programs
VII. Recommendation

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[RTID 0648–XD621]**

## Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

**ACTION:** Notice; issuance of letter of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to bp Exploration and Production Inc. (bp) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico (GOM).

**DATES:** The LOA is effective from April 1, 2024 through December 31, 2024.

**ADDRESSES:** The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the GOM over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

## Summary of Request and Analysis

Bp plans to conduct a three-dimensional (3D) ocean bottom node (OBN) and distributed acoustic sensing (DAS) survey, a source test of the Gemini 8000 (Gemini source test), and a Seismic Apparition (SA) source test in the Thunder Horse protraction area. Approximate water depths of the survey area range from 1,450 to 2,350 meters (m). See section 1.1 of the LOA application for a map of the area.

Bp anticipates using two source vessels, each towing conventional airgun sources consisting of 32 elements, with a total volume of 5,110 cubic inches ($in^3$) for the 3D OBN and DAS survey portion. Please see bp's application for additional detail.

The Gemini source was not included in the acoustic exposure modeling developed in support of the rule. However, our rule anticipated the possibility of new and unusual technologies (NUT) and determined they would be evaluated on a case-by case basis (86 FR 5322, 5442, January 19, 2021). This source was previously evaluated as a NUT in 2020 (prior to issuance of the 2021 final rule) pursuant to the requirements of NMFS' 2020 Biological Opinion on BOEM's Gulf of Mexico oil and gas program as well as the issuance of the rule. An associated report produced by Jasco Applied Sciences (Grooms *et al.,* 2019) provides information related to the acoustic output of the Gemini source, which informs our evaluation here.

The Gemini source operates on the same basic principles as a traditional airgun source in that it uses compressed air to create a bubble in the water column which then goes through a series of collapses and expansions creating primarily low-frequency sounds. However, the Gemini source consists of one physical element with two large chambers of 4,000 $in^3$ each (total volume of 8,000 $in^3$). This creates a larger bubble resulting in more of the energy being concentrated in low frequencies, with a fundamental frequency of 3.7 Hertz. In addition to concentrating energy at lower frequencies, the Gemini source is expected to produce lower overall sound levels than the conventional airgun proxy source. The number of airguns in an array is highly influential on overall sound energy output, because the output increases approximately linearly with the number of airgun elements. In this case, because the same air volume is used to operate two very large guns, rather than tens of smaller guns, the array produces lower sound levels than a conventional array of equivalent total volume.

The modeled distances described in the aforementioned Jasco report show expected per-pulse sound pressure level threshold distances to the 160-dB level of 4.29 kilometers (km). When frequency-weighted, *i.e.,* considering the low frequency output of the source relative to the hearing sensitivities of different marine mammal hearing groups, the estimated distance is decreased to approximately 1 km for the low-frequency cetacean hearing group and to de minimis levels for mid- and high-frequency cetacean hearing groups, significantly less than comparable modeled distances for the proxy 72-

element, 8,000 in$^3$ array evaluated in the rule.

These factors lead to a conclusion that take by Level B harassment associated with use of the Gemini source would be less than would occur for a similar survey instead using the modeled airgun array as a sound source. Based on the foregoing, we have determined there will be no effects of a magnitude or intensity different from those evaluated in support of the rule. Moreover, use of modeling results relating to use of the 72 element, 8,000 in$^3$ airgun array are expected to be significantly conservative as a proxy for use in evaluating potential impacts of use of the Gemini source.

The SA source test option is considered an operational variation rather than a source variation, and would utilize traditional airgun source equipment. The test involves ''source densification,'' in which a greater number of pulses are produced per square kilometer, compared to the OBN/DAS survey. Each source vessel would tow six airgun strings firing within a 120 ms time window, but not simultaneously. On average, the OBN/DAS seismic survey source will be operated such that 400 pulses are produced per square kilometer whereas for the SA test, approximately 900 pulses are produced per square kilometer. This would increase the number of pulses created per day compared to the OBN/DAS survey. Because the sources and/or subarrays are not firing simultaneously, per-pulse output would not be of concern relative to the modeled proxy source. Regarding total pulses, the modeled coil survey configuration selected for use here (see below) had the highest number of simulated pulses of all modeled survey configurations (Zeddies et al., 2015). The SA source test is anticipated to produce a total of 101,558 pulses for the full, 9-day duration of the test (approximately 11,000 pulses per day), and in comparison the coil survey included 120,000 pulses over a 7-day simulation (approximately 17,000 pulses per day). Note also that each pulse during the SA test would be from one subarray or string, each of which is approximately 1,700 in$^3$ volume, as compared with the simulated pulses from the modeled Coil survey which are from the full 72-element, 8,000 in$^3$ proxy. In addition, this portion of the survey would cover a much smaller area of approximately 112 km$^2$ compared to the 1,751–3,305 km$^2$ survey area covered by the OBN/DAS survey. We have determined that the SA test is not expected to cause effects beyond those considered through the rule, and that use of modeling results from a traditional airgun array as a proxy for take that may occur incidental to the SA source test is applicable.

Consistent with the preamble to the final rule, the survey effort proposed by bp in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No 3D OBN or DAS surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* two-dimensional (2D), 3D narrow-azimuth (NAZ), 3D wide-azimuth (WAZ), Coil) is generally conservative for use in evaluation of 3D OBN and DAS survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29220, June 22, 2018). Coil was selected as the best available proxy survey type in this case because the spatial coverage of the planned survey is most similar to the coil survey pattern.

The planned 3D OBN and DAS surveys will use the same seismic source and are thus conducted at the same time. This will involve two source vessels. The coil survey pattern was assumed to cover approximately 144 kilometers squared (km$^2$) per day (compared with approximately 795 km$^2$, 199 km$^2$, and 845 km$^2$ per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although bp is not proposing to perform a survey using the coil geometry, its planned 3D OBN and DAS survey is expected to cover approximately 55.1 km$^2$ per day, meaning that the coil proxy is most representative of the effort planned by bp in terms of predicted Level B harassment exposures. In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in$^3$ array. Thus, as discussed above, estimated take numbers for this LOA are considered conservative due to differences between the acoustic source planned for use (32 element, 5,110 in$^3$ airgun array, Gemini test, and SA test) and the proxy array modeled for the rule.

The survey will include 69 days of sound source operation (60 days of traditional airgun array surveys and 9 days of testing). The survey plan includes 34 days within Zone 5 and 35 days within Zone 7. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (*e.g.,* 86 FR 5322, January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public. For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for Rice's whales and killer whales produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include winter (December–March) and summer (April–November).

known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100 and 400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling has identified similar habitat (*i.e.,* approximately 100 to 400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016; Garrison et al., 2023), and Rice's whales have been detected within this depth band throughout the GOM (Soldevilla et al., 2022, 2024). See discussion provided at, *e.g.,* 83 FR 29228, June 22, 2018; 83 FR 29280, June 22, 2018; 86 FR 5418, January 19, 2021.

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100 to 400 m) and that, based on the few available records, these occurrences would be rare. Bp's planned activities will occur in water depths of approximately 1,450 to 2,350 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through this LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992 to 2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017 to 2018 (Waring *et al.,* 2013; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992 to 2009 NOAA surveys (Fraser's dolphin and false killer whale).[4] However, observational data collected by protected species observers (PSO) on industry geophysical survey vessels from 2002 to 2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002 to 2008 and 2009 to 2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322 and 86 FR 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia spp.* or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3 to 2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0 and 10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of 4 killer whales, noting that the whales performed 20 times as many dives 1 to 30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in$^3$ array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, January 19, 2021; 86 FR 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018; 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to 7 animals).

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See table 1 in this notice and table 9 of the rule (86 FR 5322, January 19, 2021).

**Small Numbers Determination**

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than 1 day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5322, January 19, 2021; 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

| Species | Authorized take | Scaled take [1] | Abundance [2] | Percent abundance |
|---|---|---|---|---|
| Rice's whale | 0 | n/a | 51 | 0 |
| Sperm whale | 974 | 412 | 2,207 | 18.7 |
| *Kogia spp* | [3] 398 | 120 | 4,373 | 3.3 |
| Beaked whales | 5,002 | 505 | 3,768 | 13.4 |
| Rough-toothed dolphin | 880 | 252 | 4,853 | 5.2 |
| Bottlenose dolphin | 2,939 | 843 | 176,108 | 0.5 |
| Clymene dolphin | 2,429 | 697 | 11,895 | 5.9 |
| Atlantic spotted dolphin | 1,171 | 336 | 74,785 | 0.4 |
| Pantropical spotted dolphin | 14,734 | 4,229 | 102,361 | 4.1 |
| Spinner dolphin | 2,278 | 654 | 25,114 | 2.6 |
| Striped dolphin | 1,038 | 298 | 5,229 | 5.7 |
| Fraser's dolphin | 308 | 88 | 1,665 | 5.3 |
| Risso's dolphin | 623 | 184 | 3,764 | 4.9 |
| Melon-headed whale | 1,588 | 468 | 7,003 | 6.7 |
| Pygmy killer whale | 485 | 143 | 2,126 | 6.7 |
| False killer whale | 673 | 198 | 3,204 | 6.2 |
| Killer whale | 7 | n/a | 267 | 2.6 |
| Short-finned pilot whale | 366 | 108 | 1,981 | 5.5 |

[1] Scalar ratios were applied to "Authorized Take" values as described at 86 FR 5322 and 86 FR 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and the killer whale, the larger estimated SAR abundance estimate is used.

[3] Includes 24 takes by Level A harassment and 374 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of bp's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

## Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to bp authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: March 11, 2024.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2024–05468 Filed 3–14–24; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[RTID 0648–XD764]

## Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Ecosystem Advisory Subpanel (EAS) will hold an online meeting, which is open to the public.

**DATES:** The online meeting will be held Thursday, April 4, 2024, from 1 p.m. to 3 p.m., Pacific Time.

**ADDRESSES:** This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

**SUPPLEMENTARY INFORMATION:** The purpose of this online meeting is for the EAS to discuss and draft the contents of a report with its recommendations for the Council Operations and Priorities agenda item that the Pacific Council will discuss at its April 2024 meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

## Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: March 12, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024–05564 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD761]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Advisory Subpanel (HMSAS) will hold an online meeting, which is open to the public.

**DATES:** The online meeting will be held Tuesday, April 2, 2024, from 9 a.m. to 11 a.m., Pacific Time.

**ADDRESSES:** This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

**SUPPLEMENTARY INFORMATION:** The purpose of this online meeting is for the HMSAS to discuss and draft the contents of a report with its recommendations for the Council Operations and Priorities agenda item that the Pacific Council will discuss at its April 2024 meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

## Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: March 12, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024–05562 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Understanding the Human Response to Water Hazards: A Social Network Analysis

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 24, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic & Atmospheric Administration (NOAA), Commerce.

*Title:* Understanding the Human Response to Water Hazards: A Social Network Analysis.

*OMB Control Number:* 0648–XXXX.

*Form Number(s):* None.

*Type of Request:* Regular submission (New information collection).

*Number of Respondents:* 790.

*Average Hours per Response:* Semi-structured interviews: 1 hour; Survey: 15 minutes.

*Total Annual Burden Hours:* 227.50 Hours.

*Needs and Uses:* This is a request for a new collection of information. The Social, Behavioral, and Economic Sciences Program (SBES) in the Office of Science and Technology Integration for the National Weather Service (NWS) is sponsoring this data collection effort.

Under the Bipartisan Infrastructure Law, the NWS SBES Program was

provided funding to better understand the human responses to water hazard services and products. This project seeks to understand and mitigate flooding outcomes for riverine communities, especially those that rank high on the Centers for Disease Control's (CDC's) Social Vulnerability Index (SVI), by conducting a Social Network Analysis (SNA) to study how stakeholders within two selected communities: Roanoke, Virginia; and Greenbrier County, West Virginia. Based on interviews with local government leaders and faith/community-based organizations (FCBOs) along with a survey of residents, the resulting SNA will map how messages are created and distributed, how they are accessed and understood, and how the information affects the decisions of emergency and water resource managers, first responders, community partners, and the general public as they prepare for, respond to, and recover from flooding events. While the NWS possesses some anecdotal knowledge of the dissemination and use of flood forecasts, a more complete accounting and formal analysis of the individuals and groups within these networks are needed. Ideally, the findings from the SNA in relation to the water hazard products and services will not only improve the NWS's understanding of who the stakeholders are, but also how they use the information provided and what they believe are the benefits for their constituents.

The primary driver for this project comes from the direction of NOAA leadership to develop a social behavioral infrastructure with data that supports the NWS in providing equitable service delivery for all of its products and services. Based on *H.R.3684 Infrastructure Investment and Jobs Act (IIJA), Provision 3:* funding shall be used for coastal and inland flood and inundation mapping and forecasting, next-generation water modeling activities such as modernized precipitation frequency and probable maximum studies, and transformative foundational social science research that build infrastructure and supports equitable service delivery to all communities. This project also aligns with Goal 3 of the NWS Strategic Plan to transform our Agency to meet current and future needs of society by (3.6) delivering actionable inland and coastal water resource and inundation information across all time scales to address the growing risk of flooding, drought, and low water flow as well as immediate and long range water management and planning; and by (3.8) understanding and applying the best social, behavioral, and economic sciences to clearly communicate information with communities in multiple languages and deliver equitable service for those historically underserved and socially vulnerable to attain the desired response to high impact events.

Semi-structured interviews will be utilized to collect information from state and local government leaders, as well as FCBO leaders. A survey will be provided to residents of both communities, along with an in-person intercept survey provided to residents of Greenbrier County based on interviews with the FCBO leaders.

The SNA maps derived from the data collected will be utilized by the following NWS offices:

- Community Engagement Program to support outreach and engagement activities with specific groups and the organizations that serve these populations.
- The Decision Support Integration Branch of the Analyze, Forecast, and Support Office to help them identify and recruit organizations, businesses, and individuals who may be well poised to become Weather-Ready Ambassadors.

The raw data collected will be used by:

- The Social, Behavioral, and Economic Sciences (SBES) Program in the Office of Science and Technology Integration in developing an Agent Based Model (ABM) that can demonstrate, describe, and potentially anticipate evacuation and mobility behaviors within a prescribed system for inland flooding events. If possible, the application of an ABM will support the development of mitigation efforts that stakeholders can test to understand how the actions of specific agents within a system could possibly alter outcomes of flooding events for a community.

*Affected Public:* Local government, Not-for profit, and individuals or households.

*Frequency:* Once.

*Respondent's Obligation:* Voluntary.

*Legal Authority: H.R.3684 Infrastructure Investment and Jobs Act (IIJA), Provision 3:* funding shall be used for coastal and inland flood and inundation mapping and forecasting, next-generation water modeling activities such as modernized precipitation frequency and probable maximum studies, and transformative foundational social science research that build infrastructure and supports equitable service delivery to all communities.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2024–05602 Filed 3–14–24; 8:45 am]

BILLING CODE 3510–KE–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD763]**

### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

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**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold an online meeting, which is open to the public.

**DATES:** The online meeting will be held Thursday, April 4, 2024, from 10 a.m. to 12 p.m., Pacific Time.

**ADDRESSES:** This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

**SUPPLEMENTARY INFORMATION:** The purpose of this online meeting is for the

HMSMT to discuss and draft the contents of a report with its recommendations for the Council Operations and Priorities agenda item that the Pacific Council will discuss at its April 2024 meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: March 12, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024–05563 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD804]**

### Marine Mammals; File No. 27548

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Lars Bejder, Ph.D., University of Hawaii at Manoa, 46–007 Lilipuna Road, Kaneohe, Hawaii 96744, has applied in due form for a permit to conduct research on cetaceans.

**DATES:** Written comments must be received on or before April 15, 2024.

**ADDRESSES:** The application and related documents are available for review by selecting ‘‘Records Open for Public Comment’’ from the ‘‘Features’’ box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27548 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27548 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Shasta McClenahan, Ph.D., or Erin Markin, Ph.D., (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a 5-year research permit to study cetaceans including fundamental biology, ecology, habitat use, social structure, behavior, energetics, and impacts of human activities. Up to 31 species of marine mammals may be targeted including the following ESA-listed species: blue (*Balaenoptera musculus*), bowhead (*Balaena mysticetus*), fin (*Balaenoptera physalus*), false killer (*Pseudorca crassidens;* Hawaiian insular distinct population segment [DPS]), gray (*Eschrichtius robustus;* Western North Pacific DPS), humpback (*Megaptera novaeangliae;* Western North Pacific and Mexico DPSs), sei (*Balaenoptera. borealis*), and sperm (*Physeter macrocephalus*) whales. Research may occur year-round in U.S. and international waters of the Pacific Ocean near Hawaii, Alaska, and U.S. territories. Research may be conducted from a vessel or unmanned aircraft system for counts, photography and video recording (above and underwater), photogrammetry, passive acoustics, tracking, biological sampling (skin and blubber biopsy, sloughed skin, exhaled air, and feces), and suction-cup tagging. See the application for complete numbers of animals requested by species, age-class, and procedure.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 12, 2024.

**Julia M. Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2024–05596 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD805]**

### Marine Mammals; File No. 27921

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Joshua Schiffman, M.D., University of Utah, 2000 Circle Of Hope Drive, Salt Lake City, UT 84112, has applied in due form for a permit to import marine mammal parts for scientific research.

**DATES:** Written comments must be received on or before April 15, 2024.

**ADDRESSES:** The application and related documents are available for review by selecting ‘‘Records Open for Public Comment’’ from the ‘‘Features’’ box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27921 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27921 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Shasta McClenahan, Ph.D., or Malcolm Mohead, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16

U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to import and receive biological samples from up to 100 cetaceans and 100 pinnipeds, excluding walrus, annually to study the mechanisms of cancer resistance in marine mammals. The requested duration of the permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 12, 2024.

**Julia M. Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2024–05557 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD799]**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council will hold a public webinar to collect input on the Summer Flounder Commercial Mesh Size Exemptions Framework/Addendum.

**DATES:** The meeting will be held on Tuesday, April 2, 2024, from 2 p.m. until 4 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The meeting will be held via webinar. Connection information will be posted prior to the meeting at *www.mafmc.org.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The Mid-Atlantic Fishery Management Council (Council) will host a webinar to collect public input on draft alternatives for a framework action/addendum to consider revisions to two exemptions to the summer flounder commercial minimum mesh size requirements, including: (1) the Small Mesh Exemption Program (SMEP), and (2) the flynet exemption. This action was initiated in response to a Fall 2023 review of summer flounder commercial mesh regulations, and is being developed jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board).

Under the SMEP vessels landing more than 200 pounds of summer flounder east of longitude 72°30.0′ W, from November 1 through April 30, and using mesh smaller than 5.5-inch diamond or 6.0-inch square are required to obtain a SMEP permit from NMFS. Based on suggestions made by fishing industry representatives during the Fall 2023 review of this exemption, the Council and Board are considering modifications to the exempted area associated with this exemption.

The Council and Board are also considering modifications to the regulatory definition of a flynet as it relates to the flynet exemption to the summer flounder commercial minimum mesh size. Under the flynet exemption, vessels fishing with a two-seam otter trawl flynet with a specific mesh configuration are also exempt from the minimum mesh size requirements. The definition of an exempted flynet is being reconsidered in light of changes in the use and configuration of commercial trawl gear since this exemption was put in place in the 1990s.

The overarching aim of these considerations is to modernize these requirements, taking into account current fishing industry gear usage and practices. The Council seeks to provide additional flexibility to fishery participants while ensuring continued adherence to the conservation objectives outlined in the Fishery Management Plan.

The primary target audience for this webinar includes: (a) any commercial industry participant using trawl gear to fish for summer flounder, (b) commercial fishing industry participants utilizing either of the summer flounder mesh size exemptions while targeting any species, (c) any stakeholder with knowledge of these gear types and their use, and (d) any member of the public who wishes to provide comments or recommendations on these regulations. Additional information including background documents, can be found on the Council's website at: *https://www.mafmc.org/.*

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: March 11, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024–05513 Filed 3–14–24; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No.: PTO–C–2024–0004]**

### Request for Comments: Unlocking the Full Potential of Intellectual Property by Translating More Innovation to the Marketplace

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Request for comments.

**SUMMARY:** American innovation is a cornerstone of our strong, vibrant economy, with robust development of emerging and early-stage innovation spurring entrepreneurship and other economic activity. Intellectual property (IP) forms the bridge that moves innovation to impact for the benefit of society. The United States Patent and Trademark Office (USPTO, or the Agency) is committed to supporting translation of innovations to the marketplace through commercialization and is seeking public comment on how the agency can build on current initiatives to advance this commitment. The USPTO, with support from the National Oceanic and Atmospheric Administration (NOAA), the National Institute of Standards and Technology (NIST), and the National Science Foundation (NSF), seeks input on new

ways to unlock the potential of intellectual property for the public good by fostering pathways for innovation to reach the marketplace, with particular attention to green, critical, and emerging technologies.

**DATES:** To ensure consideration, written comments must be received by May 14, 2024. Please note that comments submitted after May 14, 2024 will not be considered.

**ADDRESSES:** You may submit written comments as follows. For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, enter docket number PTO–C–2024–0004 on the homepage and select ''Search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this request for comments and select the ''Comment'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format (PDF) or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions regarding how to submit comments by mail or by hand delivery.

**FOR FURTHER INFORMATION CONTACT:** Parikha Mehta, USPTO, Office of the Under Secretary, at 571–272–3248 or *parikha.mehta@uspto.gov.* Please direct media inquiries to the USPTO's Office of the Chief Communications Officer at 571–272–8400.

**SUPPLEMENTARY INFORMATION:** Intellectual property rights create a critical engine that powers our economy and supports our nation as a global leader in innovation and entrepreneurship. For example, patents drive our nation's technological progress and achievement by incentivizing and protecting new ideas, encouraging investment in creative problem solving, and promoting knowledge sharing to inspire others to engage in follow on innovation. When brought to the market through commercialization, patented products save lives, improve our standard of living, and address some of the pressing issues to solve global challenges.

Through this request for comment, the USPTO seeks input on what more the Agency can do to accelerate and incentivize commercialization of innovation. The USPTO also invites specific input on what the Agency can do to accelerate and incentivize the commercialization of green, critical, and emerging technologies. We seek to better understand how the USPTO might build on and expand our current initiatives in this space, detailed below, through direct agency work, through collaboration with other agencies or institutions such as NOAA, NIST, and NSF, as the principal advisor to the President and the Administration on IP through the Secretary of Commerce, and as a technical advisor to Congress on IP. While the USPTO is proud of our recent initiatives to ensure robustness and reliability of IP, as well as the role the agency is playing in the current dialogue on Bayh-Dole rights, pandemic preparedness, and Trade-Related aspects of Intellectual Property Rights waivers, those topics are beyond the scope of this request for comment. Here, we specifically focus on opportunities for positive public impact by bringing innovation to market through commercialization, for example via the licensing of IP rights. Public comments on this notice will be used to evaluate possibilities for amplifying the impact of our current work, and to explore new ways to support the transfer of innovation to the marketplace.

As used here, ''technology transfer,'' ''tech transfer,'' and ''commercialization'' interchangeably refer to the cycle of bringing new technologies to the public through the marketplace, which is often made possible by the licensing of IP rights such as patents.

## Patents Lead to Positive Public Impact Through Commercialization

Bringing innovation to the marketplace through commercialization serves the greater good by creating jobs, improving economic prosperity, and solving world problems. IP rights such as patents play a key role in our economy, creating a mutually beneficial risk-tolerance paradigm for both patent holders and commercialization partners. Patents allow innovators to retain ownership and integrity of their technology while also incentivizing partners to provide the critical resources and support needed to bring that new technology to market through licensing. The societal benefits of this IP rights commercialization paradigm are directly evident in the success of the U.S. economy. For example, in 2019, the U.S. industries that relied most heavily on intellectual property (''IP-intensive'' industries) accounted for $7.8 trillion in gross domestic product or 41% of domestic economic activity and account for 63 million jobs, or 44% of all U.S. jobs.[1] These industries also provided 79% (or $1.31 trillion) of all U.S. commodity exports in that year.

Without IP commercialization, we might not have internet search algorithms, the artificial lung, or life-saving COVID–19 therapies. By continuing to build a strong IP system that encourages the transfer of technological advances to the marketplace, we can foster the emerging technologies of the future, such as those that will mitigate the effects of climate change or prepare us for future global health challenges. We also recognize the importance of balancing IP commercialization and innovation with work to increase competition and prevent unnecessary barriers for new entrants into the market.

## Current Initiatives

The following examples of current initiatives illustrate our existing efforts in the tech transfer space, as a reference point for considering ways we might expand or add to this work for greater impact.

### *I. General Innovation and Technology Transfer*

The USPTO continues to prioritize the development of ecosystems that can unlock IP to create jobs and solutions by translating that IP to the market across sectors, including key technology areas such as healthcare, manufacturing, and climate resilience. The USPTO has built tech transfer into its 2022–2026 strategic plan, making it one of the five overarching goals driving the USPTO's work to ''bring innovation to impact for the public good''.[2] As explained in the strategic plan, the USPTO is focused on driving innovation for long-term economic growth, supply chain resiliency, prosperity, and national security. Getting IP-protected goods and services into the hands of those who can benefit from them via the marketplace is a critical component of U.S. innovation, inclusive capitalism, and global competitiveness.

[1] USPTO Intellectual Property and the U.S. Economy report, third edition. *https://www.uspto.gov/sites/default/files/documents/uspto-ip-us-economy-third-edition.pdf.*

[2] USPTO 2022–2026 Strategic Plan, p 26–29 (2023). *https://www.uspto.gov/sites/default/files/documents/USPTO_2022-2026_Strategic_Plan.pdf.*

We are expanding our efforts to help those pursuing IP protection identify available funding sources—public and private—to bring their innovations to impact for the public good. To further promote U.S. competitiveness and economic growth, we are partnering with other government agencies to provide IP education for federally funded innovators, and to strategize and explore the commercialization of innovation for job creation. We are advocating for policies that support the creation, protection, and enforcement of IP rights, domestically and abroad. As a leader in the global IP ecosystem, the USPTO is providing expertise to IP stakeholders to facilitate best practices.

The USPTO is working closely with colleges and universities, including Historically Black Colleges and Universities (HBCUs) and Minority Serving Institutions (MSIs), as well as professionals and organizations focused on tech transfer, to explore ways in which the USPTO can collaborate with other agencies and with the private sector to improve and enhance the conversion of IP developed through research into impactful real-world solutions.

The USPTO recognizes the need for tools that help connect IP rights owners with funders, so that IP can be realized in the marketplace. For example, during the recent pandemic, we launched an IP marketplace platform that connects the owners of COVID–19 related technologies with funders seeking to commercialize those types of solutions. The Patents 4 Partnerships platform is a voluntary listing of patents and patent application publications indicated as ''available for licensing'' on external public websites or in the USPTO Official Gazette Notices. It also includes links to sources that include the licensing information.

The USPTO recognizes that it will take joint efforts across the entire innovation and commercialization ecosystem to optimally facilitate getting great ideas to impact. For that reason, the USPTO has been working across the U.S. government and with the private sector and universities—including through the USPTO's work with other agencies such as NOAA, NIST, and NSF, through its Council for Inclusive Innovation (CI²) [3] and through the Economic Development Administration's Entrepreneurship [4]—on identifying challenges and opportunities related to innovation and commercialization.

NIST plays a critical role in the facilitation of federal technology transfer by analyzing, planning, coordinating, reporting, and exercising general oversight of technology transfer responsibilities under section 5 of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710(g)) and Executive Order (E.O.) 12591 of April 10, 1987. NIST co-chairs the National Science and Technology Council's Lab-to-Market Subcommittee, which establishes goals, measures performance, streamlines administrative processes and facilitates local and regional partnerships to help foster a healthier environment for R&D commercialization. NIST also convenes the Interagency Working Group for Technology Transfer to identify and disseminate creative approaches to technology transfer from Federal laboratories, advises and assists on federal technology transfer studies, and identifies and coordinates responses to technology transfer policy issues through an interagency task force. NIST also acts as the host agency for the Federal Laboratory Consortium (FLC). The FLC is the nationwide network of federal laboratories that fosters commercialization, best practice strategies, and opportunities for accelerating federal technologies out of the labs and into the marketplace.

*II. Innovation and Tech Transfer for Green Technology*

In addition to its focus on tech transfer in general, the USPTO also recognizes the more specific and immediate need to accelerate the transfer of green technology and climate innovations to the marketplace. In January 2022, the National Oceanic and Atmospheric Administration (NOAA), a sister bureau within the Department of Commerce, reported that 2021 was the fourth warmest year on record for the United States, with 20 separate climate- and weather-related disasters costing over $1 billion each in the United States alone.[5] Last year, 2023, fared no better, registering as the hottest year on record for the planet.[6]

That is why, under the Biden Administration, the USPTO has been focused on initiatives to incentivize the advancement and commercialization of climate innovations. In June 2022, the USPTO launched the Climate Change Mitigation Pilot Program,[7] which expedites initial examination of certain patent applications for innovations that reduce greenhouse gas emissions. Qualifying patent applications are advanced out of turn (that is, granted special status) until first action on the merits by a patent examiner with no charge for the petition to make special. The program [8] supports President Biden's January 27, 2021 Executive Order on Tackling the Climate Crisis at Home and Abroad [9] and ties directly into the administration's priority to reach net-zero greenhouse gas emissions.[10] In June 2023, the USPTO extended and expanded the program to also include innovations that are designed to remove, prevent, and/or monitor greenhouse gas emissions.[11]

The USPTO has also worked with innovators in the green tech space to promote the use of intellectual property to protect and commercialize innovations on major tech platforms in the U.S. and abroad.[12] As part of that work, the USPTO hosted its first ever Green Energy Innovation Expo [13] in May 2023, in collaboration with the Federal Laboratory Consortium and the Association of University Technology Managers The event facilitated partnerships between businesses and federal laboratories, universities, and private-sector innovators—including government-funded startups—offering a wide range of green energy technologies for licensing, including green hydrogen, energy storage, and wind energy.

To bring more green tech and climate innovation to impact, the USPTO is also engaging in several collaborative partnerships. In July 2022, the USPTO became a technology partner to the global green-technology platform of the World Intellectual Property

[3] Council for Inclusive Innovation. *https://www.uspto.gov/initiatives/equity/ci2.*

[4] National Advisory Council on Innovation and Entrepreneurship. *https://www.eda.gov/strategic-initiatives/national-advisory-council-on-innovation-and-entrepreneurship.*

[5] *https://www.noaa.gov/news/us-saw-its-4th-warmest-year-on-record-fueled-by-record-warm-december.*

[6] *https://www.usatoday.com/story/news/nation/2024/01/01/2023-was-earths-hottest-year-experts-say/71882923007/.*

[7] Climate Change Mitigation Pilot Program, 87 FR 33750 (June 3, 2022). See also *https://www.uspto.gov/patents/laws/patent-related-notices/climate-change-mitigation-pilot-program.*

[8] *https://www.uspto.gov/patents/laws/patent-related-notices/climate-change-mitigation-pilot-program.*

[9] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/.*

[10] *https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/04/fact-sheet-biden-harris-administration-makes-historic-investment-in-americas-national-labs-announces-net-zero-game-changers-initiative/.*

[11] Expansion and Extension of the Climate Change Mitigation Pilot Program, 88 FR 35841 (June 1, 2023).

[12] See, for example, the May 2022 Remarks by USPTO Director Kathi Vidal at the ARPA–E Energy Innovation Summit available at *https://www.uspto.gov/about-us/news-updates/remarks-uspto-director-kathi-vidal-arpa-e-energy-innovation-summit.*

[13] *https://www.uspto.gov/about-us/events/green-energy-innovation-expo.*

Organization (WIPO), WIPO GREEN.[14] WIPO GREEN is a public-private partnership established by WIPO in 2013, with more than 145 international partners including major technology companies, intellectual property offices, business groups, research institutes, and nongovernmental organizations. The partnership provides an online platform for technology exchange, connecting providers and seekers of environmentally friendly technologies, and organizing acceleration projects, conferences, and international events that highlight the availability of green technologies.

The USPTO is also collaborating across government, including with the Department of Energy, the NSF, and NOAA to jointly promote the commercialization of green technologies. The USPTO engaged in a detail exchange program [15] [16] with NOAA that focuses on the intersection of IP and climate and environmental technologies. USPTO expertise helps NOAA raise awareness and understanding of intellectual property concepts across its research workforce, to achieve a shared organizational understanding of the importance of IP. In return, NOAA is overseeing climate science training for USPTO patent examiners and advising the USPTO on future green initiatives. This collaboration is ongoing and has already resulted in positive outcomes, including a formal memorandum of understanding between USPTO and NOAA that defines areas for future work to encourage sustainable economic development while supporting climate and environmental stewardship.[17]

Internationally, the USPTO hosted and led the 2023 annual meeting of the largest IP offices in the world—the European Patent Office, the Japan Patent Office, the Korean Intellectual Property Office, and the China National Intellectual Property Administration (collectively with USPTO referred to as the IP5)—along with WIPO, which focused on sustainability and green tech along with finding ways to work across the offices to bring more green tech innovations to market. The USPTO recently hosted a sustainable innovation dialogue [18] during which the offices discussed how we can work together towards a goal of net-zero carbon emissions to help mitigate climate change and preserve our environment. The IP5 leaders also shared information on initiatives that encourage patent filings in climate technologies in their countries, streamline examination, and encourage eco-friendly efforts, such as paperless filing and energy efficiency. The USPTO brought together innovators, accelerators, and funders, as well as NOAA, to determine how we can be a catalyst to bring climate change technologies from research to the marketplace.

To memorialize the IP5 offices' commitment to sustainability, the offices adopted a new vision statement: ''Building a sustainable future by fostering innovation and economic growth through an inclusive and accessible patent system. Promoting patent protection through harmonization of practices and procedures, high-quality and timely search and examination results, worksharing and access to patent information, and achieving an efficient, cost-effective and user-friendly international patent landscape.'' [19] And, to ensure the work done at the gathering had maximum impact, the Offices compiled and published a ''Climate Initiatives Booklet.'' [20]

### *III. Innovation and Tech Transfer for Critical and Emerging Technologies*

The White House issued an updated list of critical and emerging technologies in February 2022. The list includes ''a subset of advanced technologies that are potentially significant to the U.S. national security. The 2021 Interim National Security Strategic Guidance defines three national security objectives: protect the security of the American people, expand economic prosperity and opportunity, and realize and defend democratic values.'' The list includes everything from AI to quantum information technologies to semiconductors and microelectronics.[21]

The USPTO has been actively involved with the Biden Administration on policies related to critical and emerging technologies, including artificial intelligence [22] and standards policies.[23] To support the Biden Administration and U.S. Department of Commerce's work on supply chain resiliency in the semiconductor space, and enhance the impact of the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act, the USPTO launched the Semiconductor Technology Pilot Program in December 2023.[24] The pilot program is designed to accelerate improvements in the semiconductor industry by expediting examination of patent applications for certain semiconductor manufacturing innovations.

Under the Biden Administration, the USPTO additionally launched its first artificial intelligence (AI) and emerging technology (ET) partnership, an ongoing cooperative effort between the USPTO and the AI/ET community, including academia, independent inventors, small businesses, industry, other government agencies, nonprofits, and civil society. Through the AI/ET Partnership, the USPTO engages the AI/ET community on USPTO AI/ET efforts, such as using AI and ET to enhance the quality and efficiency of patent and trademark examination. The USPTO's Office of the Chief Economist has also published reports on AI diffusion, and the Agency is actively collaborating with other agencies on AI-related issues.

## Request for Comment

The USPTO requests comment from all interested parties, including innovators, patent holders, patent applicants, patent licensees, academic personnel (faculty, researchers, administrators), entrepreneurs, consumers of patented products, public interest groups, and other parties interested in and engaged in innovation, research, development, licensing, or commercialization of technology. Responses may address direct agency work, USPTO collaboration with other agencies or institutions such as NOAA, NIST, or NSF, USPTO's role as a

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[14] *https://www3.wipo.int/wipogreen/en/.*

[15] *https://www.uspto.gov/about-us/news-updates/noaa-us-patent-and-trademark-office-create-work-sharing-program-advance-green.*

[16] *https://www.uspto.gov/blog/director/entry/patenting-innovation-in-climate-science.*

[17] *https://www.noaa.gov/news-release/noaa-uspto-sign-collaborative-agreement-to-advance-climate-technology.*

[19] *https://link.epo.org/ip5/IP5%20Vision%20Statement%2006152023%20FINAL.pdf.*

[20] *https://link.epo.org/ip5/IP5%20Climate%20Initiatives%20Booklet%20%20July%2020%202023.pdf.* More information can be found at *https://www.fiveipoffices.org/20220609.*

[21] *https://www.whitehouse.gov/wp-content/uploads/2022/02/02-2022-Critical-and-Emerging-Technologies-List-Update.pdf.*

[22] See for example the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, *https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/.*

[23] See for example the United States Government National Standards Strategy for Critical and Emerging Technologies, *https://www.whitehouse.gov/wp-content/uploads/2023/05/US-Gov-National-Standards-Strategy-2023.pdf,* the Request for Information on Implementation of the United States Government National Standards Strategy for Critical and Emerging Technologies, *https://public-inspection.federalregister.gov/2023-19245.pdf,* and the Joint ITA–NIST–USPTO Collaboration Initiative Regarding Standards; Notice of Public Listening Session and Request for Comments, *https://www.federalregister.gov/documents/2023/09/11/2023-19667/joint-ita-nist-uspto-collaboration-initiative-regarding-standards-notice-of-public-listening-session.*

[24] Semiconductor Technology Pilot Program, 88 FR 83926 (December 1, 2023). See also *https://www.uspto.gov/SemiconductorTechnology.*

principal advisor to the President and the Administration on IP through the Secretary of Commerce, and/or USPTO's role as a technical advisor to Congress on IP.

Respondents may address any (or none) of the following questions. When possible, respondents should identify which question(s) relate to their comments. Respondents may organize their submissions in any manner.

In particular, the USPTO seeks the following information:

1. Please identify the biggest challenges to, and opportunities for, commercialization of innovation through use of the intellectual property system. Please identify what concrete measures the USPTO can take to help.

2. Are there any IP-related challenges or opportunities that are specific to commercializing green technology and climate technologies? Please identify what concrete measures the USPTO can take to help.

3. Are there any IP-related challenges or opportunities that are specific to commercializing critical and emerging technologies? Please identify what concrete measures the USPTO can take to help.

4. Please identify any changes to IP policies and practices that may help streamline or accelerate commercialization of IP in general.

5. Please identify any changes to IP policies and practices that may help streamline or accelerate commercialization of green technology and climate technologies.

6. Please identify any changes to IP policies and practices that may help streamline or accelerate commercialization of critical and emerging technologies.

7. Please identify any IP-related challenges that interested parties face when licensing or acquiring technologies and identify any changes in the law, policies or practices which could help alleviate these challenges.

8. Please identify challenges that interested parties face when attempting to identify potential licensees, and when licensing intellectual property. Please identify any changes in the law, policies or practices that could help alleviate these challenges.

9. Please provide any feedback on the USPTO's Patents 4 Partnerships [25] platform, including any experience with the same, whether it should be expanded to include patents across all sectors, and any comments on how it can otherwise be improved. Please also identify what additional, concrete measures the USPTO can take to better facilitate connections between innovators and funders.

10. Please provide any feedback on the WIPO GREEN [26] initiative including any experience with the same and any comments on how the USPTO may better leverage its role as a partner to enhance the success and influence of the initiative.

11. Please identify opportunities for the USPTO to minimize any current challenges related to commercialization for certain persons, technologies, industries, or companies. If available, please provide supporting data that illustrates the impact of these challenges on those select groups.

12. Please identify opportunities for the USPTO to help underrepresented groups, individual inventors, and small and medium-sized enterprises to gain enhanced awareness of and access to resources for commercializing their innovations and suggest ways to overcome existing challenges that undermine the realization of this goal.

13. Please identify opportunities for the USPTO to expand research commercialization opportunities through IP rights for MSIs, and HBCUs, including any data or information related to the development of research commercialization at these institutions.

14. Please identify any role that the USPTO can play in incentivizing innovations in commercially viable technologies.

15. Are there any laws or practices in other countries that are effective in bringing IP to market? If so, please identify, explain, and indicate how they can be adapted to be applied within the framework of the U.S. patent law, or explain what new legislation would be needed.

**Katherine K. Vidal,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2024–05504 Filed 3–14–24; 8:45 am]

BILLING CODE 3510–16–P

[25] *https://developer.uspto.gov/ipmarketplace/search/platform.*

[26] *https://www3.wipo.int/wipogreen/en/.*

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

## Procurement List; Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Deletions from the Procurement List.

**SUMMARY:** This action delete product(s) and service(s) to the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Date added to and deleted from the Procurement List:* April 14, 2024.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

### Deletions

On 2/9/2024, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

### End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

*Product(s)*

*NSN(s)—Product Name(s):*
7510–01–664–8784—DAYMAX System, 2023 Calendar Pad, Type I
7510–01–664–8815—DAYMAX System, 2023, Calendar Pad, Type II

*Authorized Source of Supply:* Anthony Wayne Rehabilitation Ctr for Handicapped and Blind, Inc., Fort

Wayne, IN
*Contracting Activity:* GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY
*NSN(s)—Product Name(s):* 7520–00–8LP–6520—Pen, Ballpoint, ''Navy'', White
*Designated Source of Supply:* The Arkansas Lighthouse for the Blind, Little Rock, AR
*Contracting Activity:* U S FLEET FORCES COMMAND, NORFOLK, VA

*Service(s)*

*Service Type:* Tool and MRO Sourcing and Fulfillment Services
*Mandatory for:* USPFO Connecticut, Army National Guard, National Guard Bureau,360 Broad Street, Hartford, CT
*Authorized Source of Supply:* Industries for the Blind and Visually Impaired, Inc., West Allis, WI
*Contracting Activity:* DEPT OF THE ARMY, W7MZ USPFO ACTIVITY CT ARNG

*Service Type:* Furniture Design, Configuration and Installation
*Mandatory for:* U.S. Department of the Interior, OS Office, Herndon Atrium Building, 381 Elden Street, Herndon, VA
*Authorized Source of Supply:* Industries for the Blind and Visually Impaired, Inc., West Allis, WI
*Contracting Activity:* DEPARTMENTAL OFFICES, IBC ACQ SVCS DIRECTORATE (00004)

*Service Type:* Medical Transcription
*Mandatory for:* Department of the Navy, Naval Medical Center San Diego (NMCSD), 34800 Bob Wilson Drive, San Diego, CA
*Authorized Source of Supply:* Lighthouse for the Blind of Houston, Houston, TX
*Contracting Activity:* DEPT OF THE NAVY, NAVAL MEDICAL CENTER SAN DIEGO CA

*Service Type:* Mailroom Operation
*Mandatory for:* Federal Deposit Insurance Corporation: 1910 Pacific Avenue, Dallas, TX
*Authorized Source of Supply:* Dallas Lighthouse for the Blind, Inc., Dallas, TX
*Contracting Activity:* HEALTH AND HUMAN SERVICES, DEPARTMENT OF, DEPT OF HHS

*Service Type:* Mailroom Operation
*Mandatory for:* Department of Health and Human Services: Program Support Center Headquarters, Dallas, TX
*Authorized Source of Supply:* Dallas Lighthouse for the Blind, Inc., Dallas, TX
*Contracting Activity:* HEALTH AND HUMAN SERVICES, DEPARTMENT OF, DEPT OF HHS

*Service Type:* Grounds Maintenance/Vegetation Control
*Mandatory for:* US Navy, Housing and Station Areas, Naval Air Station Fallon, 4755 Pasture Road, Fallon, NV
*Authorized Source of Supply:* PRIDE Industries, Roseville, CA
*Contracting Activity:* DEPT OF THE NAVY, NAVFAC SOUTHWEST

*Service Type:* Janitorial/Custodial
*Mandatory for:* US Navy, Naval and Marine Corps Reserve Center,7117 West Plank Road, Peoria, IL
*Authorized Source of Supply:* Community Workshop and Training Center, Inc., Peoria, IL
*Contracting Activity:* DEPT OF THE NAVY, NAVAL FAC ENGINEERING CMD MID LANT

**Michael R. Jurkowski,**

*Director, Business Operations.*

[FR Doc. 2024–05567 Filed 3–14–24; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

## Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) previously furnished by such agencies.

**DATES:** Comments must be received on or before: April 14, 2024.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Product(s)*

*NSN(s)—Product Name(s):*
4210–01–387–1392—Rake, Collapsible, Forest Fire
*Authorized Source of Supply:* BESTWORK INDUSTRIES FOR THE BLIND, INC, Cherry Hill, NJ
*Contracting Activity:* DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
*Mandatory for:* Total Government Requirement
*Distribution:* B-List

### Deletions

The following product(s) are proposed for deletion from the Procurement List:

*Product(s)*

*NSN(s)—Product Name(s):*
8105–01–662–7124—Can Liners—Can Liner, Linear Low Density, 44 Gallon, Clear
8105–01–662–6362—Can Liners—Can Liner, Linear Low Density, 23 Gallon, Clear
8105–01–662–7122—Can Liners—Can Liner, Linear Low Density, 32 Gallon, Clear
8105–01–662–6361—Can Liners—Can Liner, Linear Low Density, 10–15 Gallons, Clear
8105–01–662–7928—Can Liners—Can Liner, Linear Low Density, 40–45 Gallon, Clear
*Authorized Source of Supply:* Envision, Inc., Wichita, KS
*Contracting Activity:* GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

*NSN(s)—Product Name(s):*
7350–00–988–6498—Cup, Paper, Disposable, Hot, White, 8 oz, with Handle
7350–00–205–1182—Cup, Paper, Disposable, Hot, White, 6 oz, with Handle
*Authorized Source of Supply:* The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA
*Contracting Activity:* STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

*NSN(s)—Product Name(s):*
7350–00–988–6498—Cup, Paper, Disposable, Hot, White, 8 oz, with Handle
7350–00–205–1182—Cup, Paper, Disposable, Hot, White, 6 oz, with Handle
*Authorized Source of Supply:* The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA
*Contracting Activity:* GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

*NSN(s)—Product Name(s):*
8520–01–522–0832—Refill, Body and Hair Shampoo, Scented, 2000 mL
8520–01–522–0833—Refill, Body and Hair Shampoo, Scented, 1000 mL
8520–01–522–0836—Refill, Body and Hair Shampoo, Scented, 800 mL
*Authorized Source of Supply:* Travis Association for the Blind, Austin, TX
*Contracting Activity:* GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

**Michael R. Jurkowski,**

*Director, Business Operations.*

[FR Doc. 2024–05566 Filed 3–14–24; 8:45 am]

BILLING CODE 6353–01–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Agency Information Collection Activities; Comment Request; AmeriCorps Climate Corps Recruitment Form

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing a new information collection.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 14, 2024.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method).

(2) By mail sent to AmeriCorps, Attention: Kelsey Gerber, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or courier to the AmeriCorps mailroom at the mail address in paragraph (2) above between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment, placed in the public docket, and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication are treated as public comments and may be made available to the public, notwithstanding the inclusion of the standard notice.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Gerber, 202–967–5659, or by email at *kgerber@americorps.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* AmeriCorps Climate Corps Recruitment Form.

*OMB Control Number:* TBD. Type of Review: New.

*Respondents/Affected Public:* Businesses and organizations and State, local, or Tribal governments.

*Total Estimated Number of Annual Responses:* 300.

*Total Estimated Number of Annual Burden Hours:* 200.

*Abstract: ACC.gov* will be a recruitment portal where AmeriCorps Climate Corps programs can post information about their service opportunities, such as what the service opportunity will be, where it will occur, and how much it will pay. The website's intent is for the public to see all available AmeriCorps Climate Corps service opportunities in one central location and to review a description of the activity and information about the AmeriCorps Climate Corps program. If a member of the public would like to apply, they can follow a link posted on the service opportunity page, which will take them to the program's application. *ACC.gov* will not include an application to serve. *ACC.gov* will streamline the AmeriCorps Climate Corps' ability to reach a wider audience of applicants, aiming to increase participation in AmeriCorps Climate Corps programs and make it substantially easier for the public to find opportunities to serve.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. AmeriCorps invites comments on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources people spend to generate, maintain, retain, disclose, or provide information to or for a Federal agency. Burden includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems to collect, validate, verify, process, maintain, disclose, and provide information; to train personnel and to be able to respond to a collection of information, search data sources, complete and review the collection of information; and transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

**Yasmeen Shaheen-McConnell,**

*Senior Advisor for Partnerships.*

[FR Doc. 2024–05514 Filed 3–14–24; 8:45 am]

BILLING CODE 6050–28–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Board of Visitors for the U.S. Army Command and General Staff College Meeting Notice

**AGENCY:** Department of the Army, Department of Defense (DoD).

**ACTION:** Notice of open meeting.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board of Visitors for the U.S. Army Command and General Staff College (CGSC), Fort Leavenworth, KS. This meeting is open to the public.

**DATES:** The Board of Visitors will meet from 8:30 a.m. to 4:30 p.m. on Monday, April 22, 2024, and Tuesday, April 23, 2024. The Board of Visitors will meet from 8:30 a.m. to 11 a.m. on Wednesday, April 24, 2024.

**ADDRESSES:** Ike Skelton Combined Arms Research Library, 250 Gibbon Ave., Fort Leavenworth, KS 66027.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dale Spurlin, Alternate Designated Federal Officer for the Committee, by email at *dale.f.spurlin.civ@army.mil,* or by telephone at (913) 684–2742.

**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), 41 CFR 102–3.140(c), and 41 CFR 102–3.150.

*Purpose of the Meeting:* The Board of Visitors for the U.S. Army Command and General Staff College is a non-discretionary Federal advisory committee chartered to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on matters pertaining to the Command and General Staff College's mission, specifically academic policies, staff and faculty development, student success indicators, curricula, educational methodology and objectives; other matters relating to the CGSC that the board decides to consider; and other items that the Secretary of Defense determines appropriate. The board

provides expert and continuous advice on ways to improve the Command and General Staff College (CGSC) educational program, especially with regard to is master's degree programs and the maintenance of regional academic accreditation by the Higher Learning Commission of the North Central Association of Colleges and Schools. The Secretary of Defense may act on the committee's advice and recommendations.

*Agenda:* Overview briefing from the CGSC Dean of Academics; updates on and observations of CGSC operations, curricula, and educational initiatives; briefing and discussion on current challenges within the CGSC; and presentation of other information appropriate to the board's interests.

*Public Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. A 30-minute period between 10:30 a.m.to 11 a.m. on April 24, 2024, will be available for verbal public comments. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Dr. Spurlin, via electronic mail at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Because the meeting of the committee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter the base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. The Ike Skelton Combined Arms Research Library is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Dr. Spurlin at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Written Comments and 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 committee, in response to the stated agenda of the open meeting or regarding the committee's mission in general. Written comments or statements should be submitted to Dr. Spurlin via electronic mail at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least five business days prior to the meeting to be considered by the committee. The Designated Federal Officer will review all timely submitted written comments or statements with the committee chairperson, and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date will be filed and presented to the committee during its next meeting.

**James W. Satterwhite, Jr.,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2024–05597 Filed 3–14–24; 8:45 am]

BILLING CODE 3711–02–P

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2024–OS–0020]**

### Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Project Program

**AGENCY:** Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

**ACTION:** This notice provides new authorities to all Science and Technology Reinvention Laboratory (STRL) personnel demonstration (demo) projects.

**SUMMARY:** STRLs may implement innovative approaches to attract and retain exceptional talent who are participating in Demo projects. The flexibilities described herein allow the STRLs to better manage their workforce by authorizing flexible extended temporary promotion and temporary reassignment for supervisory and team leader positions; a recruitment incentive in the form of time-off awards (time off from duty without loss of pay or charge to leave); retention counter-offers for high performing employees in scientific, technical or administrative positions; and certain awards management authorities for STRL directors. The flexibilities and procedures described herein are in addition to and do not supersede or cancel flexibilities described in previously published STRL FRNs.

**DATES:** This proposal may not be implemented until a 30-day comment period is provided, comments addressed, and a final **Federal Register** notice published. To be considered, written comments must be submitted on or before April 15, 2024.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments should be sent electronically to the docket listed above.

*Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name, docket 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.

**FOR FURTHER INFORMATION CONTACT:**

Department of Defense:

- Office of the Under Secretary of Defense (Research and Engineering), Defense Research Enterprise Office: Dr. James Petro, 571–286–6265, *James.B.Petro.civ@mail.mil.*

Department of the Air Force:

- Air Force Research Laboratory: Ms. Rosalyn Jones-Byrd, 937–656–9747, *Rosalyn.Jones-Byrd@us.af.mil.*
- Joint Warfare Analysis Center: Ms. Amy Balmaz, 540–653–8598, *Amy.T.Balmaz.civ@mail.mil.*

Department of the Army:

- Army Futures Command: Ms. Marlowe Richmond, 512–726–4397, *Marlowe.Richmond.civ@army.mil.*
- Army Research Institute for the Behavioral and Social Sciences: Dr. Scott Shadrick, 254–288–3800, *Scottie.B.Shadrick.civ@army.mil.*
- Combat Capabilities Development Command Armaments Center: Mr. Mike Nicotra, 973–724–7764, *Michael.J.Nicotra.civ@mail.mil.*
- Combat Capabilities Development Command Army Research Laboratory: Mr. Christopher Tahaney, 410–278–9069, *Christopher.S.Tahaney.civ@army.mil.*
- Combat Capabilities Development Command Aviation and Missile Center: Ms. Nancy Salmon, 256–876–9647, *Nancy.C.Salmon2.civ@army.mil.*
- Combat Capabilities Development Command Chemical Biological Center: Ms. Patricia Milwicz, 410–417–2343, *Patricia.L.Milwicz.civ@army.mil.*
- Combat Capabilities Development Command Command, Control,

Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center: Ms. Angela Clybourn, 443–395–2110, *Angela.M.Clyborn.civ@army.mil.*

• Combat Capabilities Development Command Ground Vehicle Systems Center: Ms. Jennifer Davis, 586–306–4166, *Jennifer.L.Davis1.civ@army.mil.*

• Combat Capabilities Development Command Soldier Center: Ms. Joelle Montecalvo, 508–206–3421, *Joelle.K.Montecalvo.civ@army.mil*

• Engineer Research and Development Center: Dr. Lucy Priddy, 601–415–7845, *Lucy.P.Priddy@usace.army.mil.*

• Medical Research and Development Command: Ms. Linda Krout, 301–619–7276, *Linda.J.Krout.civ@health.mil.*

• Technical Center, Space and Missile Defense Command: Dr. Chad Marshall, 256–955–5697, *Chad.J.Marshall.civ@army.mil.*

Department of the Navy:

• Naval Air Warfare Center, Weapons Division and Aircraft Division: Mr. Richard Cracraft, 760–939–8115, *Richard.A.Cracraft2.civ@us.navy.mil.*

• Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center: Ms. Lori Leigh, 805–901–5917, *Lori.A.Leigh@us.navy.mil.*

• Naval Information Warfare Centers:

◦ Naval Information Warfare Center Atlantic: Mr. Michael Gagnon, 843–218–3871, *Michael.L.Gagnon2.civ@us.navy.mil.*

◦ Naval Information Warfare Center Pacific: Ms. Angela Hanson, 619–553–0833, *Angela.Y.Hanson.civ@us.navy.mil.*

• Naval Medical Research Center: Dr. Jill Phan, 301–319–7645, *Jill.C.Phan.civ@mail.mil.*

• Naval Research Laboratory: Ms. Ginger Kisamore, 202–731–8100, *Ginger.Kisamore@nrl.navy.mil.*

• Naval Sea Systems Command Warfare Centers: Ms. Diane Brown, 215–897–1619, *Diane.J.Brown.civ@us.navy.mil.*

• Office of Naval Research: Ms. Margaret J. Mitchell, 703–588–2364, *Margaret.J.Mitchell@navy.mil.*

Marine Corps:

• Marine Corps Tactical Systems Support Activity: Lissa Henriksen, 760–587–6893, *Lissa.Lalonde@usmc.mil.*

**SUPPLEMENTARY INFORMATION:**

**1. Background**

Through the USD(R&E), the Secretary exercises the authorities granted to the Office of Personnel Management (OPM) under 5 United States Code (U.S.C.) 4703 to conduct personnel demonstration projects at DoD laboratories designated as STRLs. All STRLs authorized pursuant to 10 U.S.C. 4121 may use the provisions described in this FRN for employees participating in the Demo Project. STRLs implementing these flexibilities must have an approved personnel demonstration project plan published in an FRN and must fulfill any collective bargaining obligations. Each STRL will establish internal operating procedures (IOPs) as appropriate.

The 22 current STRLs are:

• Air Force Research Laboratory
• Joint Warfare Analysis Center
• Army Futures Command
• Army Research Institute for the Behavioral and Social Sciences
• Combat Capabilities Development Command Armaments Center
• Combat Capabilities Development Command Army Research Laboratory
• Combat Capabilities Development Command Aviation and Missile Center
• Combat Capabilities Development Command Chemical Biological Center
• Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center
• Combat Capabilities Development Command Ground Vehicle Systems Center
• Combat Capabilities Development Command Soldier Center
• Engineer Research and Development Center
• Medical Research and Development Command
• Technical Center, US Army Space and Missile Defense Command
• Naval Air Systems Command Warfare Centers
• Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center
• Naval Information Warfare Centers, Atlantic and Pacific
• Naval Medical Research Center
• Naval Research Laboratory
• Naval Sea Systems Command Warfare Centers
• Office of Naval Research
• Marine Corps Tactical Systems Support Activity

**2. Overview**

**I. Introduction**

*A. Purpose*

This FRN provides new personnel management flexibilities designed to enable the STRL Directors to be more agile and competitive in attracting, hiring, and retaining world-class candidates in science, technology, engineering and mathematics (STEM) career fields and in career fields that directly support the STRL mission. Specifically, this notice provides a new approach to assigning employees to supervisory and team leader positions within the STRL Demo project by authorizing a time-limited, renewable temporary promotion and a renewable temporary reassignment authority; time-off awards as a recruitment incentive for employees to accept positions in the Demo project; retention counter-offers for high performing employees in scientific, technical or administrative positions within the STRL Demo project; and awards management authority for STRL Directors.

The authority to offer time-limited supervisory and team leader positions to employees participating in the Demo project will enable STRL Directors to better manage their workforce by (1) taking individual career preferences into consideration; (2) increasing efforts in succession planning; (3) allowing for periodic assessments of the supervisory talent pool; (4) allowing for better utilization of supervisory and leadership skills and experience; (5) enhancing organizational planning; and (6) synchronizing timelines for supervisory and leadership continuity. Additionally, it provides greater flexibilities to employees by increasing flexibility in individual development and providing more pathways to developmental assignments to broaden and deepen their experiential base.

The authority to provide time-off awards as a recruitment incentive to employees participating in the Demo project enables the STRLs to better compete with industry where time-off is often part of recruitment packages. Such an incentive may be especially attractive to candidates from outside of government who value time off and typically would not accumulate a significant balance of paid leave for some time.

The authority to provide retention counteroffers to high performing employees participating in the Demo project in any career field, who have critical skills and present evidence of alternative employment opportunities with higher compensation, will enable the STRLs to continue to meet mission requirements by retaining key employees.

The authority for STRL Directors to manage award funding for employees participating in the Demo project, consistent with the STRL's budget, will enable STRLs to fully utilize their contribution- or performance-based pay systems by providing timely award funding for pay pools which are often administered on different cycles than

those applicable to employees who are not participating in a Demo project.

*B. Required Waivers to Law and Regulation*

Waivers and adaptations of certain title 5, U.S.C. and title 5, Code of Federal Regulations (CFR) provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions authorized under an approved STRL demonstration project. Appendix A lists waivers needed to enact authorities described in this FRN. Nothing in this plan is intended to preclude STRLs from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this FRN.

*C. Problems With Present System*

Despite the authorities already available to STRLs, some laboratories still have difficulty recruiting and retaining supervisors or team leaders within the organization. STRLs need the ability to shape the mix of skills and expertise in order to position the most qualified personnel in a given position to meet new research and development missions. The problem with the traditional system is that it does not support flexibility in organizational and succession planning. Time-limited supervisory and team leader positions will enable management to periodically evaluate these positions, taking into consideration mission needs, as well as employee career development, and organizational succession planning. It will also offer experiential opportunities for employees interested in becoming supervisors and team leaders. This dynamic will support individual development, organizational planning, synchronizing timelines for supervisory/leadership continuity, and calibrating career expectations vs. mission needs. Similar to the Flexible Extended Temporary Promotion Authority for ST and SSTM positions documented in the Air Force Research Laboratory FRN, 82 FR 38896, STRLs need the flexibility to offer temporary promotions and temporary reassignments not to exceed 5 years, with the ability to extend in not longer than 5-year increments, for all supervisory and team leader positions.

STRLs need numerous flexible tools to use in their battle for talent. Current recruitment incentives involve monetary payments only and offer no means to provide additional paid time off from duty as a recruitment incentive. Providing a time-off award, instead of or in addition to other incentives, will enable STRLs to better compete for critical talent.

Retaining critical talent is also a priority for STRLs. The retention incentive available under 5 CFR part 575 subpart C is limited to 25% of an employee's basic pay and requires documented analysis of employment trends and labor market factors; quality and availability of potential sources of employees; the success of recent efforts to recruit candidates; retention of similar employees; and other factors. This monetary limit and time-consuming process prevents STRLs from effectively countering recruitment offers from the private sector. Similar to the retention counteroffer for employees with critical scientific or technical skills documented in the Technical Center of the U.S. Army Space and Missile Defense Command (USASMDC) FRN, 84 FR 49255, this retention counteroffer for all STRL employees participating in the Demo project, regardless of career field, will allow the STRLs to retain critical talent by quickly approving an increase to basic pay and/or an incentive up to 50% of an employee's basic pay in circumstances where employees with critical skills receive an offer of employment with higher compensation.

Finally, the timing of DoD awards guidance is generally consistent with the Defense Performance Management and Appraisal Program which uses an assessment cycle that ends in the March/April timeframe. Because STRL performance and contribution-based systems often use different assessment cycles and issue special act and notable achievement awards during the first quarter of the fiscal year, independent authority to issue awards will promote greater efficiency in the administration of STRL Demo projects.

*D. Participating Organizations and Employees*

All DoD laboratories designated as STRLs pursuant to 10 U.S.C. 4121(b), as well as any additional laboratories designated as STRLs by the Secretary of Defense (SECDEF), through the USD(R&E), with approved personnel demonstration project plans published in FRNs may use the provisions described in this FRN. Absent another statutory authority to provide these flexibilities, the provisions do not apply to employees who are not candidates for or incumbents of positions participating in the Demo projects authorized by 10 U.S.C. 4121, to include prevailing rate employees (as defined by 5 U.S.C. 5342(a)(2)) and senior executives (as defined by section 3132(a)(3) of such title). STRLs implementing these flexibilities must first fulfill any collective bargaining obligations.

**II. Personnel System Changes**

*A. Description and Implementation*

1. Flexible Temporary Assignments

An STRL Director may approve flexible temporary promotions or reassignments to supervisory and team leader positions for not more than five years, with the ability to extend without limit in not more than five-year increments for candidates who are current Federal employees participating in the Demo project. The candidates must meet the OPM Qualification Standard for the position. The initial flexible temporary promotion must be made using competitive procedures. Prior to extending a temporary promotion or reassignment or making the action permanent, management will make a determination based on mission needs, employee career development, and organizational succession planning on whether the employee should continue in the position on a temporary or permanent basis. If not extended on a temporary basis or made permanent, the employee will return to the position held prior to the temporary assignment or to a position within the STRL comparable in duties and pay band to the position held before the assignment. Upon termination of the temporary promotion or reassignment, pay will be set in accordance with the STRL's applicable pay setting rules and internal operating procedures. To be converted to a permanent supervisory or team leader position, the employee must: (1) have been notified in writing at the time of the initial action of the possibility of the temporary assignment being made permanent at a later date; (2) served a minimum of one year of continuous service in the temporary position; and (3) have at least a successful or equivalent performance rating in any applicable supervisory/leadership performance element. STRLs will document their plans and processes in IOPs.

2. Authority To Provide Time-Off as a Recruitment Incentive

An STRL Director may provide a newly hired or newly converted participant in the Demo project up to 80 hours of time-off from duty, without loss of pay or charge to leave, as a recruitment incentive, to be used within one year. This recruitment incentive will be processed in the same manner as a time-off award available under the authority in 5 U.S.C. chapter 45, but it is not provided pursuant to that authority and is not subject to otherwise

applicable limits on the use of that authority. The time-off provided as a recruitment incentive may not be converted to cash payment and is forfeited if not used within twelve months after it is posted to the employee's leave account. STRLs may require a service agreement when offering this recruitment incentive. STRLs will document in IOPs the criteria for determining the amount of paid time off that may be provided as a recruitment incentive.

3. Retention Counteroffers

STRL Directors may offer a retention counteroffer to high performing employees participating in the Demo project, with critical scientific, technical or administrative skills, in any career field, who present credible evidence of an alternative employment opportunity with higher compensation. Such employees may be provided increased basic pay (up to the top of the pay band/cap within a pay band) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. Retention counteroffers, either in the form of a base pay increase and/or a lump sum payment, count toward the Executive Level I aggregate limitation on pay consistent with 5 U.S.C. 5307 and 5 CFR part 530, subpart B. STRLs may require a service agreement when offering this retention counteroffer. Further details will be published in STRL IOPs.

4. STRL Award Management Authority

STRL compensation strategies develop and foster a culture of recognition. Strategic use of awards and recognition throughout the year adds value to the STRLs and supports retention of high performing/contributing employees. STRL Directors manage the workforce strength, structure, positions, and compensation without regard to any limitation on appointments, positions, or funding in a manner consistent with the budget available. STRL Directors will execute contribution/performance-based payouts, awards and bonuses, and non-ratings-based awards and bonuses for the Demo workforce consistent with Demo project plans and available funds budgeted for that purpose. Unless directed or authorized by the USD(R&E), in coordination with the Under Secretary of Defense for Personnel and Readiness, DoD Components will not impose additional management limitations on the payments of contribution/performance-based payouts, awards and bonuses, and non-ratings based awards and bonuses.

*B. Evaluation*

Procedures for evaluating these authorities will be incorporated into the STRL demonstration project evaluation processes conducted by the STRLs, OUSD(R&E), or Component headquarters, as appropriate.

*C. Reports*

STRLs will track and provide information and data on the use of these authorities when requested by the Component headquarters or OUSD(R&E).

**Appendix A: Required Waivers to Laws and Regulations**

BILLING CODE 6001–FR–P

| Title 5, United States Code | Title 5, Code of Federal Regulations |
|---|---|
| 5 U.S.C. 45, Subchapter 1 - Awards for Superior Accomplishments. Waived to the extent necessary to allow the STRL director to implement the flexibilities in this Federal Register and provide paid time-off as a recruitment incentive, provide retention and other incentive awards, and provide contribution- and performance-based payouts, as described in this FRN. | 5 CFR part 335, Section 335.102(f) - Agency authority to promote, demote, or reassign. Waived to the extent necessary to allow extensions of temporary promotions and reassignments as described in this Federal Register Notice.<br>5 CFR part 451, Subpart A - Agency Awards. Waived to the extent necessary to allow the STRL Director to implement the flexibilities in this Federal Register and provide paid |

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| | time-off as a retention incentive, provide retention incentives and other incentive awards, and execute contribution and performance-based payouts, as described in this FRN. |
| | 5 CFR Part 575, Subpart A and Subpart C – Recruitment and Retention Incentives. |
| | Waived to the extent necessary to allow the STRL Director to implement the recruitment and retention flexibilities as described in this Federal Register notice, to include paying a retention counteroffer up to 50 percent of basic pay to retain high performing employees and to determine whether a service agreement is required. Criteria for these determinations will be as prescribed in 5 U.S.C. 5754 unless otherwise specified in this FRN. |

**Appendix B. Authorized STRLs and Federal Register Notices**

| STRL | Federal Register Notice |
|---|---|
| Air Force Research Laboratory | 61 FR 60400 amended by 75 FR 53076 |
| Joint Warfare Analysis Center | 85 FR 29414 |
| Army Futures Command | 89 FR 13548 |

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|---|---|
| Army Research Institute for Behavioral and Social Sciences | 85 FR 76038 |
| Combat Capabilities Development Command Armaments Center | 76 FR 3744 |
| Combat Capabilities Development Command Army Research Laboratory | 63 FR 10680 |
| Combat Capabilities Development Command Aviation and Missile Center | 62 FR 34906 and 62 FR 34876 amended by 65 FR 53142 (AVRDEC and AMRDEC merged together). |
| Combat Capabilities Development Command Chemical Biological Center | 74 FR 68936 |
| Command, Control, Communications, Cyber, Intelligence, Surveillance, and Reconnaissance Center | 66 FR 54872 |
| Combat Capabilities Development Command Ground Vehicle Systems Center | 76 FR 12508 |
| Combat Capabilities Development Command Soldier Center | 74 FR 68448 |
| Engineer Research and Development Center | 63 FR 14580 amended by 65 FR 32135 |
| Medical Research and Development Command | 63 FR 10440 |

| | |
|---|---|
| Technical Center, US Army Space and Missile Defense Command | 85 FR 3339 |
| Naval Air Systems Command Warfare Centers | 76 FR 8530 |
| Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center | 86 FR 14084 |
| Naval Information Warfare Centers, Atlantic and Pacific | 76 FR 1924 |
| Naval Medical Research Center | Not yet published |
| Naval Research Laboratory | 64 FR 33970 |
| Naval Sea Systems Command Warfare Centers | 62 FR 64050 |
| Office of Naval Research | 75 FR 77380 |
| Marine Corps Tactical Systems Support Activity | Not yet published |

Dated: March 12, 2024.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2024–05588 Filed 3–14–24; 8:45 am]

BILLING CODE 6001–FR–C

## DEPARTMENT OF ENERGY

### Privacy Act of 1974; System of Records

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A–108 and A–130, the Department of Energy (DOE or the Department) is publishing notice of a modification to an existing Privacy Act System of Records. DOE proposes to amend System of Records DOE–7 Whistleblower Investigation, Hearings, and Appeals Records. This System of Records Notice (SORN) is being modified to align with new formatting requirements, published by OMB, and to ensure appropriate Privacy Act coverage of business processes and Privacy Act information. While there are no substantive changes to the ''Categories of Individuals'' or ''Categories of Records'' sections covered by this SORN, substantive changes have been made to the ''System Locations,'' ''Routine Uses,'' and ''Administrative, Technical and Physical Safeguards'' sections to provide greater transparency. Changes to ''Routine Uses'' include new provisions related to responding to breaches of information held under a Privacy Act SORN as required by OMB's Memorandum M–17–12, ''Preparing for and Responding to a Breach of

Personally Identifiable Information'' (January 3, 2017). Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

**DATES:** This modified SORN will become applicable following the end of the public comment period on April 15, 2024 unless comments are received that result in a contrary determination.

**ADDRESSES:** Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503 and to Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H–085, Washington, DC 20585 or by facsimile at (202) 586–8151 or by email at *privacy@hq.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H–085, Washington, DC 20585 or by facsimile at (202) 586–8151, by email at *privacy@hq.doe.gov,* or by telephone at (240) 686–9485.

**SUPPLEMENTARY INFORMATION:** On January 9, 2009, DOE published a Compilation of its Privacy Act Systems of Records, which included System of Records DOE–7 Whistleblower Investigation, Hearings, and Appeals Records. This notice deletes a previous routine use concerning efforts responding to a suspected or confirmed loss of confidentiality of information as it appears in DOE's compilation of its Privacy Act systems of records (January 9, 2009) and replaces it with one to assist DOE with responding to a suspected or confirmed breach of its records of PII, modeled with language from OMB's Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information'' (January 3, 2017). Further, this notice adds one new routine use to ensure that DOE may assist another agency or entity in responding to the other agency's or entity's confirmed or suspected breach of PII, as appropriate, in alignment with OMB's Memorandum M–17–12. Additionally, in the seventh routine use, ''Hearing Officers'' has been changed to ''Administrative Judges,'' pursuant to recent title changes. The URL for this routine has also been updated. In the ''Categories of Individuals'' section, the citation for the National Defense Authorization Act for FY 2000 has been revised from ''42 U.S.C. 7239'' to ''50 U.S.C. 2702.'' An administrative change required by the FOIA Improvement Act of 2016 extends the length of time a requestor is permitted to file an appeal under the Privacy Act from 30 to 90 days. Both the ''System Locations'' and ''Administrative, Technical and Physical Safeguards'' sections have been modified to reflect the Department's usage of cloud-based services for records storage. Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

#### SYSTEM NAME AND NUMBER:

DOE–7 Whistleblower Investigation, Hearings, and Appeals Records.

#### SECURITY CLASSIFICATION:

Unclassified and classified.

#### SYSTEM LOCATION:

Systems leveraging this SORN may exist in multiple locations. All systems storing records in a cloud-based server are required to use government-approved cloud services and follow National Institute of Standards and Technology (NIST) security and privacy standards for access and data retention. Records maintained in a government-approved cloud server are accessed through secure data centers in the continental United States.

U.S. Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue SW, Washington, DC 20585–1615.

#### SYSTEM MANAGER(S):

Headquarters: U.S. Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue SW, Washington, DC 20585–1615.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 42 U.S.C. 2201(b), (c), (i), (p), 5814, 5815, 7251, 7254, 7255, 7257; 50 U.S.C. 2702.

#### PURPOSE(S) OF THE SYSTEM:

Records in this system are maintained and used by the DOE to document and resolve complaints made by current and former employees, contractors, and subcontractors of DOE (including National Nuclear Security Administration (NNSA) contractors and subcontractors), who allege retaliation by their employer for disclosure of information concerning danger to public or worker health or safety, substantial violations of law, or gross mismanagement; for participation in Congressional proceedings; or for refusal to participate in dangerous activities.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of DOE, contractors, and subcontractors (including NNSA contractors and subcontractors), whose complaints are received at the Office of Hearings and Appeals pursuant to 10 CFR part 708, and pursuant to Section 3164 of the National Defense Authorization Act for FY 2000, Public Law 106–65, codified at 50 U.S.C. 2702.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Whistleblower reprisal complaints; names, Social Security numbers, case numbers, work and home addresses and telephone numbers, job titles, series, grade or pay levels; organization information; supervisors' names and telephone numbers; copies of employee records such as personnel actions, performance appraisals, pay and leave records, and security clearance documents; management reports; witness statements; affidavits; checklists; notes; reports of investigation; and relevant correspondence.

#### RECORD SOURCE CATEGORIES:

The complainant; individuals and organizations that have pertinent knowledge about the subject of the complaint; those authorized by the complainant to furnish information; confidential informants; and Congressional offices.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed to any source from which additional information is requested when necessary to obtain information relevant to the processing of a whistleblower complaint by the Office of Hearings and Appeals. The source will be provided such information from the System of Records only to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested, as appropriate to the necessary information to process the complaint.

2. A record from this system may be disclosed as a routine use to the appropriate local, Tribal, state, or Federal agency when records, alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

3. A record from this system may be disclosed as a routine use for the

purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witnesses, potential witnesses, or their representatives and assistants; and (4) any other persons who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

4. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings, or discussion in open court) when such disclosure: (1) is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

a. The Department, its predecessor agencies, current or former contractor of the Department, or other United States Government agencies and their components, or

b. A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

5. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's signed request for assistance.

7. Decisions, opinions, reports of investigation, orders, and other determinations signed by investigators, Administrative Judges or the Director of the Office of Hearings and Appeals that are records contained in this System of Records may be published for the general public, for precedential or educational purposes, in paper format and electronically on the Office of Hearings and Appeals' website, the current address of which is *www.energy.gov/oha/office-hearings-and-appeals.*

8. A record from this system may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the System of Records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOE (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. A record from this system may be disclosed as a routine use to another Federal agency or Federal entity, when the Department determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

#### POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored as paper records or electronic media.

#### POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by complainant's name or other personal identifier or case number.

#### POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention and disposition of these records are unscheduled. This requires the records to be retained as permanent until the National Archives and Records Administration approves the draft schedule, which will require the records to be retained 7 years.

#### ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records may be secured and maintained on a cloud-based software server and operating system that resides in Federal Risk and Authorization Management Program (FedRAMP) and Federal Information Security Modernization Act (FISMA) hosting environment. Data located in the cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handling data at rest and in transit are in accordance with DOE encryption standards. Records are protected from unauthorized access through the following appropriate safeguards:

- *Administrative:* Access to all records is limited to lawful government purposes only, with access to electronic records based on role and either two-factor authentication or password protection. The system requires passwords to be complex and to be changed frequently. Users accessing system records undergo frequent training in Privacy Act and information security requirements. Security and privacy controls are reviewed on an ongoing basis.
- *Technical:* Computerized records systems are safeguarded on Departmental networks configured for role-based access based on job responsibilities and organizational affiliation. Privacy and security controls are in place for this system and are updated in accordance with applicable requirements as determined by NIST and DOE directives and guidance.
- *Physical:* Computer servers on which electronic records are stored are located in secured Department facilities, which are protected by security guards, identification badges, and cameras. Paper copies of all records are locked in file cabinets, file rooms, or offices and are under the control of authorized personnel. Access to these facilities is granted only to authorized personnel and each person granted access to the system must be an individual authorized to use and/or administer the system.

#### RECORD ACCESS PROCEDURES:

The Department follows the procedures outlined in 10 CFR 1008.4. Valid identification of the individual making the request is required before information will be processed, given, access granted, or a correction considered, to ensure that information is processed, given, corrected, or records disclosed or corrected only at the request of the proper person.

**CONTESTING RECORD PROCEDURES:**

Any individual may submit a request to the System Manager and request a copy of any records relating to them. In accordance with 10 CFR 1008.11, any individual may appeal the denial of a request made by him or her for information about or for access to or correction or amendment of records. An appeal shall be filed within 90 calendar days after receipt of the denial. When an appeal is filed by mail, the postmark is conclusive as to timeliness. The appeal shall be in writing and must be signed by the individual. The words ''PRIVACY ACT APPEAL'' should appear in capital letters on the envelope and the letter. Appeals of denials relating to records maintained in government-wide System of Records reported by Office of Personnel Management (OPM), shall be filed, as appropriate, with the Assistant Director for Agency Compliance and Evaluation, OPM, 1900 E Street NW, Washington, DC 20415. All other appeals relating to DOE records shall be directed to the Director, Office of Hearings and Appeals (OHA), 1000 Independence Avenue SW, Washington, DC 20585.

**NOTIFICATION PROCEDURES:**

In accordance with the DOE regulation implementing the Privacy Act, 10 CFR part 1008, a request by an individual to determine if a System of Records contains information about themselves should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name and the time period for which records are sought.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

The system is exempt under subsections 552a(k)(1), (2) and (5) of the Privacy Act to the extent that information within the system meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3); 5 U.S.C. 552a(d) and (e)(1) of the Act; see the DOE Privacy Act regulation at 10 CFR part 1008.

**HISTORY:**

This SORN was last published in the **Federal Register** (FR), 74 FR 1005–1006, on January 9, 2009.

## Signing Authority

This document of the Department of Energy was signed on January 22, 2024, by Ann Dunkin, Senior Agency Official for Privacy, 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 March 11, 2024.

**Treena V. Garrett,**

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

[FR Doc. 2024–05500 Filed 3–14–24; 8:45 am]

**BILLING CODE 6450–01–P**

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# DEPARTMENT OF ENERGY

## Secretary of Energy Advisory Board

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). This meeting will be held virtually for members of the public, and both virtually and in-person for SEAB members. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, April 9, 2024; 12:30 p.m. to 3:30 p.m. EDT

**ADDRESSES:** This meeting is open to the public virtually via Zoom. SEAB members only will participate in-person at Brookhaven National Laboratory, 98 Rochester Street, Upton, NY 11973. Registration is required by registering at the SEAB April 9 meeting page at: *www.energy.gov/seab/seab-meetings*.

**FOR FURTHER INFORMATION CONTACT:** David Borak, Designated Federal Officer; U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (202) 586–5216 or Email: *seab@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

*Tentative Agenda:* The meeting will start at 12:30 p.m. Eastern Time on April 9, 2024. The tentative meeting agenda includes: roll call, remarks from the SEAB chair, remarks from the Secretary, discussion of SEAB working group reports, and public comment. The meeting will conclude at approximately 3:30 p.m. Meeting materials can be found here: *www.energy.gov/seab/seab-meetings*.

*Public Participation:* The meeting is open to the public via a virtual meeting option. Individuals who would like to attend must register for the meeting here: *https://www.energy.gov/seab/seab-meetings*.

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed three minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, *seab@hq.doe.gov,* no later than 5:00 p.m. Eastern Time on Monday, April 8, 2024.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to David Borak, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: *seab@hq.doe.gov*.

*Minutes:* The minutes of the meeting will be available on the SEAB website or by contacting David Borak. He may be reached at the above postal address or email address, or by visiting SEAB's website at *www.energy.gov/seab*.

*Signing Authority:* This document of the Department of Energy was signed on March 12, 2024, by David Borak, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 12, 2024.

**Treena V. Garrett,**

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

[FR Doc. 2024–05572 Filed 3–14–24; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, April 17, 2024; 4:00 p.m.–7:45 p.m. PDT.

The opportunity for public comment is at 4:10 p.m. PDT.

This time is subject to change; please contact the Nevada Site Specific Advisory Board (NSSAB) Administrator (below) for confirmation of time prior to the meeting.

**ADDRESSES:** This meeting will be open to the public in-person at the Beatty Community Center (address below) or virtually via Microsoft Teams. To attend virtually, please contact Barbara Ulmer, NSSAB Administrator, by email *nssab@emcbc.doe.gov* or phone (702) 523–0894, no later than 4:00 p.m. PDT on Monday, April 15, 2024.

Beatty Community Center, 100 A South Avenue, Beatty, Nevada 89003.

**FOR FURTHER INFORMATION CONTACT:** Barbara Ulmer, NSSAB Administrator, by phone: (702) 523–0894 or email: *nssab@emcbc.doe.gov* or visit the Board's internet homepage at *www.nnss.gov/NSSAB/.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

#### Tentative Agenda

1. Public Comment Period
2. Update from Deputy Designated Federal Officer
3. Update from National Nuclear Security Administration/Nevada Field Office
4. Updates from NSSAB Liaisons
5. Presentations

*Public Participation:* The in-person/online virtual hybrid meeting is open to the public either in-person at the Beatty Community Center or via Microsoft Teams. To sign-up for public comment, please contact the NSSAB Administrator (above) no later than 4:00 p.m. PDT on Monday, April 15, 2024. In addition to participation in the live public comment session identified above, written statements may be filed with the Board either before or within seven days after the meeting by sending them to the NSSAB Administrator at the aforementioned email address. Written public comment received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so in 2-minute segments for the 15 minutes allotted for public comments.

*Minutes:* Minutes will be available by writing or calling Barbara Ulmer, NSSAB Administrator, U.S. Department of Energy, EM Nevada Program, 100 North City Parkway, Suite 1750, Las Vegas, NV 89106; Phone: (702) 523–0894. Minutes will also be available at the following website: *https://www.nnss.gov/nssab/nssab-meetings/.*

*Signing Authority:* This document of the Department of Energy was signed on March 12, 2024, by David Borak, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 12, 2024.

**Treena V. Garrett,**

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

[FR Doc. 2024–05570 Filed 3–14–24; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Privacy Act of 1974; System of Records

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A–108 and A–130, the Department of Energy (DOE or the Department) is publishing notice of a modification to an existing Privacy Act System of Records. DOE proposes to amend System of Records DOE–23 Property Accountability System. This System of Records Notice (SORN) is being modified to align with new formatting requirements, published by the Office of Management and Budget, and to ensure appropriate Privacy Act coverage of business processes and Privacy Act information. While there are no substantive changes to the ''Categories of Individuals'' or ''Categories of Records'' sections covered by this SORN, substantive changes have been made to the ''System Locations,'' ''Routine Uses,'' and ''Administrative, Technical and Physical Safeguards'' sections to provide greater transparency. Changes to ''Routine Uses'' include new provisions related to responding to breaches of information held under a Privacy Act SORN as required by OMB's Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information'' (January 3, 2017). Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

**DATES:** This modified SORN will become applicable following the end of the public comment period on April 15, 2024 unless comments are received that result in a contrary determination.

**ADDRESSES:** Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503 and to Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H–085, Washington, DC 20585 or by facsimile at (202) 586–8151 or by email at *privacy@hq.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H–085, Washington, DC 20585, by facsimile at (202) 586–8151, by email at *privacy@hq.doe.gov,* or by telephone at (240) 686–9485.

**SUPPLEMENTARY INFORMATION:** On January 9, 2009, DOE published a Compilation of its Privacy Act systems of records, which included System of Records DOE–23 Property Accountability System. This notice

proposes amendments to the System Locations section of that System of Records by removing four System Locations where DOE–23 is no longer applicable. These locations are as follows: Bonneville Power Administration, the National Energy Technology Laboratory, Southeastern Area Power Administration, and Western Area Power Administration. In the ''Routine Uses'' section, this modified notice deletes a previous routine use concerning efforts responding to a suspected or confirmed loss of confidentiality of information as it appears in DOE's compilation of its Privacy Act systems of records (January 9, 2009) and replaces it with one to assist DOE with responding to a suspected or confirmed breach of its records of Personally Identifiable Information (PII), modeled with language from OMB's Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information'' (January 3, 2017). Further, this notice adds one new routine use to ensure that DOE may assist another agency or entity in responding to the other agency's or entity's confirmed or suspected breach of PII, as appropriate, as aligned with OMB's Memorandum M–17–12.

Additionally, the routine use formerly numbered six has been determined to be duplicative and therefore has been deleted. This routine use is covered by that which is currently numbered five. From the ''Categories of Records in the System'' section, the following elements have been removed: operation number, high risk field, disposal code, the name and employee identification and position numbers of employees' assigned equipment, account numbers, and user activity on device. To this section, ''name and phone number of individual to whom equipment is issued'' and ''name of the Accountable Property Representative'' have been added to reflect current processes. To ''Categories of Individuals,'' the qualifiers ''current and former'' and ''employees and contractors'' have been added to qualify ''DOE employees.'' The ''Purpose(s) of the System'' section now includes the following: ''(f) enable security-related functions in the event that government property is misused, lost, or stolen.'' An administrative change required by the FOIA Improvement Act of 2016 extends the length of time a requestor is permitted to file an appeal under the Privacy Act from 30 to 90 days. Both the ''System Locations'' and ''Administrative, Technical and Physical Safeguards'' sections have been modified to reflect the Department's usage of cloud-based services for records storage. Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

#### SYSTEM NAME AND NUMBER:

DOE–23 Property Accountability System.

#### SECURITY CLASSIFICATION:

Unclassified.

#### SYSTEM LOCATION:

Systems leveraging this SORN may exist in multiple locations. All systems storing records in a cloud-based server are required to use government-approved cloud services and follow National Institute of Standards and Technology (NIST) security and privacy standards for access and data retention. Records maintained in a government-approved cloud server are accessed through secure data centers in the continental United States.

U.S. Department of Energy, Headquarters, 1000 Independence Avenue SW, Washington, DC 20585.

U.S. Department of Energy, Office of River Protection, P.O. Box 450, Richland, WA 99352.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Southwestern Power Administration, One West Third Street, Suite 1500, Tulsa, OK 74103.

#### SYSTEM MANAGER(S):

*Headquarters:* Director, Office of Management, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

*Field Offices:* The Managers of the ''System Locations'' listed above are the system managers for their respective portions of the system.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.:* 50 U.S.C. 2401 *et seq.;* Federal Property and Administrative Services Act of 1949, section 202(b), 40 U.S.C. 483(b); and 41 CFR part 109, Federal Property Management Regulation (FPMR), subchapter E, part 109.

#### PURPOSE(S) OF THE SYSTEM:

Records in this system are maintained and used by DOE (a) to provide inventories to satisfy other Federal Procurement Management Regulation requirements; (b) to maintain a record of location of emergency equipment; (c) to control equipment assignments, including but not limited to those authorized under union contracts; (d) to provide management information necessary for the budgeting and allocation of equipment; (e) to provide evidence of assignment, location, use, and value in the event that government property is misused, lost or stolen; and (f) enable security-related functions in the event that government property is misused, lost, or stolen.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees and contractors, including National Nuclear Security Administration (NNSA) employees, and contractor employees, authorized to be custodians of controlled DOE equipment.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Item description, date of purchase, acquire date, purchase price, purchase order number, vendor and manufacturer, model/serial/license number, property tag identification, status/date, condition of property, name and phone number of individual to whom equipment is issued, name of the Accountable Property Representative, organization, organization code, and location.

#### RECORD SOURCE CATEGORIES:

Information in this system comes from the Payroll/Personnel system application, various internal forms, accountable property representatives and employees, data processing personnel, supply officers, and information from use of government property.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to any law enforcement agency as needed to provide evidence of assignment, location, and value in the event that government property is stolen.

2. A record from this system may be disclosed as a routine use to the appropriate local, Tribal, State, or Federal agency when records, alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

3. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in

the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witnesses, potential witnesses, or their representatives and assistants; and (4) any other persons who possess information pertaining to the matter when it is relevant and necessary to obtain information or testimony relevant to the matter.

4. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings, or discussion in open court) when such disclosure: (1) is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

a. The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

b. A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

5. A record from this system may be disclosed as a routine use to a Federal, State, Tribal, or local agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

6. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

7. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's signed request for assistance.

8. A record from this system may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the System of Records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOE (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. A record from this system may be disclosed as a routine use to another Federal agency or Federal entity, when the Department determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored as paper records, microfilm, or electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by tag number, license number, custodian name, employee identification number, position number, accounting information, catalog number, contract number, make, model, security logon identification, serial number, or storage location.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention and disposition of these records are unscheduled. This requires the records to be retained as permanent until the National Archives and Records Administration approves the draft schedule, which will require the records to be retained for 10 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records may be secured and maintained on a cloud-based software server and operating system that resides in Federal Risk and Authorization Management Program (FedRAMP) and Federal Information Security Modernization Act (FISMA) hosting environment. Data located in the cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handling data at rest and in transit are in accordance with DOE encryption standards. Records are protected from unauthorized access through the following appropriate safeguards:

- *Administrative:* Access to all records is limited to lawful government purposes only, with access to electronic records based on role and either two-factor authentication or password protection. The system requires passwords to be complex and to be changed frequently. Users accessing system records undergo frequent training in Privacy Act and information security requirements. Security and privacy controls are reviewed on an ongoing basis.
- *Technical:* Computerized records systems are safeguarded on Departmental networks configured for role-based access based on job responsibilities and organizational affiliation. Privacy and security controls are in place for this system and are updated in accordance with applicable requirements as determined by NIST and DOE directives and guidance.
- *Physical:* Computer servers on which electronic records are stored are located in secured Department facilities, which are protected by security guards, identification badges, and cameras. Paper copies of all records are locked in file cabinets, file rooms, or offices and are under the control of authorized personnel. Access to these facilities is granted only to authorized personnel and each person granted access to the system must be an individual authorized to use and/or administer the system.

RECORD ACCESS PROCEDURES:

The Department follows the procedures outlined in 10 CFR 1008.4. Valid identification of the individual making the request is required before information will be processed, given, access granted, or a correction considered, to ensure that information is processed, given, corrected, or records disclosed or corrected only at the request of the proper person.

**CONTESTING RECORD PROCEDURES:**

Any individual may submit a request to the System Manager and request a copy of any records relating to them. In accordance with 10 CFR 1008.11, any individual may appeal the denial of a request made by him or her for information about or for access to or correction or amendment of records. An appeal shall be filed within 90 calendar days after receipt of the denial. When an appeal is filed by mail, the postmark is conclusive as to timeliness. The appeal shall be in writing and must be signed by the individual. The words ''PRIVACY ACT APPEAL'' should appear in capital letters on the envelope and the letter. Appeals relating to DOE records shall be directed to the Director, Office of Hearings and Appeals (OHA), 1000 Independence Avenue SW, Washington, DC 20585.

**NOTIFICATION PROCEDURES:**

In accordance with the DOE regulation implementing the Privacy Act, 10 CFR part 1008, a request by an individual to determine if a System of Records contains information about themselves should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name and the time period for which records are sought.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

This SORN was last published in the **Federal Register**, 74 FR 1023–1024, on January 9, 2009.

**Signing Authority**

This document of the Department of Energy was signed on January 31, 2024, by Ann Dunkin, Senior Agency Official for Privacy, 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 March 12, 2024.

**Treena V. Garrett,**

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

[FR Doc. 2024–05576 Filed 3–14–24; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Comments regarding this proposed information collection must be received on or before April 15, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–881–8585.

**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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Early, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–5B, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0121, or by email at *Chris.Early@ee.doe.gov* or by calling 240–354–1304.

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) *OMB No.:* 1910–5184; (2) *Information Collection Request Titled:* Programs for Improving Energy Efficiency in Buildings; (3) *Type of Review:* extension; (4) *Purpose:* The proposed collection will enable DOE to understand the universe of organizations participating in building load management programs, including the following four voluntary programs: the Home Performance with ENERGY STAR Program, the Home Energy Score Program, the Better Buildings Residential Network, and the Zero Energy Ready Home Program. DOE encourages and assists the people and organizations that voluntarily participate in energy efficiency programs to build or renovate buildings for the purposes of improved efficiency, reliability, and affordability. The partners who voluntarily participate in the programs include: home builders, building trades and building-related associations, home design professionals, home energy raters and auditors, home inspectors, building consultants, manufacturers of building products, retailers, utility companies, financial institutions, non-profit organizations, educational institutions, energy program administrators and implementers, Home Performance with ENERGY STAR sponsors, state or local government energy offices or agencies, and other organizations that believe peer sharing will help them improve their effectiveness in encouraging effective energy upgrades. DOE proposes to continue to collect information such as names of program participants and names of organizations and addresses; estimates of how many homes they can get to participate in the programs; information about building stock (no building owner information is collected), and load management strategies. The collected information helps DOE understand the participating partners' activities and progress toward achieving scheduled milestones enabling DOE to make decisions about the best way to respond to partners' needs to improve their operations and actions to lower energy consumption and improve affordability. DOE published a notice and request for comments related to this current request for OMB clearance to collect information on April 20, 2023 (88 FR 24395) and received no comments; (5) *Annual Estimated Number of Respondents:* 969; (6) *Annual Estimated Number of Total Responses:* 45,170; (7) *Annual Estimated Number of Burden Hours:* 19,397; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* zero.

*Statutory Authority:* The U.S. Code, title 42, chapter 149, subchapter IX, part A, section 16191—Energy Efficiency.

**Signing Authority**

This document of the Department of Energy was signed on March 8, 2024, by Amanda Mahoney, Director, Building Technologies Office, 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 March 12, 2024.

**Treena V. Garrett,**

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

[FR Doc. 2024–05545 Filed 3–14–24; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge

**AGENCY:** Office of Environmental Management, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, April 10, 2024; 6:00 p.m.–8:00 p.m. EDT.

**ADDRESSES:** This hybrid meeting will be in-person at the Department of Energy (DOE) Information Center (address below) and virtually via Zoom. To attend virtually or to register for in-person attendance, please send an email to: *orssab@orem.doe.gov* by 5:00 p.m. EDT on Wednesday, April 3, 2024.

DOE Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37831.

**FOR FURTHER INFORMATION CONTACT:** Melyssa P. Noe, Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831; Phone (865) 241–3315; or E-Mail: *Melyssa.Noe@orem.doe.gov.* Or visit the website at *www.energy.gov/orssab.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

**Tentative Agenda**

- OREM Presentation
- Discussion
- Public Comment Period
- Board Business

*Public Participation:* This meeting is open to the public. The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Public comments received by no later than 5:00 p.m. EDT on Wednesday, April 3, 2024, will be read aloud during the meeting. Comments will be accepted after the meeting, by no later than 5:00 p.m. EDT on Monday, April 15, 2024. Please submit comments to *orssab@orem.doe.gov.* Please put ''Public Comment'' in the subject line. Individuals who wish to make oral statements should contact Melyssa P. Noe at the email address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit written public comments should email them as directed above. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by emailing or calling Melyssa P. Noe at the email address and telephone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings.*

*Signing Authority:* This document of the Department of Energy was signed on March 12, 2024, by David Borak, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 12, 2024.

**Treena V. Garrett,**

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

[FR Doc. 2024–05579 Filed 3–14–24; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP24–77–000]**

### Southern Star Central Gas Pipeline, Inc.; Notice of Application and Establishing Intervention Deadline

Take notice that on March 1, 2024, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Route 56, Owensboro, Kentucky 42301, filed an application under sections 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to abandon by sale to Spire Missouri, Inc., 453 domestic meters in the State of Missouri. Southern Star states that there will be no change to its certificated capacity as a result of this project, and that the project will have no impact on any firm shippers, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY (202) 502–8659.

Any questions regarding the proposed project should be directed to Will Wathen, Director, Rates, Regulatory & Strategic Planning, 4700 State Route 56, Owensboro, KY 42301, by telephone at (270) 925–1969, or by email at *will.wathen@southernstar.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

**Public Participation**

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on April 1, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

*Comments*

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

*Protests*

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before April 1, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP24–77–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. 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; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP24–77–000).

*To file via USPS:* Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*To file via any other courier:* Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

*Interventions*

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[7] and the regulations under the NGA[8] by the intervention deadline for the project, which is April 1, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP24–77–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

Commission's website (*www.ferc.gov*) under the link to Documents and Filings. 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; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP24–77–000.

*To file via USPS:* Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*To file via any other courier:* Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email at: Will Wathen, Director, Rates, Regulatory & Strategic Planning, 4700 State Route 56, Owensboro, KY 42301, or by email at *will.wathen@southernstar.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[11] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

*Intervention Deadline:* 5:00 p.m. Eastern Time on April 1, 2024.

Dated: March 11, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–05550 Filed 3–14–24; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP24–519–000.
*Applicants:* National Fuel Gas Supply Corporation.
*Description:* Compliance filing: Notice Regarding Non-Jurisdictional Gathering Facilities (H Lines) to be effective N/A.
*Filed Date:* 3/11/24.
*Accession Number:* 20240311–5106.
*Comment Date:* 5 p.m. ET 3/25/24.

*Docket Numbers:* RP24–520–000.
*Applicants:* Southwest Gas Transmission Company, A Limited Partnership.
*Description:* § 4(d) Rate Filing: Prefile Settlement in Lieu of Rate Filling to be effective 5/1/2024.
*Filed Date:* 3/11/24.
*Accession Number:* 20240311–5123.
*Comment Date:* 5 p.m. ET 3/25/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 11, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–05551 Filed 3–14–24; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. IC24–9–000]**

## Commission Information Collection Activities (FERC–567); Consolidated Comment Request; Extension

**Correction**

In notice document 2024–05013, appearing on page 17453, in the issue of Monday, March 11, 2024, in first column, in the DATES section, ''[INSERT DATE 60 days after date of publication in the **Federal Register**]'' should read, ''May 10, 2024.''

[FR Doc. C1–2024–05013 Filed 3–14–24; 8:45 am]

BILLING CODE 0099–10–D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC24–57–000.
*Applicants:* Clean Energy Future—Lordstown, LLC, PowerLord MergerCo, LLC, AL Lordstown Holdings, LLC
*Description:* Joint Application for Authorization Under Section 203 of the Federal Power Act of Clean Energy Future—Lordstown, LLC, et al.
*Filed Date:* 3/8/24.
*Accession Number:* 20240308–5214.
*Comment Date:* 5 p.m. ET 4/22/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

*Docket Numbers:* EL24–85–000.
*Applicants:* Midcontinent Independent System Operator, Inc. v. Southwest Power Pool, Inc.
*Description:* Complaint of Midcontinent Independent System Operator, Inc. v. Southwest Power Pool, Inc.
*Filed Date:* 3/8/24.
*Accession Number:* 20240308–5206.
*Comment Date:* 5 p.m. ET 4/8/24.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER19–90–006.
*Applicants:* Clean Energy Future—Lordstown, LLC.
*Description:* Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
*Filed Date:* 3/8/24.
*Accession Number:* 20240308–5148.
*Comment Date:* 5 p.m. ET 3/29/24.

*Docket Numbers:* ER24–172–003.
*Applicants:* FirstEnergy Pennsylvania Electric Company.
*Description:* Tariff Amendment: 2nd Deficiency Ltr Response-Shortened Comment Period & Expedited Order Requested to be effective 12/31/9998.
*Filed Date:* 3/11/24.
*Accession Number:* 20240311–5004.
*Comment Date:* 5 p.m. ET 4/1/24.

*Docket Numbers:* ER24–1436–000.
*Applicants:* Public Service Company of Colorado.
*Description:* § 205(d) Rate Filing: 2024–03–08—GVH—GI–2020–18—SGIA Amnd 1–663–0.0.0 to be effective 4/1/2024.
*Filed Date:* 3/8/24.
*Accession Number:* 20240308–5166.
*Comment Date:* 5 p.m. ET 3/29/24.

*Docket Numbers:* ER24–1438–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amendment to ISA, SA No. 6819; Queue No. AC1–188 (amend) to be effective 5/11/2024.
*Filed Date:* 3/11/24.
*Accession Number:* 20240311–5102.
*Comment Date:* 5 p.m. ET 4/1/24.

*Docket Numbers:* ER24–1440–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2024–03–05_SA 4208 4209 MP–MP FCAs Square Butte TSRs to be effective 2/28/2024.
*Filed Date:* 3/11/24.
*Accession Number:* 20240311–5121.
*Comment Date:* 5 p.m. ET 4/1/24.

*Docket Numbers:* ER24–1442–000.
*Applicants:* PacifiCorp.
*Description:* Tariff Amendment: Termination of BPA Kennewick Mobile REDI Communications Agr to be effective 6/10/2024.
*Filed Date:* 3/11/24.
*Accession Number:* 20240311–5172.
*Comment Date:* 5 p.m. ET 4/1/24.

*Docket Numbers:* ER24–1446–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Amendment to ISA SA No. 6973 and CSA SA No. 6126; Queue No. AD2–134 to be effective 5/13/2024.
*Filed Date:* 3/11/24.
*Accession Number:* 20240311–5214.
*Comment Date:* 5 p.m. ET 4/1/24.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RD24–6–000.
*Applicants:* North American Electric Reliability Corporation.
*Description:* North American Electric Reliability Corporation submits Petition for Approval of new, revised, and retired definitions of terms related to the calculation of Reporting Area Control Error.
*Filed Date:* 3/8/24.
*Accession Number:* 20240308–5212.
*Comment Date:* 5 p.m. ET 4/10/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 11, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–05552 Filed 3–14–24; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 6470–008]**

### Winooski Hydroelectric Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license to continue to operate and maintain the Winooski 8 Hydroelectric Project. The project is located on the Winooski River in Washington County, Vermont. The project does not occupy federal land. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the

internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–6470–008.

For further information, contact Ingrid Brofman at (202) 502–8347 or by email at *ingrid.brofman@ferc.gov.*

Dated: March 11, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–05549 Filed 3–14–24; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. IC24–13–000]**

## Commission Information Collection Activities (FERC–716); Comment Request; Extension

### Correction

In notice document 2024–05125, beginning on page 17460, in the issue of Monday, March 11, 2024, in third column, in the DATES section, ''[INSERT DATE 60 days after date of publication in the **Federal Register**]'' should read, ''May 10, 2024.''

[FR Doc. C1–2024–05125 Filed 3–14–24; 8:45 am]

BILLING CODE 0099–10–D

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL OP–OFA–115]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed March 4, 2024 10 a.m. EST Through March 11, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

*Notice:* Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

*EIS No. 20240040,* Final, NMFS, VA, Adoption—Coastal Virginia Offshore Wind Commercial, *Contact:* Kelsey Potlock 301–427–8410.

The National Marine Fisheries Service (NMFS) has adopted the Bureau of Ocean Energy Management's Final EIS No. 20230128 filed 09/25/2023 with the Environmental Protection Agency. The NMFS was a cooperating agency on this project. Therefore, republication of the document is not necessary under Section 1506.3(b)(2) of the CEQ regulations.

*EIS No. 20240041,* Final, NMFS, NY, Adoption—Empire Offshore Wind, *Contact:* Jessica Taylor 301–427–8475. The National Marine Fisheries Service (NMFS) has adopted the Bureau of Ocean Energy Management's Final EIS No. 20230120 filed 09/11/2023 with the Environmental Protection Agency. The NMFS was a cooperating agency on this project. Therefore, republication of the document is not necessary under Section 1506.3(b)(2) of the CEQ regulations.

*EIS No. 20240042,* Final, NMFS, RI, Adoption—Revolution Wind Farm and Revolution Wind Export Cable Final Environmental Impact Statement, *Contact:* Carter Esch 301–427–8421. The National Marine Fisheries Service (NMFS) has adopted the Bureau of Ocean Energy Management's Final EIS No. 20230087 filed 07/17/2023 with the Environmental Protection Agency. The NMFS was a cooperating agency on this project. Therefore, republication of the document is not necessary under Section 1506.3(b)(2) of the CEQ regulations.

*EIS No. 20240043,* Draft, BLM, NV, Robertson Mine Project, *Comment Period Ends:* 04/29/2024, *Contact:* Gene Gilseth 775–635–4020.

*EIS No. 20240044,* Draft, BLM, WY, Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning, *Comment Period Ends:* 06/13/2024, *Contact:* Pat Deibert 720–447–8107.

Dated: March 11, 2024.

**Cindy S. Barger,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2024–05555 Filed 3–14–24; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2023–0613; FRL–11608–03–OCSPP]**

## Formaldehyde; Draft Risk Evaluation Peer Review by the Science Advisory Committee on Chemicals (SACC); Notice of Availability, Public Meetings and Request for Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or ''Agency'') is announcing the availability of and soliciting public comment on the 2024 draft risk evaluation for formaldehyde prepared under the Toxic Substances Control Act (TSCA). The draft risk

evaluation is available for public review and comment. It will also be submitted to the SACC for peer review. EPA is also announcing that there will be two virtual public meetings of the SACC. The SACC will consider and review the draft risk evaluation at a 4-day virtual peer review public meeting that will be held on May 20–23, 2024. In addition, a virtual preparatory public meeting will be held on May 7, 2024, for the SACC to consider the scope and clarity of the draft charge questions for the peer review.

**DATES:**

*Virtual Preparatory Public Meeting:* May 7, 2024, from 1 p.m. to approximately 4 p.m. (EST). You must register to receive the webcast meeting link and audio teleconference information. Online registration will be available beginning in April 2024. To request time to present oral comments during the virtual preparatory public meeting, you must register online by noon, May 3, 2024. For those not making oral comments during the virtual preparatory public meeting, registration will remain open through the end of the meeting.

*Virtual Peer Review Public Meeting:* May 20–23, 2024, from 10 a.m. to approximately 5 p.m. (EST) (as needed, updated times for each day may be provided in the meeting agenda that will be posted in the docket at *https://www.regulations.gov* and available through the SACC website at *https://www.epa.gov/tsca-peer-review*). You must register online to receive the webcast meeting link and audio teleconference information. Online registration will be available beginning in April 2024. To make oral comments during the virtual peer review public meeting and included on the meeting agenda, you must register by noon, May 13, 2024. For those not making oral comments, registration for this meeting will remain open through the last day of the meeting.

*Comments:* Submit comments on the draft risk evaluation on or before May 14, 2024. Submit comments intended for the virtual preparatory public meeting on or before noon, May 3, 2024. For additional instructions, see Unit III. of **SUPPLEMENTARY INFORMATION**.

*To request special accommodations:* To allow sufficient time for EPA to process your request before the applicable meetings, please submit your request by April 30, 2024.

**ADDRESSES:**

*Virtual Public Meetings:* You must register for each meeting to receive the webcast meeting link and audio teleconference information. Access to these virtual meetings will be provided through a webcast platform such as Zoomgov.com, streaming service, and audio teleconference.

*Meeting Registration:* For information and instructions on how to register and access these virtual public meetings, please refer to the SACC website at *https://www.epa.gov/tsca-peer-review.* After registering, you will receive the webcast meeting link and audio teleconference information.

*Comments:* Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0613, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* to docket ID No. EPA–HQ–OPPT–2023–0613. 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.*

*To request special accommodations:* For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Official (DFO) is Tamue Gibson, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency; telephone number: (202) 564–7642 or SACC main office number: (202) 564–8450; email address: *gibson.tamue@epa.gov.*

*For general information:* You may subscribe to the Office of Chemical Safety and Pollution Prevention listserv for alerts regarding this and other SACC related activities at *https://public.govdelivery.com/accounts/USAEPAOPPT/subscriber/new?topic_id=USAEPAOPPT_101.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. What action is the Agency taking?*

EPA is announcing the availability of and soliciting public comment on the 2024 draft risk evaluation for formaldehyde. EPA is also announcing a 4-day virtual peer review public meeting on May 20–23, 2024, for the SACC to consider and review the draft risk evaluation document. A virtual preparatory public meeting will be held on May 7, 2024, for the SACC and the public to consider and ask questions regarding the scope and clarity of the draft charge questions. EPA will be soliciting comments from the SACC on the Office of Pollution Prevention and Toxics (OPPT) and Office of Pesticide Programs (OPP) joint hazard assessments for human and ecological health; and the OPPT exposure and risk characterizations. This SACC peer review is in addition to prior external peer reviews by the National Academies of Science, Engineering, and Medicine (NASEM), the EPA's Human Studies Review Board (HSRB) and SACC peer reviews of scientific approaches used in previous TSCA risk evaluations. These previous peer reviews have informed the 2024 draft risk evaluation for formaldehyde.

This document provides instructions for accessing the materials, submitting written comments, and registering to provide oral comments and attend the public meetings.

*B. What is the Agency's authority for taking this action?*

EPA established the SACC in 2016 in accordance with the TSCA, 15 U.S.C. 2625(o), to provide independent advice and expert consultation, at the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of TSCA. The SACC operates in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. 10, and supports activities under the TSCA, 15 U.S.C. 2601 *et seq.,* the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.,* and other applicable statutes.

*C. Does this action apply to me?*

This action is directed to the public in general and may be of particular interest to those involved in the manufacture, processing, distribution, and disposal of the subject chemical substance, and/or those interested in the assessment of risks involving chemical substances and mixtures regulated under TSCA.

*D. What should I consider as I submit my comments to EPA?*

1. *Submitting CBI.* Do not electronically submit any information you consider to be CBI or other information whose disclosure is restricted by statute. Copyrighted material will not be posted without explicit permission of the copyright holder. Members of the public should also be aware that personal contact information, if included in any written comments, may be posted on the internet at https://www.regulations.gov. If your comment contains any information that you consider to be CBI

or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting that information.

*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#tips.* See also the instructions in Unit III.C.

## II. Background

### *A. What is the purpose of the SACC?*

The SACC provides independent scientific advice and recommendations to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA. The SACC is comprised of experts in toxicology; environmental risk assessment; exposure assessment; and related sciences (*e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, physiologically based pharmacokinetic (PBPK) modeling, computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability). The SACC currently consists of 18 members. When needed, the committee will be assisted by *ad hoc* reviewers with specific expertise in the topics under consideration.

### *B. Why did EPA develop these documents?*

TSCA requires EPA to conduct risk evaluations on high priority chemical substances to determine whether a chemical substance presents an unreasonable risk to human health or the environment under the chemical's conditions of use. EPA must also determine whether a chemical substance presents unreasonable risk to potentially exposed or susceptible subpopulations deemed relevant by the Administrator. As part of this process, EPA integrates hazard and exposure assessments using the best available science and reasonably available information to assure decisions are based on the weight of the scientific evidence. For more information about the three stages of EPA's process for ensuring the safety of existing chemicals (*i.e.,* prioritization, risk evaluation, and risk management), go to *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/how-epa-evaluates-safety-existing-chemicals.*

## III. Public Meeting of the SACC

### *A. What is the purpose of the virtual peer review public meeting?*

EPA is planning this SACC peer review of the Agency's draft evaluation of the risks from formaldehyde to inform risk management decisions under TSCA. OPPT collaborated with OPP to develop hazard assessments for human and ecological health. EPA expects to ask the SACC to consider and review these joint hazard assessments in addition to the OPPT exposure and risk characterizations. This SACC peer review is in addition to prior external peer reviews by the National Academies of Science, Engineering, and Medicine (NASEM), the EPA's Human Studies Review Board (HSRB) and SACC peer reviews of scientific approaches used in previous TSCA risk evaluations. The Agency is leveraging these peer reviews to support further development of the risk evaluation of formaldehyde. The TSCA risk evaluation of formaldehyde is comprised of several modules (*i.e.,* human health hazard, ecological hazard, release and exposure assessments) and two risk assessment documents—the environmental risk assessment and the human health risk assessment. As part of the draft risk evaluation for formaldehyde, OPPT is assessing formaldehyde conditions of use.

Recommendations from the formaldehyde SACC review and public comments will be considered in the development of the final TSCA risk evaluation for formaldehyde and may inform other EPA efforts related to the assessment and regulation of formaldehyde. The Agency will be seeking SACC review of its data analyses and methodologies relevant to human health hazard and exposure analyses that have not been previously peer reviewed. For additional information, please see the **Federal Register** notice of December 26, 2023 (88 FR 88910; FRL–11608–01–OCSPP).

### *B. How can I access the documents?*

The 2024 draft risk evaluation for formaldehyde and related documents, including background documents, related supporting materials, and draft charge questions, are available in the docket. As additional background materials become available, EPA will include those additional background documents (*e.g.,* SACC members and consultants participating in this meeting and the meeting agenda) in the docket. All of these documents will be available at *https://www.regulations.gov* (docket ID No. EPA–HQ–OPPT–2023–0613) and through links on the SACC website at *https://www.epa.gov/tsca-peer-review.*

After the public meeting, the SACC will prepare the meeting minutes and final report document summarizing its recommendations to the EPA, which will also be available in the docket and through the SACC website.

### *C. How can I provide comments?*

To ensure proper receipt of comments, it is imperative that you identify docket ID No. EPA–HQ–OPPT–2023–0613 in the subject line on the first page of your comments and follow the instructions in Unit I.D. and in this unit.

1. *Written comments.* Submit written comments by the deadlines set in the **DATES** section of this document and as described in the **ADDRESSES** section of this document.

2. *Oral comments.* To request time to present oral comments during one of the virtual public meetings, you must register online by the deadlines set in the **DATES** section of this document. Oral comments during the virtual public meetings are limited to 5 minutes. In addition, each speaker should submit a written copy of their oral comments and any supporting materials (*e.g.,* presentation slides) to the DFO prior to the meetings for distribution to the SACC by the DFO.

*Authority:* 15 U.S.C. 2625(o); 5 U.S.C. 10.

Dated: March 11, 2024.

**Michal Freedhoff,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2024–05554 Filed 3–14–24; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–11797–01–OCSPP]**

## Access to Confidential Business Information by ICF Inc and Its Subcontractors

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor ICF Inc of 9300 Lee Highway Fairfax, VA 22031, and its subcontractors to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur after March 15, 2024.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, 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:* Colby Lintner/Adam Schwoerer, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8182; email address: *lintner.colby@epa.gov* or (202) 564–4767; *schwoerer.adam@epa.gov.*

*For general information 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. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Because other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *https://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

## II. What action is the Agency taking?

Under contract number 68HERC23D0007, ICF Inc., and its subcontractors will provide support for Chemical Screening, Review, and Evaluation of New, Existing, and Safer Choice Chemical Substances in accordance with the Performance Work Statement which are vital to Agency personnel to make informed decisions on environmental issues and other information that maybe claimed as TSCA CBI in accordance with the TSCA Security Manual.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68HERC23D0007, ICF Inc., and its subcontractors will require access to CBI submitted under all Sections of TSCA to perform successfully the duties specified under the contract. ICF Inc. and its subcontractors: Personnel will be given access to information claimed or determined to be CBI information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA will provide the herein identified contractor and its subcontractors with access to the CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract, in accordance with EPA's *TSCA CBI Protection Manual* and the Rules of Behavior for Virtual Desktop Access to OPPT Materials, including TSCA CBI, will take place at EPA Headquarters, and/or at the following facilities of the contractor and/or subcontractors:

- ATL International, Inc.; 555 Quince Orchard Rd., Suite 500, Gaithersburg, MD 20878–1461.
- Colehour & Cohen, Inc.; 1011 Western Ave., Suite 702, Seattle, WA 98104.
- Sacoby Wilson, Ph.D.; MS Maryland Institute for Applied Environmental Health, School of Public Health, University of Maryland-College Park.
- Integrated Laboratory Systems, an Inotiv Company; P.O. Box 13501, Research Triangle Park, NC 27709.
- Innovate! Inc.; 6189 Cobbs Rd., Alexandria, VA 22310.
- Neptune and Company, Inc.; 1435 Garrison St., Suite 201, Lakewood, CO 80215.
- Pradeep Rajan, LLC; 2006 Camden Ln., Chapel Hill, NC 27516.
- Sagenita Limited, Harston Mill Royston Rd., Harston Cambridge, UK CB22 7GG.
- SC&A, Inc.; 2200 Wilson Blvd., Suite 300, Arlington, VA 22201.
- Sixth Sense Safety Solutions; 1365 Bertram St., Rogers City, Michigan 49779–1101.

Access to TSCA data, including CBI, will continue until November 30, 2027. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

The personnel of the contractor and subcontractors will be required to sign nondisclosure agreements and will be briefed on specific security procedures for TSCA CBI.

*Authority:* 15 U.S.C. 2601 *et seq.*

Dated: March 11, 2024.

**Pamela Myrick,**

*Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2024–05488 Filed 3–14–24; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2022–0223; FRL–11801–01–OCSPP]**

## Chlorpyrifos; Amendment to Existing Stocks Provisions in Adama Product Cancellation Orders

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On May 4, 2023 and November 6, 2023, EPA issued final cancellation orders terminating food uses for three products, which were voluntarily requested by Adama and accepted by the Agency, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Agency is issuing this notice to amend the existing stocks provisions in the May 4, and November 6, 2023 orders, for the products listed in this document.

**ADDRESSES:** The docket for this action, identified under docket identification (ID) number EPA–HQ–OPP–2022–0223, 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:** Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0700; email address: *OPPChlorpyrifosInquiries@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, 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.

## II. What action is the Agency taking?

In its May 4, 2023 Cancellation Order for Certain Chlorpyrifos Registrations and Uses, EPA granted Adama's request to terminate food uses and the tobacco use on its three chlorpyrifos products. 88 FR 28541. That order noted that all chlorpyrifos tolerances had been revoked, and thus all use on food, sale, and distribution of existing stocks for the products identified in that order were inconsistent with the purposes of FIFRA, with the following exceptions. Use was permitted for non-food uses consistent with labeling, and existing stocks were permitted to be sold and distributed for export, proper disposal, or in accordance with return agreements approved by EPA.

In addition, on November 6, 2023, EPA granted Adama's request to terminate the food processing and food manufacturing site uses on those same three chlorpyrifos products. *See* Final Cancellation Order for Certain Chlorpyrifos Registrations and Uses, 88 FR 76213 (Nov. 6, 2023). That order contained existing stocks provisions that were similar to the provisions in the May 4, 2023 order.

Subsequent to the issuance of the May 4, 2023 and November 6, 2023 cancellation orders, the U.S. Court of Appeals for the Eighth Circuit vacated EPA's rule revoking all tolerances. (*Red River Valley Sugarbeet Growers Associations, et al.* v. *Regan,* 85 F.4th 881 (8th Cir. 2023). On February 5, 2024, EPA issued a **Federal Register** notice to amend the Code of Federal Regulations to reflect the court's reinstatement of those tolerances. 89 FR 7625. At this time, all the chlorpyrifos tolerances have been reinstated and are currently in effect. *See* 40 CFR 180.342. Adama requested amendments to the cancellation orders governing disposition of their existing stocks to allow for sale, distribution, and use.

Because the reinstatement of the chlorpyrifos tolerances means that chlorpyrifos products can be used in accordance with their labeling without concern for adulterated food, EPA is amending the cancellation orders to update the existing stocks language for the following Adama products:

- Pyrinex Chlorpyrifos Insecticide (EPA Reg. No. 11678–58).
- Chlorpyrifos 4E AG (alternate brand name Quali-Pro Chlorpyrifos 4E) (EPA Reg. No. 66222–19).
- Vulcan (EPA Reg. No. 66222–223).

The registrant for all three of the listed products is Adama US, and its address is 3120 Highwoods Boulevard, Suite 100, Raleigh, NC 27604.

## III. Provisions for Disposition of Existing Stocks

Existing stocks for the products identified in this document are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to May 4, 2023 (for termination of food uses and tobacco use) and prior to November 6, 2023 (for termination of food processing and food manufacturing uses).

At this time, EPA is amending the existing stocks provisions in the May 4 and November 6 cancellation orders as follows:

- Sale and distribution of existing stocks of Pyrinex Chlorpyrifos Insecticide (EPA Reg. No. 11678–58) is permitted until June 30, 2024.
- Sale and distribution of existing stocks of Chlorpyrifos 4E AG and Quali-Pro Chlorpyrifos 4E (EPA Reg. No. 66222–19) and Vulcan (EPA Reg. Nos. 66222–233) is permitted until April 30, 2025.
- Use of existing stocks of Chlorpyrifos 4E AG, Quali-Pro Chlorpyrifos 4E, and Vulcan on food, food processing sites, and food manufacturing sites must be consistent with the product labeling. Such use is permitted until June 30, 2025. Use of existing stocks Chlorpyrifos 4E AG, Quali-Pro Chlorpyrifos 4E, and Vulcan for non-food purposes is permitted until existing stocks are exhausted, as long as such use is in accordance with the labeling.

After these dates, all respective sale, distribution, and use of existing stocks is prohibited, except for sale and distribution for export consistent with FIFRA section 17 (7 U.S.C. 136o) and for proper disposal.

Dated: March 11, 2024.

**Timothy Kiely,**

*Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2024–05594 Filed 3–14–24; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2017–0751; FRL–11659–02–OCSPP]**

## Pesticide Registration Review; Decisions for Several Pesticides; Notice of Availability; Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; correction.

**SUMMARY:** In the **Federal Register** of March 7, 2024, EPA issued a notice to announce the availability of EPA's interim registration review decision for etofenprox, and the final registration review decision for acetominophen. That notice incorrectly included a **DATES** section that established a comment deadline of May 6, 2024. A comment period is not necessary or appropriate for that document because the decision announced in that document are final for the interim phase of the process for etofenprox and a final decision for acetominophen. This document corrects that document by reaffirming the nature of all the decisions announced in that document and by closing the comment period it incorrectly established.

**DATES:** The comment period established in the **Federal Register** of March 7, 2024, is hereby closed on March 15, 2024.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0751, is available online at *https://www.regulations.gov*. Additional instructions for visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

**FOR FURTHER INFORMATION 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:** Pursuant to 40 CFR 155.58, EPA issued a notice in the **Federal Register** of March 7, 2024 (89 FR 16563) (FRL–11659–01–OCSPP), to announce the availability of EPA's interim registration review decision for etofenprox, and the final registration review decision for acetominophen. As described in that document, EPA previously sought public comment on the proposed registration review decisions.

Subsequent to the publication of that notice, EPA identified that it incorrectly

included a **DATES** section that established a comment deadline of May 6, 2024. A comment period is not necessary or appropriate for that document because the decisions announced in that document are complete. As a result, EPA is issuing this document to reaffirm the nature of the decisions announced in that document and to close the comment period it incorrectly established.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation.*

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: March 11, 2024.

**Timothy Kiely,**

*Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2024–05628 Filed 3–14–24; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1046; FR ID 208604]**

### Information Collection Being Submitted for Review and Approval to Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments and recommendations for the proposed information collection should be submitted on or before April 15, 2024.

**ADDRESSES:** Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

*OMB Control Number:* 3060–1046.

*Title:* Part 64, Modernization of Payphone Compensation Rules, *et al.,* WC Docket No. 17–141, *et al.*

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 216 respondents; 1,456 responses.

*Estimated Time per Response:* 0.50–122 hours.

*Frequency of Response:* On occasion, one-time, and quarterly reporting requirements; third party disclosure requirements; and recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154 and 276.

*Total Annual Burden:* 22,524 hours.

*Total Annual Cost:* No cost.

*Needs and Uses:* Section 276 of the Communications Act, as amended (the Act), requires that the Federal Communications Commission (Commission or FCC) establish rules ensuring that payphone service providers or PSPs are ''fairly compensated'' for each and every completed payphone-originated call. The Commission's Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. A 2003 Report and Order (FCC 03–235) established detailed rules (Payphone Compensation Rules) ensuring that payphone service providers or PSPs are ''fairly compensated'' for each and every completed payphone-originated call pursuant to section 276 of the Communications Act, as amended (the Act), which the Commission revised in a 2018 Report and Order (FCC 18–21). The Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. The Payphone Compensation Rules: (1) place liability to compensate PSPs for payphone-originated calls on the facilities-based long distance carriers or switch-based resellers (SBRs) from whose switches such calls are completed; (2) define these responsible carriers as ''Completing Carriers'' and require them to develop their own system of tracking calls to completion; (3) require Completing Carriers to file with PSPs a quarterly report and also submit an attestation by a company

official, including but not limited to the chief financial officer (CFO), that the payment amount for that quarter is accurate and is based on 100% of all completed calls; (4) require quarterly reporting obligations for other facilities-based long distance carriers in the call path, if any, and define these carriers as ''Intermediate Carriers;'' and (5) give parties flexibility to agree to alternative compensation arrangements (ACA) so that small Completing Carriers may avoid the expense of instituting a tracking system. The revisions adopted in the 2018 Report and Order significantly decreased the paperwork burden on carriers.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2024–05615 Filed 3–14–24; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL TRADE COMMISSION

**[Docket No. C–4760]**

### Petition for Prior Approval of XCL Resources Holdings, LLC's Proposed Acquisition of Altamont Energy, LLC

**AGENCY:** Federal Trade Commission.

**ACTION:** Announcement of Petition; Request for Comment.

**SUMMARY:** XCL Resources Holdings, LLC (''XCL'') has petitioned the Federal Trade Commission (''FTC'' or ''Commission'') for approval of its acquisition of Altamont Energy, LLC (''Altamont''), an oil and gas operator in the Uinta Basin, pursuant to the agreement reached with the FTC in the EnCap/EP Energy matter.

**DATES:** Comments must be received on or before April 15, 2024.

**ADDRESSES:** Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''XCL/Altamont Petition for Prior Approval; Docket No. C–4760'' on your comment, and file your comment online at *www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex P), Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Libby (202–326–2694), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to FTC Rule 2.41(f), 16 CFR 2.41(f), notice is hereby given that the public [redacted] version of the above-captioned petition has been filed with the Secretary of the Commission and is being placed on the public record for a period of thirty (30) days. After the period for public comments has expired, the Commission shall determine whether to approve the petition. In making its determination, the Commission will consider, among other information, all timely and responsive comments submitted in connection with this document.

The text of the public [redacted] version of the petition is provided below. An electronic copy of the text of the public [redacted] version of the petition can be obtained from the FTC website at this web address: *https://www.ftc.gov/legal-library/browse/cases-proceedings/2110158-encapep-energy-matter.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 15, 2024. Write ''XCL/Altamont Petition for Prior Approval; Docket No. C–4760'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *www.regulations.gov* website.

Because of the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *www.regulations.gov* website.

If you prefer to file your comment on paper, write ''XCL/Altamont Petition for Prior Approval; Docket No. C–4760'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex P), 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 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 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). 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 on *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this document and the news release describing this matter. 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 April 15, 2024. 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*.

**April J. Tabor,**

*Secretary.*

**Text of Public [Redacted] Version of Petition for Prior Approval of XCL Resources Holdings, LLC's Proposed Acquisition of Altamont Energy, LLC**

**I. Executive Summary**

XCL Resources Holdings, LLC (''XCL'') plans to acquire Altamont Energy, LLC (''Altamont'' and, together with XCL, the ''Parties''), an oil and gas operator in the Uinta Basin. XCL seeks prior approval from the Federal Trade Commission (the ''FTC'' or the ''Commission'') to complete this proposed transaction pursuant to the agreement reached with the FTC in the EnCap/EP Energy matter.

The Proposed Transaction will not increase the capacity or share of XCL in any relevant market in any appreciable way; nor will it alter in any negative way the competitive landscape for supply of waxy crude oil to Salt Lake City refiners (or to any other refiner). It will provide Altamont, a small operator [REDACTED], the access to capital it needs. The transaction will allow the combined entity to increase production, execute drilling of new wells at a lower cost, and allow for other cost-lowering enhancements, ultimately offering more production at competitive prices downstream to buyers in and out of Salt Lake City.

**II. Introduction**

*A. Background on the Order*

Pursuant to Section 2.41(f) of the FTC Rules of Practice and Procedure [1] and Section X(A) of the September 13, 2022, final decision and order *In the Matter of EnCap Investments L.P., a limited partnership, EnCap Energy Capital Fund XI, L.P., a limited partnership, Verdun Oil Company II LLC, a limited liability company, XCL Resources Holdings, LLC, a limited liability company, EP Energy Corporation, a corporation and EP Energy LLC, a limited liability company* (the ''Order''),[2] XCL hereby petitions the Commission to approve its proposed acquisition of Altamont (the ''Proposed Transaction'').

As part of the Order, the Commission required that EnCap Investments L.P., EnCap Energy Capital Fund XI, L.P., Verdun Oil Company II LLC and XCL (collectively, ''EnCap'') obtain prior approval before acquiring any other producer of waxy crude oil with an output of over 2,000 barrels per day in any of the following Utah counties: Duchesne, Uintah, Utah, Grand, Emery, Carbon and Wasatch.[3]

*B. The Proposed Transaction*

On August 24, 2023, XCL signed a non-disclosure agreement with Altamont in contemplation of the Proposed Transaction. XCL subsequently began due diligence and negotiation of initial terms. On October 31, 2023, XCL and Altamont signed a deal term sheet and entered into an exclusivity agreement. XCL notified the FTC of the Proposed Transaction on November 5, 2023. On January 16, 2024, XCL and Altamont executed a Purchase and Sale Agreement in contemplation of the Proposed Transaction, which [REDACTED] makes closing conditional on obtaining approval from the Commission.[4]

Given that Altamont is a waxy crude oil producer in the Uinta Basin with an output of approximately [REDACTED] barrels per day, the Proposed Transaction is subject to the requirement for prior approval under the Order; and XCL hereby seeks such approval prior to closing the Proposed Transaction. As outlined *infra* in Section IV, the Proposed Transaction is procompetitive and does not raise any competitive concerns.

**III. The Parties and the Transaction Rationale**

*A. The Parties*

XCL is a privately held, Houston-based independent oil and gas company focused on the acquisition and development of liquids-rich basins in the United States. XCL owns and operates approximately 135 horizontal wells across approximately 45,900 net acres in Duchesne and Uintah Counties, Utah, where it extracts black and yellow waxy crude oil and natural gas. XCL's low-cost, efficient operations strategy focuses on the development of horizontal wells and pioneering new production methods in the Uinta Basin. The company has three active rigs and is drilling 70 new wells per year on average in the Uinta Basin. A majority of XCL's production is exported to refiners on the U.S. Gulf Coast, due to supply saturation in Salt Lake City. See infra, Section IV(A).

XCL became a subsidiary of EnCap Investments L.P. (''EnCap Investments'') in 2018, and EnCap Investments has provided the majority of the financial backing for XCL's projects and investments to date. EnCap Investments is a private equity firm specializing in investments in the energy industry, particularly oil and gas.

Altamont is a small operator with no active rigs and no material growth plans it can achieve without access to capital [REDACTED]. Altamont produces [REDACTED] barrels of waxy crude oil per day on average, and nearly all of that is purchased by Salt Lake City refiners. [REDACTED].

In 2018, Altamont acquired oil and gas assets from LINN Energy, Inc., an oil and gas exploration and production company. Altamont focused its operations in and around the Wasatch and Green River stacked formations in the Uinta Basin. Altamont completed drilling operations for four vertical wells in 2018 and 2019.

In 2021, Altamont [REDACTED] to drill eight horizontal wells. Those wells were begun in 2022 completed in 2023, with five wells beginning production in March and three wells beginning production in June, [REDACTED].[5]

Altamont hired Houlihan Lokey as its investment banker and began marketing itself for a sale in August 2023. Altamont and its bankers reached out to over 300 parties in search of potential bidders. [REDACTED].[6] As the highest bidder, XCL was selected as buyer; and discussions kicked off shortly thereafter for the Potential Transaction. *See supra,* Section II(B).

*B. The Transaction Rationale*

With the acquisition of Altamont, XCL expects to realize substantial economic efficiencies in the development and production of oil in the Uinta Basin. XCL projects that the Proposed Transaction will not have any significant impact on its own growth or investment plans, but it will enable XCL to apply capital and its superior operating capabilities to Altamont properties, further XCL's cost-reduction objectives, and ultimately bring more product at competitive prices to its customers.

[1] 16 CFR 2.41(f).

[2] *In the Matter of EnCap Investments L.P., a limited partnership, EnCap Energy Capital Fund XI, L.P., a limited partnership, Verdun Oil Company II LLC, a limited liability company, XCL Resources Holdings, LLC, a limited liability company, EP Energy Corporation, a corporation and EP Energy LLC, a limited liability company,* Decision and Order, Docket No. C–4760, (F.T.C. Sept. 13, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/C4760 EnCapEPEnergyOrder.pdf* (hereinafter, ''Order''), at § X(A).

[3] Order § X(A).

[4] An executed copy of the Purchase and Sale Agreement between Altamont Energy LLC and Altamont Minerals LLC, collectively, as Seller and XCL AssetCo, LLC as Buyer, has been provided to the Commission in connection with this application.

[5] [REDACTED].

[6] [REDACTED].

As the owner of acreage adjacent to Altamont's and an efficient, low-cost operator, XCL is uniquely positioned to generate numerous efficiencies from combining the contiguous acreage. For example, XCL will be able to lower operating costs by combining its water and gas infrastructure with Altamont's. Additionally, XCL will be able to optimize development plans to limit downtime in drilling and completion operations on the contiguous acreage. Reduced operating costs will enhance economic viability (*i.e.,* ability to maintain production and investment in lower commodity price environments) and increase competitive downstream pricing without adding significantly to XCL's share of the Uinta Basin production, output to the Sale Lake City refiners or the like. *See infra,* Section IV. [REDACTED].[7]

For Altamont specifically, the Proposed Transaction will provide an opportunity to generate value for their assets [REDACTED]. XCL plans to change this with the goal of tripling Altamont's production. [REDACTED].

**IV. Competitive Analysis of the Transaction**

*A. Changes in the Market Structure*

Since the FTC investigated the EPE Transaction, the competitive landscape in the Uinta Basin, including its supply into the Salt Lake City refiners, has changed significantly.[8]

Critically for purposes of the FTC's concern in 2021, the increase in waxy crude oil production in the Uinta Basin has saturated supply to the Salt Lake City refiners. Current production levels dramatically exceed the capacity of the refiners, and Uinta Basin producers are selling a growing portion (in XCL's case, a majority) of their output outside the Salt Lake City area (primarily to the U.S. Gulf Coast). The Salt Lake City's refiners' demand for waxy crude oil remains capped at approximately 90,000 barrels per day,[9] while Uinta Basin waxy crude oil production has reached 140,000 barrels per day and is continuing to grow.[10] In addition, Salt Lake City refiners also source other types of crude from outside of the Uinta Basin. Moreover, three different owners of Salt Lake City refineries also source Uinta waxy crude for their other refineries outside of Utah. Both in Salt Lake City and at refineries on the Gulf Coast, waxy crude competes with various other crude grades as refineries optimize their crude feedstocks to maximize profits by producing the combination of products dictated by the market.[11]

In the Complaint, the Commission expressed concern that increased concentration in the Uinta Basin would result in higher prices and decreased supply to the Salt Lake City refiners.[12] But the supply today from the Uinta Basin well exceeds the demand for waxy crude oil from the Salt Lake refiners. This puts the Salt Lake City refiners in the position of driving prices, rather than the Uinta Basin oil producers doing so. Because the Uinta Basin oil producers need to pay higher transportation and other costs to access customers other than the Salt Lake City refiners, the refiners are able to demand low prices.

The Salt Lake City refiners also charge high prices for their finished product—higher than in most of the United States—and realize the highest profits in the nation as compared to refiners in other locations. Finished product prices in Salt Lake City are independent of the sales price of waxy crude oil.[13]

As described above, the production of waxy crude oil in the Uinta Basin has grown (well beyond the demand of Salt Lake City refiners) and continues to grow, creating opportunities for entry and growth. In the last 24 months, at least four new oil producers, Scout Energy Partners, Wasatch Energy Management Operating (''WEM Operating''),[14] Anschutz Corporation and Vaquero Energy have entered the Uinta Basin, initiated drilling operations and have wells that are producing. Additionally, several formerly dormant operators have resumed drilling activities, including Berry Corporation[15] Caerus Uinta, and KGH Operating. Ovintiv, Inc., Uinta Wax Operating and Crescent Energy Company (the company that ultimately acquired EPE) remain large producers, while other competitors, including Middle Fork Energy Partners [16] as well as the new entrants mentioned above, have also built a significant presence, as measured by crude production.

The below chart shows the number of new horizontal wells that have been drilled by year since 2020 per producer, with a notable increase for most producers in 2023.

| Producer | 2020 | 2021 | 2022 | 2023 |
| --- | --- | --- | --- | --- |
| Altamont Energy | 0 | 0 | 8 | 0 |
| Anschutz Corp | 0 | 0 | 0 | 2 |
| Crescent Energy | 9 | 41 | 30 | 24 |
| Finley Resources | 2 | 0 | 0 | 0 |
| KGH Operating Co | 0 | 0 | 1 | 1 |
| Koda Resources | 0 | 0 | 0 | 9 |
| Ovintiv | 3 | 26 | 14 | 54 |
| Scout Energy | 0 | 0 | 0 | 20 |
| Uinta Wax | 10 | 16 | 23 | 37 |
| WEM Operating | 0 | 0 | 0 | 6 |
| XCL Resources | 4 | 48 | 70 | 61 |

[7] Altamont acreage shapefiles provided to XCL in the course of diligence. XCL acreage shapefiles created by XCL internally in the ordinary course.

[8] Please note that, for the purposes of this submission only, XCL adopts the view of the market set forth by the Commission in the EnCap/EP Energy matter. *See In the Matter of EnCap Investments L.P., a limited partnership, EnCap Energy Capital Fund XI, L.P., a limited partnership, Verdun Oil Company II LLC, a limited liability company, XCL Resources Holdings, LLC, a limited liability company, EP Energy Corporation, a corporation and EP Energy LLC, a limited liability company,* Docket No. C–4760 (F.T.C. Mar. 25, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/2110158C4760EnCapEPEComplaint.pdf* (hereinafter, ''Complaint'') ¶ 15.

[9] Based on Utah Geological Survey data for 2022, available at *https://geology.utah.gov/docs/statistics/petroleum3.0/pdf/T3.13a.pdf.* The Complaint estimated the capacity of the Salt Lake City refineries at 80,000 barrels per day. *See* Complaint ¶ 21.

[10] Refinery Demand Data extracted by XCL from Utah Geological Survey. Production Data supplied to XCL by Utah Division of Oil Gas and Mining.

[11] Based on U.S. Geological Survey, Table 3.13a ''Utah Refinery Receipts of Crude Oil by St.ate of Origin, 1980–2022'', available at *https://geology.utah.gov/energy-minerals/info/energy-mineral-statistics/#toggle-id-3.*

[12] Complaint ¶ 24.

[13] Data obtained from Utah Office of Energy Development 2022 Utah Gasoline Prices Report, *https://energy.utah.gov/wp-content/uploads/Utah-Gasoline-Prices.pdf.*

[14] [REDACTED]. WEM Operating began drilling in the Uinta Basin as an independent operator in 2023 and are not yet listed on the UDOGM website as an active producer yet (expected to be listed in 2024).

[15] Primarily drilling vertical wells (so not included in the chart below).

[16] Listed in the chart below as Koda Resources.

| Producer | 2020 | 2021 | 2022 | 2023 |
| --- | --- | --- | --- | --- |
| Total | 28 | 131 | 146 | 214 |

Source: Enverus Data [REDACTED].

The emergence of at least four new entrants in the last 24 months, combined with formerly small producers increasing their shares, indicates that competition is robust in the region.

*B. Size and Positioning of the Target*

As outlined *supra* in Section II(A)(2), Altamont is a small producer with limited capacity and output. Altamont's limited acreage is contiguous to XCL's, and the Parties' infrastructure is complementary, allowing XCL to optimize the combined entity's processes and lower costs. While XCL expects to realize significant cost savings from the Potential Transaction, the increase to XCL's production and share of the Uinta Basin will be modest. *See supra,* Section IV(A). XCL expects that the addition of Altamont's current production will only increase XCL's total production by 9% and market share of waxy crude oil supply to Salt Lake City by 4%, and not materially affect its development or investment plans.

The Parties also expect the Proposed Transaction to have a limited effect, if any, on the supply of waxy crude oil to the Salt Lake City refiners. As outlined *supra* in Section IV(A), the production of waxy crude oil in the Uinta Basin well exceeds the demand from the Salt Lake City refiners. Although XCL's waxy crude oil production has quadrupled since 2022, its supply to Salt Lake City refiners remains unchanged, at approximately [REDACTED] barrels per day. The Salt Lake City refiners have indicated to XCL that they do not intend to purchase any more oil from XCL, and XCL does not expect to increase its sales to them in any significant measure, even with the acquisition of Altamont. [REDACTED] the incremental output from Altamont is only 4% of the waxy crude oil sold to Salt Lake City refiners.

XCL estimates that the HHI index in the market for the supply of waxy crude oil to Salt Lake City refiners is currently 1,549 (pre-Proposed Transaction) and would increase to 1,647 (post-Proposed Transaction), for an HHI delta of 98 points.[17] The chart below shows the pre and post-Proposed Transaction market shares and corresponding HHI components for the 12 top producers for supply of waxy crude to Salt Lake City refiners.[18]

| Producer | Share of waxy crude supply to SLC (pre-transaction) | HHI component (pre-transaction) | Share of waxy crude supply to SLC (post-transaction) | HHI component (post-transaction) |
| --- | --- | --- | --- | --- |
| XCL AssetCo, LLC | [REDACTED] | 311 | [REDACTED] | 475 |
| Javelin Energy Partners Management, LLC | [REDACTED] | 654 | [REDACTED] | 654 |
| Ovintiv USA, Inc | [REDACTED] | 189 | [REDACTED] | 189 |
| Uinta Wax Operating, LLC | [REDACTED] | 178 | [REDACTED] | 178 |
| FINLEY RESOURCES, INC | [REDACTED] | 80 | [REDACTED] | 80 |
| Scout Energy Management, LLC | [REDACTED] | 29 | [REDACTED] | 29 |
| Altamont Energy Operating LLC | [REDACTED] | 17 | [REDACTED] | N/A |
| Berry Petroleum Company LLC | [REDACTED] | 16 | [REDACTED] | 16 |
| MIDDLE FORK ENERGY UINTA, LLC | [REDACTED] | 9 | [REDACTED] | 9 |
| Vaquero Uinta, LLC | [REDACTED] | 2 | [REDACTED] | 2 |
| Greylock Production, LLC | [REDACTED] | 1 | [REDACTED] | 1 |
| Caerus Uinta, LLC | [REDACTED] | 1 | [REDACTED] | 0 |
| Total [19] | 100% | 1,549 | 100% | 1,647 |

Neither the starting nor ending HHI figures indicate a highly concentrated market and the delta from the transaction is not a significant increase under the 2023 Merger Guidelines; instead, the delta reflects only a marginal increase in concentration. [REDACTED].[20] Additionally, the HHI calculations do not take into account the ample oversupply of waxy crude oil available to Salt Lake City refiners. The estimated HHIs also only include waxy crude oil sold to Salt Lake City (90,000 barrels per day) and not all crude oil sold to Salt Lake City (200,000 barrels per day).

*C. Expected Competitive Effects*

The Proposed Transaction will have no negative competitive effect on any relevant market. Since the Commission issued the Order, the competitive landscape has shifted in favor of Salt Lake City refiners, due to the increase in local output from existing suppliers (XCL and others) and the entry of new waxy crude oil producers; while the emergence of these producers shows that barriers to entry have weakened. Given the ample choice Salt Lake City refiners have, the small increase in capacity and output XCL would receive from the Altamont assets would have

[17] Calculations based on latest available Utah Division of Oil, Gas and Mining (UDOGM) data as of January 2024 (July 2023), using production data for a 12-month period (August 2022-July 2023). Calculations use XCL actual sales to SLC and UDOGM production data for other Uinta Basin producers. Estimates assume 100% of production in the Uinta Basin is supplied to Salt Lake City for most producers, except for Ovintiv and Uinta Wax, which XCL is aware also supply a portion (which, for the purposes of this estimate XCL has assumed to be 10,000 barrels per day) to the Gulf Coast. XCL is not aware of Uinta Basin producers other than itself, Ovintiv, and Uinta Wax that supply outside of Salt Lake City in any significant manner. SLC demand for waxy crude (for total size of market) obtained from UDOGM. [REDACTED].

[18] Note the remaining (smaller) producers have a market share and HHI component that rounds to 0 and so have not been displayed. [REDACTED].

[19] Note that the percentages and HHI numbers are rounded and <1% is accounted for by the small producers not listed.

[20] A typical horizontal well in Utah can make anywhere between 800–2,000 barrels per day in its first several months of production. However, by month 12, this typically will fall to under 500 barrels per day, and typically will fall below 300 barrels per day by month. *See* Appendix A (showing average daily production for Uinta Basin horizontal wells with first production since 2019). [REDACTED].

little effect.[21] Additionally, both the size of the target and the value of the Proposed Transaction are a small fraction of the size of the EPE Transaction that resulted in the Order.

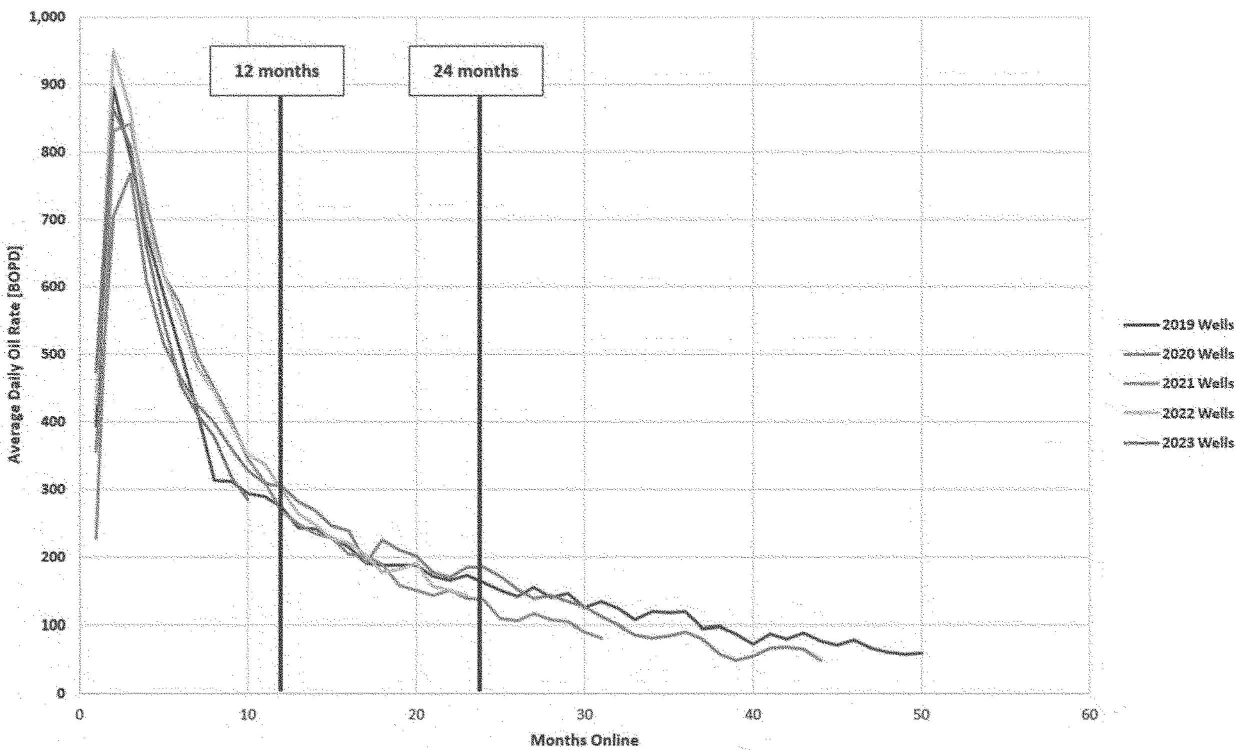
The Potential Transaction will, however, result in pro-competitive effects, allowing XCL to lower costs, grow production, and optimize its processes to deliver high-quality, competitively priced products to the downstream markets in Salt Lake City, the Gulf Coast, and elsewhere. XCL has demonstrated its desire and ability to significantly grow production on its existing position for the benefit of customers (and consumers) in all regions, and it is uniquely positioned to employ the same strategy on Altamont.

### V. Request for Confidential Treatment

This petition, including its related documents, contains certain confidential and competitively sensitive business information relating to XCL, Altamont and the Proposed Transaction. Disclosure of such confidential information may prejudice XCL and Altamont, and cause harm to the ongoing competitiveness of both companies. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the FTC's Rules of Practice and Procedure,[22] XCL has redacted such information from the public version of this application, and requests confidential treatment for such redacted information under Section 4.10(a)(2) of the FTC's Rules of Practice and Procedure [23] and Sections 552(b)(4) and (b)(7) of the Freedom of Information Act.[24] In the event that a determination is made that any material marked as confidential is not subject to confidential treatment, XCL requests that the FTC provide prompt notice of that determination and adequate opportunity to appeal such a decision.

### Appendix A

**Average Daily Production 2019–2023 for Uinta Basin Horizontal Wells With First Production in 2019** [25]




[21] As noted above, for the purposes of this submission, XCL has adopted the Complaint's view of the market. However, XCL believes that market activity and competitive dynamics have demonstrated that waxy crude is not its own product market. It is a crude grade that is fungible with and competes with various other crude grades as refineries optimize their feedstock to align with what the market dictates. Waxy crude has been run at many refineries outside of Salt Lake City and in the process, displaced alternative crude oils at those destinations. When analyzed in this broader market lens, the transaction has negligible impacts on any refining markets.

[22] 16 CFR 2.41(f)(4), 4.9(c).

[23] 16 CFR 4.10(a)(2).

[24] 5 U.S.C. 552(b)(4), 552(b)(7).

[25] A minimum of 10 wells is required to produce a monthly average reducing noise in outer years. Data sourced from Enverus. [REDACTED].

A full color version of this chart is included as a Supporting Document in the docket for this matter on *www.regulations.gov*.

[FR Doc. 2024–05297 Filed 3–14–24; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2024–D–0664]**

## Evaluation of Thermal Effects of Medical Devices That Produce Tissue Heating and/or Cooling; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Evaluation of Thermal Effects of Medical Devices That Produce Tissue Heating and/or Cooling.'' FDA is issuing this draft guidance document to describe relevant information that should be provided in premarket submissions to support the evaluation of thermal effects of medical devices that produce local, regional, and/or systemic changes in tissue temperature (*i.e.,* heating and/or cooling) due to their use. The recommendations in this draft guidance reflect current review practices and are intended to promote consistency and facilitate efficient review of thermal effects data in premarket submissions for these devices. This draft guidance is not final nor is it for implementation at this time.

**DATES:** Submit either electronic or written comments on the draft guidance by May 14, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2024–D–0664 for ''Evaluation of Thermal Effects of Medical Devices that Produce Tissue Heating and/or Cooling.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Evaluation of Thermal Effects of Medical Devices that Produce Tissue Heating and/or Cooling'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Devashish Shrivastava, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4628, Silver Spring, MD 20993–0002, 301–796–5459.

**SUPPLEMENTARY INFORMATION:**

## I. Background

When a change in tissue temperature occurs because of device heating and/or cooling, there is a potential for adverse health effects, such as tissue damage or a negative impact on physiological functions. This draft guidance provides FDA's recommendations for evaluation of thermal effects for devices that produce changes in tissue temperature (heating and/or cooling) as an intended or unintended consequence of device use. The draft guidance describes when

experimental methods (*i.e.,* phantom, ex vivo tissue, and/or in vivo tissue models), computational methods, and/or clinical studies may be appropriate to assess thermal effects.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Evaluation of Thermal Effects of Medical Devices That Produce Tissue Heating and/or Cooling.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

**II. Electronic Access**

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Evaluation of Thermal Effects of Medical Devices that Produce Tissue Heating and/or Cooling'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00022002 and complete title to identify the guidance you are requesting.

**III. Paperwork Reduction Act of 1995**

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

| 21 CFR part or guidance | Topic | OMB control No. |
|---|---|---|
| 807, subpart E | Premarket notification | 0910–0120 |
| 814, subparts A through E | Premarket approval | 0910–0231 |
| 814, subpart H | Humanitarian Use Devices; Humanitarian Device Exemption | 0910–0332 |
| 812 | Investigational Device Exemption | 0910–0078 |
| 860, subpart D | De Novo classification process | 0910–0844 |
| ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''. | Q-submissions and Early Payor Feedback Request Programs for Medical Devices. | 0910–0756 |
| 800, 801, 809, and 830 | Medical Device Labeling Regulations; Unique Device Identification. | 0910–0485 |

Dated: March 12, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–05584 Filed 3–14–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2024–P–0827]**

### Determination That DUEXIS (Ibuprofen and Famotidine) Tablet, 800 Milligrams and 26.6 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that DUEXIS (ibuprofen and famotidine) tablet, 800 milligrams (mg) ibuprofen and 26.6 mg famotidine, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

**FOR FURTHER INFORMATION CONTACT:** Grace St. Vincent, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6215, Silver Spring, MD 20993–0002, 240–402–9201, *Grace.StVincent@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

DUEXIS (ibuprofen and famotidine) tablet, 800 mg and 26.6 mg, is the subject of NDA 022519, held by Horizon Medicines LLC, and initially approved on April 23, 2011. DUEXIS is indicated for the relief of signs and symptoms of rheumatoid arthritis and osteoarthritis and to decrease the risk of developing upper gastrointestinal ulcers in patients who are taking ibuprofen for those indications.

In a letter dated August 10, 2023, Horizon Medicines LLC notified FDA

that DUEXIS (ibuprofen and famotidine) tablet, 800 mg and 26.6 mg, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Aurobindo Pharma USA, Inc., submitted a citizen petition dated February 14, 2024 (Docket No. FDA–2024–P–0827), under 21 CFR 10.30, requesting that the Agency determine whether DUEXIS (ibuprofen and famotidine) tablet, 800 mg and 26.6 mg, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that DUEXIS (ibuprofen and famotidine) tablet, 800 mg and 26.6 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that DUEXIS (ibuprofen and famotidine) tablet, 800 mg and 26.6 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of DUEXIS (ibuprofen and famotidine) tablet, 800 mg and 26.6 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list DUEXIS (ibuprofen and famotidine) tablet, 800 mg and 26.6 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: March 12, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–05578 Filed 3–14–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–P–4065]**

### Determination That NUCYNTA (Tapentadol Hydrochloride) Solution, Equivalent 20 Milligrams Base/Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that NUCYNTA (tapentadol hydrochloride) solution, equivalent (eq) 20 milligrams (mg) base/milliliter (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for tapentadol hydrochloride solution, eq 20 mg base/mL, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Kaetochi Okemgbo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6624, Silver Spring, MD 20993–0002, 301–796–1546, *Kaetochi.Okemgbo@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness § 314.162 (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

NUCYNTA (tapentadol hydrochloride) solution, eq 20 mg base/mL, is the subject of NDA 203794, held by Collegium Pharmaceutical, Inc., and initially approved on October 15, 2012. NUCYNTA is indicated for the management of acute pain severe enough to require an opioid analgesic and for which alternative treatments are inadequate in adults and pediatric patients aged 6 years and older with a body weight of at least 16 kilograms.

Collegium Pharmaceutical, Inc. has never marketed NUCYNTA (tapentadol hydrochloride) solution, eq 20 mg base/mL. In previous instances (see, *e.g.,* 72 FR 9763, March 5, 2007; 61 FR 25497, May 21, 1996, the Agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale.

Novitium Pharma, LLC submitted a citizen petition dated September 19, 2023 (Docket No. FDA–2023–P–4065), under 21 CFR 10.30, requesting that the Agency determine whether NUCYNTA (tapentadol hydrochloride) solution, eq 20 mg base/mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that NUCYNTA (tapentadol hydrochloride) solution, eq 20 mg base/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that NUCYNTA (tapentadol hydrochloride) solution, eq 20 mg base/mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of NUCYNTA (tapentadol hydrochloride) solution, eq 20 mg base/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and

determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list NUCYNTA (tapentadol hydrochloride) solution, eq 20 mg base/mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to NUCYNTA (tapentadol hydrochloride) solution, eq 20 mg base/mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: March 12, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–05582 Filed 3–14–24; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–D–1774]**

### Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program.'' This draft guidance document provides an overview of the mechanisms available to submitters through which they can request interactions with FDA related to medical device submissions. This draft guidance, when finalized, is intended to supersede the document entitled ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' issued on June 2, 2023, and provides clarification and additional information on the scope of Q-Submission (Q-Sub) types, better delineation of how to obtain feedback for different types of questions (*i.e.,* informal communication vs. Pre-Submission or other Q-Submission types), and improved examples. This draft guidance is not final nor is it for implementation at this time.

**DATES:** Submit either electronic or written comments on the draft guidance by May 14, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2018–D–1774 for ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903

New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Joshua Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2438, Silver Spring, MD 20993–0002, 301–796–5640 or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

As part of the Medical Device User Fee Amendments of 2022, the Agency committed to issuing a draft guidance to provide additional information to assist in identifying the circumstances in which an applicant's question is most appropriate for informal communication instead of a Pre-Submission and to provide an opportunity for the public to comment on the updated guidance. This draft guidance reflects such additional information and further clarifies other elements of the Q-Sub Program.

This draft guidance provides an overview of the mechanisms available to submitters through which they can request interactions with FDA, including written feedback and/or a meeting regarding medical device Investigational Device Exemption applications, Premarket Approval applications, Humanitarian Device Exemption applications, De Novo requests, 510(k) submissions, Clinical Laboratory Improvement Amendments (CLIA) Waiver by Applications, Dual 510(k) and CLIA Waiver by Application submissions, Accessory Classification Requests, and certain Investigational New Drug applications and Biologics License Applications submitted to the Center for Biologics Evaluation and Research.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics.* Persons unable to download an electronic copy of ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00001677 and complete title to identify the guidance you are requesting.

## III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

| 21 CFR part or guidance | Topic | OMB control No. |
|---|---|---|
| 807, subpart E | Premarket notification | 0910–0120 |
| 814, subparts A through E | Premarket approval | 0910–0231 |
| 814, subpart H | Humanitarian Use Devices; Humanitarian Device Exemption | 0910–0332 |
| 812 | Investigational Device Exemption | 0910–0078 |
| 860, subpart D | De Novo classification process | 0910–0844 |
| ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''. | Q-submissions and Early Payor Feedback Request Programs for Medical Devices. | 0910–0756 |
| ''Administrative Procedures for CLIA Categorization'' and ''Recommendations: Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications for Manufacturers of In Vitro Diagnostic Devices''. | CLIA Administrative Procedures; CLIA Waivers | 0910–0607 |
| ''Medical Device Accessories—Describing Accessories and Classification Pathways''. | Accessories | 0910–0823 |
| Form FDA 3601 ''Medical Device User Fee Cover Sheet''; Form FDA 3601(a), the ''Device Facility User Fee Cover Sheet;'' ''FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act''. | Medical Device User Fee Cover Sheet and Device Facility User Fee Cover Sheet—Form FDA 3601 and Form 3601(a); 513(g) Request for Information. | 0910–0511 |
| ''Center for Devices and Radiological Health Appeals Processes'' | Appeals Process | 0910–0738 |
| ''Emergency Use Authorization of Medical Products and Related Authorities''. | Emergency Use Authorization | 0910–0595 |
| 312 | Investigational New Drug Application | 0910–0014 |
| 601 | Biologics License Application | 0910–0338 |

Dated: March 12, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–05580 Filed 3–14–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required) and Investigator Initiated Extended Clinical Trial (R01 Clinical Trial Required).

*Date:* April 12, 2024.

*Time:* 9:30 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G34, Rockville, MD 20852 (Video Assisted Meeting).

*Contact Person:* Vishakha Sharma, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G34, Rockville, MD 20852, 301–761–7036, *vishakha.sharma@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 11, 2024.

**Lauren A. Fleck,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–05503 Filed 3–14–24; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Technologies for Health Disparities RFA–EB–21–001 Review.

*Date:* May 31, 2024.

*Time:* 9:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Democracy II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Yoon-Young Jang, MD, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–3397, *yoon-young.jang@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: March 11, 2024.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–05541 Filed 3–14–24; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health. The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session can be accessed at the following NIH Videocast URL link *https://videocast.nih.gov.*

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 Advisory Council for Complementary and Integrative Health.

*Date:* May 17, 2024.

*Closed:* 9:00 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 31 Center Drive, Building 31C/6th Floor, Conference Room A&B, Bethesda, MD 20892.

*Open:* 11:10 a.m. to 4:00 p.m.

*Agenda:* Reports and Updates about Recent and Ongoing NCCIH Led or Involved Activities by NCCIH staff and its Director.

*Place:* National Institutes of Health, 31 Center Drive, Building 31C/6th Floor, Conference Room A&B, Bethesda, MD 20892.

*Contact Person:* Martina Schmidt, Ph.D., Director, Division of Extramural Activities, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–3456, *schmidma@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should be less than 700 words in length, and should include the name, email address, telephone number and when applicable, the business or professional affiliation of the interested person. Any member of the public may submit written comments no later than May 3rd, 2024 (14 days before the council meeting).

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *https://*

*www.nccih.nih.gov/news/events/advisory-council-87th-meeting,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: March 11, 2024.

**Victoria E. Townsend,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–05540 Filed 3–14–24; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Member Conflict: Disease, Cognitive Aging, and Related Dementias April 2, 2024, 1:00 p.m. to April 2, 2024, 7:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on March 11, 2024, 89 FR 17494, Doc 2024–05079.

This meeting is being amended to change the panel name to Member Conflict: Alzheimer's Disease, Cognitive Aging, and Related Dementias. The meeting is closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6).

Dated: March 12, 2024.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–05599 Filed 3–14–24; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Anti-Infective Therapeutics.
*Date:* April 10–11, 2024.
*Time:* 8:00 a.m. to 7:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Crowne Plaza National Airport, 1480 Crystal Drive, Arlington, VA 22202.
*Contact Person:* Marcus Ferrone, PHARMD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–2371, *marcus.ferrone@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA Panel: HEAL KIDS Acute Pain Program.
*Date:* April 10, 2024.
*Time:* 11:00 a.m. to 8:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
*Contact Person:* Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular and Electrophysiological Aspects of Psychiatric and Neurologic Disorders in Humans and Animal Models.
*Date:* April 11, 2024.
*Time:* 10:00 a.m. to 8:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
*Contact Person:* Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, (301) 435–1259, *nadis@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Epidemiology and Population Health.
*Date:* April 11, 2024.
*Time:* 10:00 a.m. to 8:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
*Contact Person:* Rebecca I. Tinker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 435–0637, *tinkerri@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Transmission of Vector-Borne and Zoonotic Diseases.
*Date:* April 11, 2024.
*Time:* 1:00 p.m. to 7:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
*Contact Person:* Bidyottam Mittra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20894, (301) 435–4057, *bidyottam.mittra@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 11, 2024.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–05482 Filed 3–14–24; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Fellowships: Infectious Diseases and Immunology A Study Section, April 3, 2024, 10:00 a.m. to April 4, 2024, 7:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on March 8, 2024, 89 FR 16776, Doc 2024–04932.

This notice is being amended to change the meeting start time from 10:00 a.m. to 9:00 a.m. The meeting is closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6).

Dated: March 11, 2024.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–05483 Filed 3–14–24; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as

amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/*.

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* May 14, 2024.

Open: May 14, 2024, 10:00 a.m. to 4:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

*Closed:* May 14, 2024, 4:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* Christine Ireland, Committee Management Officer, Division of Extramural Programs, National Library of Medicine, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov*.

Any member of the public may submit written comments no later than 15 days in advance of the meeting. Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html* where additional information for the meeting will be posted when available. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*) on May 14, 2024.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: March 11, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–05495 Filed 3–14–24; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Eunice Kennedy Shriver National Institute of Child Health and Human Development Initial Review Group; Pediatrics Study Section.

*Date:* June 20, 2024.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* North Bethesda Marriott Hotel and Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Anita Szajek, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6701 Rockledge Drive, Room 2131D, Bethesda, MD 20892, *anita.szajek@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 11, 2024.

**Lauren A. Fleck,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–05496 Filed 3–14–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

*Date:* April 10, 2024.

*Time:* 10:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852 (Video Assisted Meeting).

*Contact Person:* Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

*Date:* April 12, 2024.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852 (Video Assisted Meeting).

*Contact Person:* Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 11, 2024.

**Lauren A. Fleck,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–05489 Filed 3–14–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer at *samhsapra@samhsa.hhs.gov.*

**Proposed Project: 2023–2026 Advancing Wellness and Resilience in Education and Trauma Informed Services in Schools Cross-Site Evaluation—New Collection**

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) is requesting clearance for data collection that is part of a national cross-site evaluation of process, outcomes, and impact for the Advancing Wellness and Resilience in Education (hereinafter referred to as Project AWARE) and Trauma-Informed Services in Schools (TISS) programs.

The purpose of the Project AWARE–TISS Cross-Site Evaluation is to better understand how each program is implemented, the extent to which they facilitate collaboration between education agencies and mental health systems, and how each program contributes to access and referral to mental health services and improved outcomes for youth.

The AWARE–TISS Cross-Site Evaluation incorporates four evaluation components to provide a robust understanding of the implementation (process), outcomes, and associated impacts of the AWARE and TISS Programs and includes program-specific components to ensure programmatic differences and commonalities are understood. With this integrated evaluation design, SAMHSA maintains the ability to evaluate and report on each program separately, while additionally benefiting from the ability to understand the overarching impact of both programs collectively.

Approval is being requested for data collection associated with a Process Evaluation and an Outcome Evaluation. Several program specific sub-studies and cross-program impact analyses will also be conducted to assess implementation and outcomes overall as well as those outcomes specific to high-need subpopulations and under-resourced communities. A behavioral health equity and cultural equity lens will be applied to each area of evaluation to ensure a culturally specific understanding of intervention implementation, outcomes, and impacts.

The Process Evaluation will contain two studies (Implementation and Sustainability Study and Systems Change Study) that examine strategies common to both programs related to program implementation facilitators and barriers, workforce development, and grantees' plans to sustain critical program components beyond their grant period. This assessment of common elements will provide a means to compare the implementation strategies that are successful across both AWARE and TISS grantees and identify successes and challenges in changing systems, policies, service provision, and school climate; increasing behavioral health equity in access and service delivery; and increasing social and emotional development and well-being in school-aged children and youth. The Process Evaluation will also address implementation of program-specific components.

For AWARE, the evaluation will document how the grantees implement the three-tiered public health model in schools, inclusive of (Tier 1) universal prevention and mental health promotion; (Tier 2) secondary prevention and brief intervention services; and (Tier 3) tertiary intervention and behavioral health treatment along with the referral pathways to increase access to mental health promotion, prevention, and intervention. The evaluation will assess the grantee collaborative efforts and grantee activities intended to increase workforce capacity to identify the signs and symptoms of mental illness and ability to refer to appropriate services promptly.

For TISS, the Process Evaluation will focus on examining what innovative strategies the grantees use to increase access to trauma informed services for school-aged youth and how the collaborative efforts of grantees and their partners develop/improve a school-based system for identification, referral, early intervention, treatment, and supportive services. Additionally, the Process Evaluation will assess the implementation of training to improve school capacity to address trauma support needs and engagement of families and communities to increase awareness of the effects of trauma on children and youth.

The Outcome Evaluation will include two studies that examine important facets of the AWARE and TISS programs: (1) identification and referral infrastructure (Identification and Referral Study); and (2) youth resiliency and outcomes (Youth Resiliency and Outcomes Study). Both studies will provide critical information about the effectiveness of the AWARE and TISS programs in establishing and enhancing school-based mental health supports for students.

Program specific sub-studies, inclusive of two TISS case studies and an AWARE Suicide Awareness and Prevention Sub-Study, will be conducted to provide more extensive contextual and implementation information related to the AWARE and TISS programs.

Finally, in addition to assessing the process and outcomes of each of the AWARE and TISS programs, we will conduct two cross-program analyses that examine the associated impacts of the both programs on the establishment and enhancement of school-based mental health supports for students (Cross-Program Impact Analysis) and the relationships of program and contextual factors with outcomes (Behavioral Health Equity Cross-Study Analysis).

The proposed multimethod approach considers allowable and required activities, variation in the partnerships and provider networks/infrastructure, program settings, populations being served, the range of program implementation plans and goals, existing data systems, and grant infrastructures that support implementation and evaluation participation. In addition, the design considers the stage of implementation of currently funded grantees to seamlessly integrate cohorts appropriately into the evaluation studies.

Fourteen primary data collection activities compose the AWARE–TISS Cross-Site Evaluation.

*Instrument Descriptions*

- *Implementation Survey (IS):* The IS is a web-based survey that includes questions on protocols, policies, and structures present as part of schools'

AWARE and TISS implementation processes; school/community integration; barriers and facilitators to implementation, and sustainability capacity. The survey also includes questions to gather program-specific information—for example, implementation of the pyramid model and suicide prevention policies in the case of AWARE grantees and details on trauma-informed services in the case of TISS grantees. The IS will be completed by project coordinator and program staff representatives annually. IS data will inform the Implementation and Sustainability Study, AWARE Suicide Awareness and Prevention Sub-Study and Behavioral Health Equity Cross-Study Analysis.

▪ *Implementation Key Informant Interview (IKII):* Supplementing IS findings, IKIIs will be conducted to obtain in-depth information about AWARE and TISS program implementation and sustainability based on the perspectives of grantee program staff and local mental health system partner staff. In each year of the 3-year data collection period, individual semi-structured interviews will be conducted with key representatives of each grantee's collaborative partnership group. Questions will focus on partnership development, coordination, and shared decision-making; perspectives on implementation including challenges, strategies, and successes; contextual, systems, or other factors that affect implementation; and approaches to planning for program sustainability. Interviews will be conducted in person during training and technical assistance (TTA) site visits or virtually when needed. IKII data will inform the Implementation and Sustainability Study, TISS Case Studies and Behavioral Health Equity Cross-Study Analysis.

▪ *Youth and Family Focus Group—Youth (YFFG–Y) and Youth and Family Focus Group—Family (YFFG–F):* The YFFG–Y and YFFG–F will be conducted with youth (aged 14–18 or older if appropriate) who attend schools implementing the AWARE or TISS programs and/or their parents/family representatives. The moderator guides will be semi-structured and include open-ended questions to understand experiences and perspectives related to school climate, positive supports, youth or parent engagement, student resiliency and coping skills, awareness of school-based programs or resources to promote mental health literacy and meet mental health needs, mental health resource availability, and satisfaction with the program. Youth and family focus groups will be conducted annually and will include youth or parents representing a sample of AWARE and TISS grantees per year, such that all grantees will participate in the focus groups at least once during the evaluation. The YFFG–Y and YFFG–F will inform the Implementation and Sustainability Study and Behavioral Health Equity Cross-Study Analysis. Data collected through the YFFG–Y will also inform the Youth and Resiliency Outcomes Study.

▪ *Collaboration and Partnership Survey (CPS):* CPS is a web-based survey that assesses communication, working relationships, leadership, role-expectations, resources, and partner engagement/commitment. Respondents will also be asked whether their organization currently has a formal, signed memorandum of agreement with the grantee and what changes to policy and infrastructure have been made in the past year. State and local entities, including project coordinators, school administrators, and mental health providers, identified as partners by AWARE and TISS Grantees will be considered for participation. The CPS will be administered annually and will inform the Systems Change Study.

▪ *Training Summary Form (TSF):* TSF is a web-based form that will be used annually by AWARE and TISS grantees to document training and educational seminars. It will include training dates, length of time of training (in hours), topic of the training, training objectives, format of training delivery (in-person, webinar, online asynchronous, etc.), intended audience, and number of training participants. It is estimated that grantees will conduct up to 10 trainings annually for different groups (*e.g.,* teachers, mental health professionals, instructional support personnel). The TSF will inform the Systems Change Study and AWARE Suicide Awareness and Prevention Sub-Study.

▪ *Participant Feedback Form (PFF):* The PFF is a web-based form that assesses perceptions of immediate and longer-term benefits in training areas that research has linked to effective implementation and practice change. The PFF will be completed annually by grantee training participants after training events to gather perception of the training experience and perceived feasibility of using the information. The PFF will inform the Systems Change Study.

▪ *AWARE Pre-Post Training Survey (APPTS) and TISS Pre-Post Training Survey (TPPTS):* The APPTS and TPPTS are web-based surveys intended to be taken before and after AWARE or TISS grantee trainings across the 3-year data collection period. The APPTS will be completed by a sample of training participants per AWARE grantee annually and assesses knowledge, attitudes, and beliefs related to identifying students in need of mental health services and referring them for mental health services, mental health literacy, attitudes, beliefs (including stigma), and self-efficacy to provide support and referrals to youth experiencing mental health symptoms. The TPPTS will be completed by sample of training participants per TISS grantee annually and assesses trainee's knowledge of and self-efficacy to use trauma-informed strategies in their work. The APPTS and TPPTS will inform the Systems Change Study.

▪ *Workforce Follow-up Survey (WFS):* The WFS is a web-based survey that assesses barriers and facilitators to training use and the extent to which participants identified students in need of mental health services and referred them to services. The WFS will be administered to approximately 50% of AWARE and TISS training participants that also completed the APPTS or TPPTS. The WFS will be completed 3- and 12-months after training events and will be used to measure behavioral changes and longer-term impact on systems and communities. The WFS will inform the Systems Change Study.

▪ *Student Climate and Safety Survey (STCSS), School Staff Climate and Safety Survey (SSCSS), and Parent Climate and Safety Survey (PCSS):* The STCSS, SSCSS, and PCSS are web-based surveys assessing school climate and safety among students attending grantee LEAs, parents of students, school personnel, and LEA staff. Surveys will be administered in year one and in year three of the evaluation and assess availability and utilization of referral for services (for students, parents, and school staff), trauma-informed practices (for school staff), respect for diversity (for school staff), racial climate (for students). The STCSS, SSCSS, and PCC will inform the Systems Change Study.

▪ *Student Identification and Referral Form (SIRF):* The SIRF is a web-based form that gathers existing data detailing each how youth in need of mental health, substance use, or trauma-specific support services were identified because of an AWARE or TISS program, whether and to which services youth were referred, and resulting services received. Establishing identification and referral systems, including coordination with support service providers equipped to meet the needs of youth, is a core component of AWARE and TISS grant requirements. The SIRF will be completed by grantee program staff for up to 100 youth annually per grantee as

part of a record review for each youth identified and referred to support services. Information about the initial identification, including the location and pathway to identification (*e.g.,* individual, screening tool, staff role), is obtained, along with information about referrals and support services received following identification. The form also includes deidentified demographic information about the youth receiving the identification, referral, and follow-up care. SIRF data can be extracted from case records of school-based care coordinators or mental health providers, or other existing data sources, including any school staff, support service provider, and family members who make a mental health, substance use, or trauma-related identification and referral. No personal identifiers are requested on the SIRF. SIRF data will inform the Identification and Referral Study and Behavioral Health Equity Cross-Study Analysis.

The estimated response burden to collect this information associated with the AWARE–TISS Cross-Site Evaluation is as follows annualized over the requested 3-year clearance period is presented below. Annual Burden (hours) and Total Cost ($) are rounded to the nearest whole number.

TOTAL AND ANNUALIZED AVERAGES: RESPONDENTS, RESPONSES, AND HOURS

| Instrument | Type of respondent | Number of respondents | Responses per respondent | Total number of responses | Burden per response (hours) | Annual burden (hours) | Hourly wage rate ($) | Total cost ($) |
|---|---|---|---|---|---|---|---|---|
| IS | Project Coordinator | 143 | 1 | 143 | 0.5 | 72 | [1] $35.52 | $2,557 |
| IS | Program Staff | 15 | 1 | 15 | 0.5 | 8 | [2] 21.71 | 174 |
| IKII | Project Coordinator | 94 | 1 | 94 | 1 | 94 | 35.52 | 3,339 |
| IKII | Mental Health Provider | 141 | 1 | 141 | 1 | 141 | [3] 69.39 | 9,784 |
| IKII | School Administrator | 47 | 1 | 47 | 1 | 47 | [4] 54.21 | 2,548 |
| YFFG–Y | Youth | 79 | 1 | 79 | 1.5 | 119 | [5] 7.25 | 863 |
| YFGG–F | Parent of Youth | 79 | 1 | 79 | 1.5 | 119 | 7.25 | 863 |
| CPS | Project Coordinator | 143 | 1 | 143 | 0.25 | 36 | 35.52 | 1,279 |
| CPS | Program Staff | 47 | 1 | 47 | 0.25 | 12 | 21.71 | 261 |
| CPS | School Administrator | 47 | 1 | 47 | 0.25 | 12 | 54.21 | 651 |
| TSF | Program Staff | 47 | 10 | 470 | 0.15 | 71 | 21.71 | 1,541 |
| PFF | Program Trainee | 2,775 | 1 | 2,775 | 0.15 | 416 | [6] 26.81 | 11,153 |
| APPTS | Program Trainee | 4,000 | 2 | 8,000 | 0.25 | 2,000 | 26.81 | 53,620 |
| TPPTS | Program Trainee | 750 | 2 | 1,500 | 0.25 | 375 | 26.81 | 10,054 |
| WFS | Program Trainee | 2,391 | 2 | 4,782 | 0.25 | 1,196 | 26.81 | 32,065 |
| PCSS | Parent of Youth | 282 | 1 | 282 | 0.4 | 113 | 7.25 | 819 |
| STCSS | Youth | 282 | 1 | 282 | 0.4 | 113 | 7.25 | 819 |
| SSCSS | School Staff | 282 | 1 | 282 | 0.5 | 141 | [7] 30.20 | 4,258 |
| SSCSS | School Administrator | 188 | 1 | 188 | 0.5 | 94 | 54.21 | 5,096 |
| SIRF | Program Staff | 47 | 100 | 4,700 | 0.5 | 2,350 | 21.71 | 51,019 |
| Total | | 11,879 | | 24,096 | | 7,529 | | 192,763 |

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.

**Alicia Broadus,**

*Public Health Advisor.*

[FR Doc. 2024–05585 Filed 3–14–24; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2024–0043]**

### Cooperative Research and Development Agreement: REGENT Craft, Inc.

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of intent; request for comments.

**SUMMARY:** The Coast Guard is announcing its intent to enter into a Cooperative Research and Development Agreement (CRADA) with REGENT Craft, Inc. (REGENT) to evaluate advancements in Wing-In-Ground (WIG) maritime aircraft for applicability to USCG missions. REGENT's sea gliders are representative of that technology. While the Coast Guard is currently considering partnering with REGENT, we are soliciting public comment on the possible nature of and participation of other parties in the proposed CRADA. In addition, the Coast Guard also invites other potential non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to consider submitting proposals for consideration in similar CRADAs.

**DATES:** Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before April 15, 2024.

[1] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Community and Social Service Specialists, All Other (code 21–1099); *https://www.bls.gov/oes/current/oes_nat.htm#21-0000.*

[2] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Community and Social Service Assistants (code 21–1093); *https://www.bls.gov/oes/current/oes_nat.htm#21-0000.*

[3] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Healthcare Diagnosing or Treating Practitioners (code 29–1000); *https://www.bls.gov/oes/current/naics5_541720.htm#29-0000.*

[4] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Educational Administrators, All Other (code 11–9039); *https://www.bls.gov/oes/current/naics5_541720.htm#11-0000.*

[5] *https://www.usa.gov/minimum-wage.*

[6] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Community and Social Service Occupations (code 21–0000); *https://www.bls.gov/oes/current/oes_nat.htm#21-0000.*

[7] BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Educational, Guidance, and Career Counselors and Advisors (code 21–2012); *https://www.bls.gov/oes/current/naics5_541720.htm#21-0000.*

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before April 15, 2024.

**ADDRESSES:** Submit comments online at *http://www.regulations.gov* following website instructions.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice or wish to submit proposals for future CRADAs, contact Jason Story, Project Official, Rapid Reaction Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2833, email *jason.m.story@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to respond to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

Comments should be marked with docket number USCG–2024–0043 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

## Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).[1] A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the R&D Center will collaborate with one non-Federal participant. Together, the R&D Center and the non-Federal participant will conduct sea glider evaluations to determine the system's applicability to USCG missions.

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Collaborate with REGENT Craft Inc. to co-design specific operational and safety test scenarios, bringing in real-world maritime expertise;

(2) Provide information regarding the USCG's interest in the WIG technology needed for creating the Test Plan;

(3) Provide all support resources, including travel, for Coast Guard staff that supports this CRADA;

(4) Provide personnel support to non-Federal participant to assist with setting up and execute testing in accordance with the agreed upon Test Plan;

(5) Work with non-Federal participant to develop a Final Report, which will document the methodologies, findings, conclusions, and recommendations of this CRADA work.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Provide appropriate staff with pertinent expertise to support the above mentioned tasks;

(2) Provide all necessary facilities and sea glider resources needed to conduct the evaluations as outlined in the Test Plan;

(3) Provide technical approach for the Test Plan;

(4) Provide test data upon completion of testing.

[1] The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have not more than five single-sided pages (excluding cover page, DD 1494, JF–12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding, of and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described, and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering REGENT for participation in this CRADA. This consideration is based on the fact that REGENT has demonstrated its sea gliders and availability of appropriate facilities to execute test scenarios. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology assessment effort. The goal of the Coast Guard for this CRADA is to determine the applicability of this type of vessel to the Coast Guard's missions. Special consideration will be given to small business firms/ consortia, and preference will be given to business units located in the U.S. This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: February 29, 2024.

**Michael Chien,**

*Captain, USCG, Commanding Officer, U.S. Coast Guard Research and Development Center.*

[FR Doc. 2024–05537 Filed 3–14–24; 8:45 am]

BILLING CODE 9110–04–P

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# DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4759–DR; Docket ID FEMA–2024–0001]**

## Washington; 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 Washington (FEMA–4759–DR), dated February 15, 2024, and related determinations.

**DATES:** The declaration was issued February 15, 2024.

**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 February 15, 2024, 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 Washington resulting from wildfires during the period of August 18 to August 25, 2023, 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 Washington.

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 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, 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, Toney L. Raines, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Spokane County for Individual Assistance.

Spokane County for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All areas within the State of Washington 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. 2024–05530 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4759–DR; Docket ID FEMA–2024–0001]**

### Washington; 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 Washington (FEMA–4759–DR), dated February 15, 2024, and related determinations.

**DATES:** This change occurred on February 20, 2024.

**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, Lance E. Davis, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Toney L. Raines 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. 2024–05531 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4756–DR; Docket ID FEMA–2024–0001]**

### West Virginia; 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 West Virginia (FEMA–4756–DR), dated January 30, 2024, and related determinations.

**DATES:** This amendment was issued February 27, 2024.

**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 West Virginia is hereby amended to include Public Assistance for 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 January 30, 2024.

Harrison and Kanawha Counties for Public Assistance (already designated for Individual Assistance).

Roane County for Public Assistance.

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. 2024–05527 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4754–DR; Docket ID FEMA–2024–0001]**

### Maine; 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 Maine (FEMA–4754–DR), dated January 30, 2024, and related determinations.

**DATES:** The declaration was issued January 30, 2024.

**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 January 30, 2024, 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 Maine resulting from a severe storm and flooding during the period of December 17 to December 21, 2023, 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 Maine.

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 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, 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, William F. Roy, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maine have been designated as adversely affected by this major disaster:

Androscoggin, Franklin, Kennebec, Oxford, and Somerset Counties for Individual Assistance.

Androscoggin, Franklin, Hancock, Oxford, Penobscot, Piscataquis, Somerset, Waldo, and Washington Counties for Public Assistance.

All areas within the State of Maine 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. 2024–05523 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4760–DR; Docket ID FEMA–2024–0001]**

### North Dakota; 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 North Dakota (FEMA–4760–DR), dated February 15, 2024, and related determinations.

**DATES:** The declaration was issued February 15, 2024.

**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 February 15, 2024, 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 North Dakota resulting from a severe winter storm and straight-line winds during the period of December 25 to December 27, 2023, 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 North Dakota.

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, James R. Stephenson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Barnes, Cass, Dickey, Grant, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, Steele, Stutsman, and Traill Counties for Public Assistance.

All areas within the State of North Dakota 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. 2024–05532 Filed 3–14–24; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4340–DR; Docket ID FEMA–2024–0001]**

## Virgin Islands; 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 for the territory of the U.S. Virgin Islands (FEMA–4340–DR), dated September 20, 2017, and related determinations.

**DATES:** This amendment was issued February 8, 2024.

**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 February 8, 2024, 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 unprecedented and combined impact of hurricanes Irma and Maria on the territory of the U.S. Virgin Islands warrant special cost-sharing arrangements for 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 the declarations signed by the President on September 7, 2017, and September 20, 2017, to authorize the following: An increase in the Federal share to 95 percent for all Public Assistance categories, retroactive to include all projects currently funded at less than 100 percent; and an increase in the Federal share to 98 percent until September 30, 2024, for all projects utilizing Section 428 procedures. The additional 3 percent Federal share apply only to projects for which a Fixed Cost Offer has been accepted by September 30, 2024, subject to extension on a per-project basis by the Administrator of the Federal Emergency Management Agency for specific and unavoidable extenuating circumstances. Section 428 projects not completed by December 31, 2035, revert to a 95 percent Federal cost share.

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. 2024–05520 Filed 3–14–24; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4756–DR; Docket ID FEMA–2024–0001]**

## West 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 State of West Virginia (FEMA–4756–DR), dated January 30, 2024, and related determinations.

**DATES:** The declaration was issued January 30, 2024.

**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 January 30, 2024, 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 West Virginia resulting from severe storms, flooding, landslides, and mudslides during the period of August 28 to August 30, 2023, 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 West 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 Individual 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 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, Jeffrey L. Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Boone, Calhoun, Clay, Harrison, and Kanawha Counties for Individual Assistance.

All areas within the State of West 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. 2024–05526 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4754–DR; Docket ID FEMA–2024–0001]**

### Maine; 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 Maine (FEMA–4754–DR), dated January 30, 2024, and related determinations.

**DATES:** This amendment was issued February 27, 2024.

**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 Maine 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 January 30, 2024.

Kennebec County for Public Assistance (already designed for Individual Assistance).

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. 2024–05524 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4757–DR; Docket ID FEMA–2024–0001]**

### Michigan; 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 Michigan (FEMA–4757–DR), dated February 8, 2024, and related determinations.

**DATES:** The declaration was issued February 8, 2024.

**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 February 8, 2024, 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 Michigan resulting from severe storms, tornadoes, and flooding during the period of August 24 to August 26, 2023, 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 Michigan.

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 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 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, John F. Boyle, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Michigan have been designated as adversely affected by this major disaster:

Eaton, Ingham, Ionia, Kent, Livingston, Macomb, Monroe, Oakland, and Wayne Counties for Individual Assistance.

All areas within the State of Michigan 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. 2024–05528 Filed 3–14–24; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3604–EM; Docket ID FEMA–2024–0001]**

### Connecticut; 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 Connecticut (FEMA–3604–EM), dated January 13, 2024, and related determinations.

**DATES:** The declaration was issued January 13, 2024.

**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 January 13, 2024, 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 Connecticut resulting from severe storms, flooding, and a potential dam breach beginning on January 10, 2024, 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 Connecticut.

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), limited to 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 V. Fogel, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Connecticut have been designated as adversely affected by this declared emergency:

New London County, including the Mohegan Tribal Nation and Mashantucket Pequot Tribal Nation for emergency protective measures (Category B), limited to 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. 2024–05517 Filed 3–14–24; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4751–DR; Docket ID FEMA–2024–0001]**

### Tennessee; 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 Tennessee (FEMA–4751–DR), dated December 13, 2023, and related determinations.

**DATES:** This amendment was issued January 30, 2024.

**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 Tennessee is hereby amended to include the Public Assistance program for 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 December 13, 2023.

Cheatham, Gibson, and Stewart Counties for Public Assistance (already designated for Individual Assistance).

Davidson, Dickson, Montgomery, and Sumner Counties for Public Assistance (already designated for emergency protective measures [Category B], limited to direct federal assistance, under the Public Assistance program).

Robertson and Weakley Counties for Public Assistance.

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. 2024–05521 Filed 3–14–24; 8:45 am]

BILLING CODE 9111–23–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4753–DR; Docket ID FEMA–2024–0001]**

### Rhode Island; 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 Rhode Island (FEMA–4753–DR), dated January 7, 2024, and related determinations.

**DATES:** This amendment was issued February 8, 2024.

**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 Rhode Island is hereby amended to include the Hazard Mitigation Grant Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 7, 2024.

All areas within the State of Rhode Island 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. 2024–05522 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4755–DR; Docket ID FEMA–2024–0001]**

### New York; 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 New York (FEMA–4755–DR), dated January 30, 2024, and related determinations.

**DATES:** The declaration was issued January 30, 2024.

**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 January 30, 2024, 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 New York resulting from a severe storm and flooding during the period of September 28 to September 30, 2023, 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 New York.

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, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Kings, Nassau, and Westchester Counties for Public Assistance.

All areas within the State of New York 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. 2024–05525 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3604–EM; Docket ID FEMA–2024–0001]**

### Connecticut; 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 Connecticut (FEMA–3604–EM), dated January 13, 2024, and related determinations.

**DATES:** This amendment was issued January 30, 2024.

**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 January 13, 2024.

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. 2024–05518 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4758–DR; Docket ID FEMA–2024–0001]**

### California; 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 California (FEMA–4758–DR), dated February 19, 2024, and related determinations.

**DATES:** The declaration was issued February 19, 2024.

**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 February 19, 2024, 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 California resulting from a severe storm and flooding during the period of January 21 to January 23, 2024, 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 California.

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 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 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,

N. Allison Pfaendler, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

San Diego County for Individual Assistance.

All areas within the State of California 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. 2024–05529 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4335–DR; Docket ID FEMA–2024–0001]**

### Virgin Islands; 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 for the territory of the U.S. Virgin Islands (FEMA–4335–DR), dated September 7, 2017, and related determinations.

**DATES:** This amendment was issued February 8, 2024.

**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 February 8, 2024, 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 unprecedented and combined impact of hurricanes Irma and Maria on the territory of the U.S. Virgin Islands warrant special cost-sharing arrangements for 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 the declarations signed by the President on September 7, 2017, and September 20, 2017, to authorize the following: An increase in the Federal share to 95 percent for all Public Assistance categories, retroactive to include all projects currently funded at less than 100 percent; and an increase in the Federal share to 98 percent until September 30, 2024, for all projects utilizing Section 428 procedures. The additional 3 percent Federal share apply only to projects for which a Fixed Cost Offer has been accepted by September 30, 2024, subject to extension on a per-project basis by the Administrator of the Federal Emergency Management Agency for specific and unavoidable extenuating circumstances. Section 428 projects not completed by December 31, 2035, revert to a 95 percent Federal cost share.

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. 2024–05519 Filed 3–14–24; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

**[245A2100DD/AAKC001030/A0A501010.999900]**

### Indian Gaming; Approval by Operation of Law of Tribal-State Class III Gaming Compact (Rosebud Sioux Tribe and the State of South Dakota)

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the approval by operation of law of the Tribal-State Compact between the Rosebud Sioux Tribe and the State of South Dakota.

**DATES:** The Amendment takes effect on March 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.,* (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove the Tribal-State compact governing the conduct of Class III gaming activity on the Tribe's Indian lands. *See* 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary, but only to the extent the compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(D). The IGRA also requires the Secretary to publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. *See* 25 U.S.C. 2710(d)(8)(D). The Department's regulations at 25 CFR 293.4 require all compacts and amendments to be reviewed and approved by the Secretary prior to taking effect. The Secretary took no action on the Compact between the Rosebud Sioux Tribe and the State of South Dakota, within the 45-day statutory review period. Therefore, the Compact is considered to have been approved, but only to the extent it is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2024–05558 Filed 3–14–24; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[BLM_HQ_FRN_MO4500174493]**

### Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan Amendment (RMPA) and Draft Environmental Impact Statement (EIS) for Greater Sage-Grouse Rangewide Planning and by this notice is providing information announcing the opening of the comment period on the Draft RMPA/EIS and on the BLM's consideration of potential areas of critical environmental concern (ACECs).

**DATES:** This notice announces the opening of a 90-day comment period for the Draft RMPA/EIS beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

To afford the BLM the opportunity to consider comments in the Proposed RMPA/Final EIS, please ensure your comments are received prior to the close of the 90-day comment period or 15 days after the last public meeting, whichever is later.

This notice also announces the opening of a 60-day comment period for ACECs. The BLM must receive your ACEC-related comments by May 14, 2024.

The BLM will hold two virtual public meetings and 11 in-person public meetings throughout the planning area. The specific dates and locations of these meetings will be announced at least 15 days in advance through the ePlanning page (see **ADDRESSES**) and media releases.

**ADDRESSES:** The Draft RMPA/EIS is available for review on the BLM ePlanning project website at *https://eplanning.blm.gov/eplanning-ui/project/2016719/510.*

Written comments related to the Greater Sage-Grouse Rangewide RMPA may be submitted by any of the following methods:

- *Website:* electronically via the BLM ePlanning website at *https://eplanning.blm.gov/eplanning-ui/project/2016719/510.*
- *Email:* BLM_HQ_GRSG_Planning.
- *Mail:* BLM Utah State Office, ATTN: HQ GRSG RMPA, 440 West 200 South #500, Salt Lake City, UT 84101.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2016719/510* and at the BLM State Offices in California, Colorado, Idaho, Montana, Nevada, Oregon, Utah and Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Pat Deibert, BLM National Sage-Grouse Conservation Coordinator; telephone: 720–447–8107; address: 5353 Yellowstone Road, Cheyenne, WY 82009; email: *BLM_HQ_GRSG_Planning@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Deibert. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** This document provides notice that the BLM has prepared a Draft RMPA/EIS, provides information announcing the opening of the comment period on the Draft RMPA/EIS, and announces the comment period on the BLM's consideration of potential ACECs. The RMPA would change the following 77 BLM land use plans, collectively referred to in this document as resource management plans (RMPs), across 10 Western States. The original completion date for each plan is noted in parentheses and could include later amendments or maintenance actions.

#### California

- Altura RMP (2008)
- Eagle Lake RMP (2008)
- Surprise RMP (2008)

#### Colorado

- Colorado River Valley RMP (2015), including Roan Plateau RMPA (2016)
- Grand Junction RMP (2015)

- Kremmling RMP (2015)
- Little Snake RMP (2011)
- White River RMP (1997) and associated amendments, including the White River Oil and Gas Amendment (2015)

**Idaho**

- Bennett Hills/Timmerman Hills Management Framework Plan (MFP) (1980)
- Big Desert MFP (1981)
- Big Lost MFP (1983)
- Bruneau MFP (1983)
- Cassia RMP (1985)
- Challis RMP (1999)
- Craters of the Moon National Monument RMP (2006)
- Four Rivers RMP (2023)
- Jarbidge RMP (2015)
- Lemhi RMP (1987)
- Little Lost-Birch Creek MFP (1981)
- Magic MFP (1975)
- Medicine Lodge MFP (1981)
- Monument RMP (1985)
- Owyhee RMP (1999)
- Pocatello RMP (2012)
- Snake River Birds of Prey National Conservation Area RMP (2008)
- Sun Valley MFP (1981)
- Twin Falls MFP (1982)

**Montana/Dakotas**

- Billings and Pompeys Pillar Nation Monument RMP (2015)
- Butte RMP (2009)
- Dillon RMP (2006)
- HiLine RMP (2015)
- Lewistown RMP (2021)
- Miles City RMP (2015)
- North Dakota RMP (1988)
- South Dakota RMP (2015)
- Upper Missouri River Breaks National Monument RMP (2008)

**Nevada**

- Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area RMP (2004)
- Carson City Field Office Consolidated RMP (2001)
- Elko RMP (1987)
- Ely RMP (2008)
- Shoshone-Eureka RMP (1986)
- Tonopah RMP (1997)
- Wells RMP (1985)
- Winnemucca District RMP (2015)

**Oregon**

- Andrews RMP (2005)
- Baker RMP (1989)
- Brothers/La Pine RMP (1989)
- Lakeview RMP (2003)
- Southeastern Oregon RMP (2002)
- Steens Mountain Cooperative Management and Protection Area RMP (2005)
- Three Rivers RMP (1992)
- Upper Deschutes RMP (2005)

**Utah**

- Vernal RMP (2008)
- Price RMP (2008)
- Richfield RMP (2008)
- Kanab RMP (2008)
- Kanab/Escalante Planning Area RMP (2020)
- Grand Staircase-Escalante National Monument—Grand Staircase Unit RMP (2020)
- Cedar/Beaver/Garfield/Antimony RMP (1986)
- Pinyon MFP (1978)
- Warm Springs RMP (1987)
- House Range RMP (1987)
- Pony Express RMP (1990)
- Box Elder RMP (1986)
- Randolph MFP (1980)
- Park City MFP (1975)
- Salt Lake District Isolated Tracts Planning Analysis (1985)

**Wyoming**

- Buffalo RMP (2015)
- Casper RMP (2007)
- Cody RMP (2015)
- Kemmerer RMP (2010)
- Lander RMP (2014)
- Newcastle RMP (2000)
- Pinedale RMP (2008)
- Rawlins RMP (2008)
- Green River RMP (1997)
- Worland RMP (2015)

The planning area includes portions of 10 Western States with greater sage-grouse (GRSG) habitat: California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming, and encompasses nearly 121 million acres of BLM-administered public lands. Because this effort is focused on GRSG habitat management, decisions resulting from this amendment effort could affect up to 69 million acres of BLM-administered lands associated with the applicable GRSG habitat management areas. No decisions are being made on National Forest System lands or the underlying Federal mineral estate as part of this process.

The 2015 GRSG RMPA amended or revised RMPs in the planning area to provide for GRSG conservation on public lands. In the 2019 GRSG RMPAs, the BLM amended some of the 2015 GRSG plan decisions in the States of California, Colorado, Idaho, Nevada, Oregon, Utah, and Wyoming. On October 16, 2019, the United States District Court for the District of Idaho preliminarily enjoined the BLM from implementing the 2019 GRSG RMPAs (Case No. 1:16–CV–83–BLW).

The amount and condition of GRSG habitat supports the GRSG populations that State wildlife agencies manage. Recent data suggests a continued long-term decline in sagebrush habitats and GRSG populations across the species range. Habitat and population trends vary across the range, with wildfire being a larger problem in the Great Basin States and human development being the primary issue in the Rocky Mountain States. Regardless of the cause, continued habitat loss results in smaller patches available for GRSG use, which can concentrate impacts to birds. Approximately half the remaining GRSG habitat is managed by the BLM. The BLM is considering specific changes to some GRSG RMP decisions across the species range to improve conservation and management of GRSG habitats consistent with the BLM's sensitive species policy and in coordination with State wildlife agencies.

On November 22, 2021, the BLM published a notice of intent in the **Federal Register** to initiate the public scoping period for this planning effort (86 FR 66331). The BLM hosted two virtual public scoping meetings aimed at providing information on the planning effort, identifying the scope of issues to be addressed in the RMPA, gathering input to assist in formulating a reasonable range of alternatives, and soliciting information on potential ACECs to consider. The resource concerns identified during the scoping process included GRSG habitat, mineral development, renewable energy development, livestock grazing management, wild horses and burros, ACECs, lands and realty, air resources, soil resources, and social and economic conditions.

**Purpose and Need**

The BLM's GRSG habitat conservation efforts rely on implementing management actions that avoid, minimize, or, if necessary, compensate for land uses and other threats that reduce the amount and quality of GRSG habitat. Many actions from the 2015 and 2019 RMPAs already accomplish this. As a result, the BLM's purpose and need is to consider amending RMPs to address a sub-set of GRSG management actions on BLM-administered lands to respond to changing land uses in GRSG habitats, improve the efficiency and effectiveness of GRSG management, provide for consistent conservation across state lines, and provide the BLM with locally relevant decisions that accord with range-wide GRSG conservation goals. To this end, the BLM is focusing on the following rangewide management actions:

- Clarify the GRSG RMP goal;
- GRSG habitat management area alignment (*i.e.,* to incorporate new science and improve alignment along

state boundaries) and the major land use allocations therein, including criteria-based management for non-habitat within the habitat management areas;

- Mitigation;
- GRSG habitat objectives;
- Disturbance cap;
- Fluid mineral development and leasing objective;
- Fluid mineral leasing waivers, exceptions, and modifications;
- Renewable energy development and associated transmission;
- Minimizing threats from predation;
- Livestock grazing;
- Wild horse and burro management;
- Areas of Critical Environmental Concern; and
- Adaptive Management.

Some management concerns are localized to circumstances in individual States and are influenced by the ecological diversity of the sagebrush system. As such, the purpose of this planning effort also includes amending specific RMP management actions associated with State-specific circumstances to improve GRSG habitat conservation.

Changes to RMPs may be needed to:

- Address the continued GRSG habitat losses that are contributing to declines in GRSG populations;
- Ensure habitat management areas and associated management incorporate recent relevant science to prioritize management where it will provide conservation benefit (including providing for durable planning decisions when considering the effects of climate change);
- Provide continuity in managing GRSG habitats based on biological information versus political boundaries, where appropriate, while allowing for management flexibility to address different strategies in identifying habitat management areas with state agencies, as well as local habitat variability; and
- Refine and clarify other aspects of RMPs.

**Alternatives Including the Preferred Alternative**

The BLM has analyzed six alternatives in detail, including the no action alternative.

Alternative 1 includes the applicable elements of the 2015 GRSG amendment efforts related to the management actions noted in the purpose and need. Under Alternative 1 the BLM would re-adopt the applicable GRSG habitat management area boundaries and the associated management. The existing language in the plans from the 2019 effort would revert to that contained in the 2015 amendments (as maintained). Due to the U.S. District Court of Idaho's preliminary injunction preventing implementation of the 2019 amendments, this alternative reflects how the BLM is currently managing GRSG habitat on public lands. There is variability across the different States regarding approaches for the management actions mentioned in the purpose. While the States have similar concepts in their RMPs (*e.g.,* disturbance cap, adaptive management, livestock grazing), the application details vary. The Sagebrush Focal Areas (SFA) identified in the 2015 RMPA would continue under this Alternative.

Alternative 2 is the applicable RMP goals, objectives, and management decisions from the 2019 GRSG amendment efforts. For RMPs in Montana and North and South Dakota, Alternative 2 is the same as Alternative 1 because those RMPs were not amended in 2019. Because this alternative reflects the management currently in the BLM's approved RMPs it is the No-Action Alternative. The U.S. District Court for the District of Idaho has issued a preliminary injunction, preventing the BLM from implementing the 2019 amendments but not vacating them or their Records of Decision. As such, Alternative 2 represents the actual language in the BLM's RMPs and are the words in the existing plan that the BLM would be amending. While major land uses are similar to Alternative 1, the differences between the States for specific management concepts increased. For example, there is more diversity between the States regarding mitigation (required vs. voluntary, net gain vs. no net loss), as well as the potential to use compensatory mitigation instead of avoiding disturbances, and increased flexibility to consider exceptions based on local information. Under Alternative 2, the SFAs would be removed in all States except Montana and Oregon.

It is important to note that the alternatives are limited to just those goals, objectives, or decisions associated with the list of rangewide management actions in the purpose above, as well as those associated with applicable State-specific circumstances. Any other goal, objective, or decision from the 2015 or 2019 RMPAs are not being considered for amendment and would remain in the plans regardless of the decision ultimately made in this effort.

Alternative 3 provides the greatest measures to protect and preserve GRSG and its habitat. Alternative 3 would update the habitat management area boundaries based on new information and science, however all habitat management areas would be managed as priority habitat management area (PHMA), with general, important, or other habitat management areas under other alternatives being managed as PHMA. The BLM would close PHMA to new fluid mineral leasing, saleable minerals/mineral materials permits, and nonenergy leasable minerals leasing. PHMA would be recommended for withdrawal from location and entry under the Mining Law of 1872 and would be unavailable for livestock grazing. PHMA would also be right-of-way exclusion area. In addition, Alternative 3 would include designation of 11,139,472 acres of PHMA as ACECs specific to the management of GRSG, with management described below. No areas would be identified as an SFA.

Alternative 4 adjusts GRSG habitat management areas based on new information and science available since the previous efforts. Many of the management actions to avoid or minimize impacts would be similar Alternatives 1 and 2, but the habitat management areas where they are applied would be updated to reflect the new science. One difference is in Wyoming, where under Alternative 4, all PHMA would be managed with no surface occupancy requirements for new oil and gas leases. In addition, management associated with some of the major minimization measures (*e.g.,* disturbance cap, adaptive management) would be adjusted to address cross-boundary coordination of shared populations, range-wide biological and managerial concerns based on monitoring, and experience gained from implementing management for GRSG since 2015. Alternative 4 allows compensatory mitigation to be used under specific conditions in considering the potential for exceptions, but would require functional habitat to be in place prior to granting the exception. Areas previously identified as an SFA are managed as PHMA. The primary difference between management of an SFA in the 2015 Plans and PHMAs in this planning effort is that PHMA would not include a recommendation for withdrawal or prioritization strategies.

Alternative 5 considers alignments of habitat management areas and associated management to balance GRSG conservation with public land uses. If State governments updated the GRSG habitat management area boundaries in their State plans, those boundaries are considered on public lands in Alternative 5. Because of this, the habitat management areas are similar to, but refined from, Alternative 4, and restrictions would generally be similar to Alternative 4, except for oil and gas in Wyoming which is similar to Alternative 2. and some additional

flexibilities provided for development of gravel pits for counties to use in maintaining local roads. In general, Alternative 5 considered options with fewer restrictions on resource uses and provided more opportunities for considering compensatory mitigation to reduce impacts on GRSG and its habitat. Areas previously identified as an SFA are managed as PHMA. The primary difference between management of an SFA in the 2015 Plans and PHMAs in this planning effort is that PHMA would not include a recommendation for withdrawal or prioritization strategies.

Alternative 6 is based on Alternative 5, with all the habitat management areas and associated management being the same as described for Alternative 5, but with the addition of ACECs. While Alternative 6 would include designation of 11,139,472 acres of PHMA as ACECs specific to the management of GRSG (same as Alternative 3), the management (described below) would be less restrictive than that considered in Alternative 3, though generally more restrictive than the rest of Alternative 6 PHMA.

The BLM has identified Alternative 5 as the preferred alternative. Alternative 5 provides a mix of conservation that avoids and minimizes impacts to GRSG habitat while providing local managers the ability to consider site-specific conditions in applying GRSG habitat conservation.

## Mitigation

The alternatives consider a variety of approaches to mitigation for GRSG, all focused on avoiding, minimizing, or compensating for impacts. For Alternative 1, mitigation in most States is required to achieve a net conservation gain for surface disturbances in PHMA. Under Alternative 2, most States adopted a no net loss requirement, but provided that compensatory mitigation would be voluntary. Under Alternatives 3, 4, 5, and 6, mitigation would be required to achieve a no net loss standard in PHMA. However, under Alternative 3, the primary approach would be avoiding new disturbances. Alternative 4, 5, and 6 would provide a broader balance by avoiding major disturbances, but providing for some land uses where they would minimize their impact (in location and/or intensity) and compensate for residual impacts to achieve no net loss of habitat value—considering both direct and indirect impacts. In achieving the no net loss standard, the BLM would work with the States to apply the tools that work best in those areas to achieve the desired mitigation outcome.

## ACECs

Consistent with land use planning regulations at 43 CFR 1610.7–2(b), the BLM is announcing the opening of a 60-day comment period on the ACECs analyzed in the EIS. Comments may be submitted using any of the methods listed in the **ADDRESSES** section earlier.

There are no new proposed ACECs included in the preferred alternative. Existing and nominated ACECs with relevant and important values unrelated to GRSG habitat are outside the scope of the purpose and need. Existing ACECs with relevant and important values related to GRSG are unchanged by this effort, with the exception of 15 key Research Natural Areas (RNAs) in Oregon. RNAs are a type of ACEC. This effort does not change the key RNA boundaries but does consider alternatives to availability for livestock grazing. Of the 60,362 acres across the 15 key RNAs in Oregon, the alternatives consider the following acreage as unavailable for livestock grazing: Alternative 1: 35,803, Alternative 2: 13,872, Alternative 3: 59,532, Alternative 4: 36,416, Alternative 5: 18,680, Alternative 6: 18,680.

The preferred alternative would not propose the following potential ACECs with GRSG relevant and important values for designation: Case Flats (Colorado), Triangle (Idaho), Owyhee-Shoshone Basin (Idaho), Camas-Laidlaw (Idaho), Big Desert (Idaho), Antelope Valley (Idaho), Mountain Valley Complex (Idaho), Upper Snake Complex (Idaho), Carter Crook GRSG Connectivity (Montana), South Valley Phillips GRSG Habitat (Montana), Warm Springs (Nevada), Montana Mountains (Nevada), Owyhee West (Nevada), Owyhee East (Nevada), North Fork Oneil (Nevada), South Fork Dixie Flats (Nevada), Butte Long Valley (Nevada), Eureka North and South (Nevada), Grass-Kobeh Valley (Nevada), Monitor Valley (Nevada), Reese River (Nevada), Hayes Canyon (Nevada), Utah and Idaho Boarder Connectivity (Nevada), Buffalo Skedaddle (California), Vya/Massacre (California), Rich GRSG Habitat (Utah), Box Elder GRSG Habitat (Utah), Little Sandy (Wyoming), Carter-Cook GRSG Connectivity (Wyoming), Sagebrush Focal Areas in South-Central and Southwestern Wyoming (Wyoming), Greater South Pass and Upper Green River Basin GRSG (Wyoming). These areas (11,139,472 acres) would be designated ACECs under Alternatives 3 and 6. Under Alternative 3 they would be managed as closed to new fluid mineral leasing, closed to saleable mineral disposal, closed to non-energy mineral leasing, excluded for major rights-of-way, excluded for wind and solar development, and recommended for withdrawal from mineral location. Under Alternative 6, they would be available for new fluid mineral leasing with no surface occupancy allowed, closed to non-energy mineral leasing, closed to saleable minerals except for free-use pits (for local road maintenance), not recommended for withdrawal from mineral location, excluded to major rights-of-way unless located in RMP designated corridors, and excluded from wind and solar development, as well as not allowing exceptions to the disturbance cap otherwise available in PHMA under Alternative 6.

## Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 30-day public protest period and a 60-day Governor's consistency review on the Proposed RMPA. The Proposed RMPA/Final EIS is anticipated to be available for public protest in the fall of 2024 with an Approved RMPA and Record of Decision in winter 2024.

The BLM will hold two virtual public meetings and 11 in-person public meetings associated throughout the planning area. The specific dates and locations of these meetings will be announced at least 15 days in advance through the ePlanning page (see **ADDRESSES**) and media releases.

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Consultation will continue on an induvial basis with individual Tribes.

Comments on the Draft EIS would be most helpful if associated with the level of decision making presented in the alternatives. As described in 43 CFR 1601.0–5(n), an RMP is not a final implementation decision on actions that require further specific plans, process steps, or decisions under specific provisions of law and regulations. Additional decision making and analyses will occur when considering individual project authorizations, where local conditions and management will be taken into account.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2)

**Sharif Branham,**

*Assistant Director for Resources and Planning.*

[FR Doc. 2024–05508 Filed 3–14–24; 8:45 am]

BILLING CODE 4331–27–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[BLM_AK_FRM_MO4500176108; AA–12223, AA–12225, AA–12237, AA–12241, AA–12243, AA–12249]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of replacement decision approving lands for conveyance.

**SUMMARY:** The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision replacing its August 3, 2023, decision (''original decision'') which approved lands for conveyance to The Aleut Corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA). The original decision is vacated in its entirety due to an error in land status and is replaced by the new decision. The lands approved for conveyance lie entirely within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge.

**DATES:** Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Curtiss, Land Law Examiner, BLM Alaska State Office, 907–271–5066 or *rcurtiss@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** Notice of the original decision was published on August 3, 2023, in the **Federal Register**, 88 FR 51342.

As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to The Aleut Corporation. The decision approves conveyance of surface and subsurface estates in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended.

The lands aggregate 62.49 acres and are located within the Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge in the following townships:

T. 67 S., R. 88 W., Seward Meridian (SM); T. 70 S., R. 108 W., SM;
T. 69 S., R. 109 W., SM; T. 77 S., R. 121 W., SM; T. 78 S., R. 128 W., SM;
T. 79 S., R. 128 W., SM; T. 82 S., R. 135 W., SM.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands approved for conveyance.

The BLM will also publish notice of the decision once a week for four consecutive weeks in ''The Bristol Bay Times & The Dutch Harbor Fisherman'' newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail, which is not certified, return receipt requested, shall have until April 15, 2024 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

**Eileen M. Ford,**

*Chief, Branch of Adjudication.*

[FR Doc. 2024–05516 Filed 3–14–24; 8:45 am]

BILLING CODE 4331–10–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCO–923000.L1440000.ET0000; COC–25845–01]**

### Public Land Order No. 7937; Withdrawal of Public Lands for McPhee Dam and Reservoir, Dolores Project, Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This Public Land Order (PLO) withdraws 953.06 acres of public lands from settlement, sale, location, or entry under the general land laws, including from location and entry under the United States mining laws, and 309.56 acres of National Forest System lands from location and entry under the U.S. mining laws, and reserves them for use by the Bureau of Reclamation in connection with the McPhee Dam and Reservoir, for a period of 100 years, subject to valid existing rights.

**DATES:** This public land order takes effect on March 15, 2024.

**ADDRESSES:** Information regarding the withdrawal, including environmental and other reviews, is available at the Bureau of Land Management Colorado State Office, Denver Federal Center Building 40, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Jardine, Senior Realty Specialist, BLM Colorado State Office, telephone: (970) 385–1224; email: *jjardine@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Jardine. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States

**SUPPLEMENTARY INFORMATION:** The McPhee Dam and Reservoir was previously withdrawn by PLO No. 5811, effective January 22, 1981, as extended by PLO No. 7473, which expired on January 21, 2021. A new notice of withdrawal application was published in the **Federal Register** on August 2, 2021 (86 FR 41507). The purpose of this withdrawal is to reserve the lands for the protection of the McPhee Dam and Reservoir, Dolores Project, and associated capital investments.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location and entry under the general land laws, including from location and entry under the United States mining laws, and 309.56 acres of National Forest System lands from location and entry under the United States mining laws, and reserved for use by the Bureau of Reclamation in connection with the McPhee Dam and Reservoir, for a period of 100 years.

#### Public Lands

*New Mexico Principal Meridian, Colorado*

T. 38 N, R. 15 W,
Sec. 18, lots 2 and 3, and NE¼SW¼;
Sec. 19, SE¼NW¼ and NE¼SW¼.
T. 38 N, R. 16 W,
Sec. 2, lots 1 thru 4;
Sec. 11, S½NE¼ and S½NW¼;
Sec. 12, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 13, W½NW¼.

The areas aggregate 953.06 acres.

#### San Juan National Forest

*New Mexico Principal Meridian, Colorado*

T. 38 N., R. 15 W.,
Sec. 3, lot 2, E½NE¼SE¼, SW¼NE¼SE¼, and SW¼SE¼;
Sec. 7, S½NE¼ and E½SE¼;
Sec. 28, NW¼SW¼.

The areas aggregate 309.56 acres.
The total area contains 1,262.62 acres.

2. The withdrawal made by this order does not alter the applicability of those laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than the United States mining laws.

3. This withdrawal will expire 100 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C 1714(f), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 U.S.C. 1714)

**Robert T. Anderson,**

*Solicitor.*

[FR Doc. 2024–05506 Filed 3–14–24; 8:45 am]

**BILLING CODE 4322–90–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[BLM_NV_FRN_MO4500177742]**

### Notice of Availability of the Draft Environmental Impact Statement for Nevada Gold Mines LLC's Robertson Mine Project, Lander County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) announces the availability of the Draft Environmental Impact Statement (EIS) for Nevada Gold Mines LLC (NGM) Robertson Mine Project in Lander County, Nevada.

**DATES:** To afford the BLM the opportunity to consider comments in the Final EIS, please ensure that the BLM receives your comments within 45 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the Draft EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

The BLM will announce the date of a public meeting on the Draft EIS at least 15 days in advance of the meeting on the BLM National NEPA Register website *https://eplanning.blm.gov/eplanning-ui/project/2023088/510*. One public meeting will be held in-person in Crescent Valley, Nevada and a second will be held virtually online.

**ADDRESSES:** The Draft EIS and documents pertinent to this proposal are available for review on the BLM National NEPA Register website at *https://eplanning.blm.gov/eplanning-ui/project/2023088/510*.

Written comments related to the Robertson Mine Project may be submitted by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2023088/510*.
- *Email: BLM_NV_BMDO_P&EC_NEPA@blm.gov*.
- *Mail:* Robertson Mine EIS c/o BLM Mount Lewis Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820.
- *By fax at:* (775) 635–4034.

**FOR FURTHER INFORMATION CONTACT:** Gene Gilseth, Project Manager, telephone: (775) 635–4020; address 50 Bastian Road, Battle Mountain, Nevada 89820; email: *egilseth@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunication relay services for contacting Mr. Gilseth. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

#### Purpose and Need for the Proposed Action

The BLM's purpose is to respond to NGM's proposal, as described in its proposed Plan of Operations, and to analyze the potential environmental effects associated with the Proposed Action, which is the operator's proposed Plan of Operations, and alternatives to the Proposed Action. NEPA mandates that the BLM evaluate the potential effects of the Proposed Action and alternatives. The BLM's need for the action is established by the BLM's responsibilities under Section 302 of FLPMA and the BLM Surface Management Regulations at 43 CFR subpart 3809 to respond to a proposed Plan of Operations and ensure that operations prevent unnecessary or undue degradation of the public lands.

#### Proposed Action and Alternatives

NGM is proposing to construct, operate, close, and reclaim a new surface mine within the Shoshone Range approximately 58 miles southeast of Battle Mountain, Nevada, and 70 miles southwest of Elko, Nevada. The Proposed Action would result in changes to the authorized Robertson Exploration Plan boundary (NVN–067688), the Cortez Mine Plan boundary (NVN–67575), and the Pipeline-South Pipeline-Gold Acres Exploration Plan boundary (NVN–067261). If the Robertson Mine Project Plan is approved, these authorized plans would be modified subsequent to that approval.

The Robertson Mine Project would employ a contractor workforce of approximately 150 employees during the initial two-year construction period and approximately 415 full-time employees, comprised of approximately 370 existing Cortez Mine employees and 45 new hires, for the operations period.

The Robertson Mine Project would operate 24 hours per day, 365 days per year. The total life of the Robertson Mine Project would be 15 years, including 9 years of mining, 3 additional years of ore processing, and 3 additional years of reclamation. Reclamation of disturbed areas resulting

from mining operations would be completed in accordance with BLM and Nevada Division of Environmental Protection regulations. Concurrent reclamation would take place where practicable and safe.

The proposed Plan of Operations would result in approximately 4,234 acres of new surface disturbance, of which 179 acres would be on private land and 4,055 acres would be on public land administered by the BLM.

The proposed Plan of Operations boundary would encompass 5,990 acres. The total disturbance associated with the Proposed Action, including existing, reclassified, and exploration, would be 4,306 acres, with 4,127 acres on land administered by the BLM and 179 acres on private land. The proposed surface mining activities for the Robertson Mine would include:

- Three open pits (Gold Pan, Porphyry, and Altenburg Hill) and associated haul roads;
- A Waste Rock Facility;
- A Heap Leach Facility including a lined pad, process solution ponds and vaults, and carbon-in-column plant;
- Ancillary facilities including a three-stage crushing system with associated conveyors; ore stockpiles; growth media stockpiles; a gravel borrow source; secondary roads; stormwater controls and diversions; truck scale; power lines and electrical substations; water production, dewatering, and monitoring wells; water pipelines and loadouts; ready lines; fuel and reagent storage; fueling facilities; laydown yards; wildlife and range fencing; assay laboratory; trailers; buildings; and communications sites;
- Shared facilities with the Pipeline Complex at the Cortez Mine, including but not limited to haul roads, potable water well, water pipelines, warehousing and maintenance shops, hazardous waste storage, petroleum-contaminated soils facility, ore stockpiles, the Pipeline Mill, carbon handling, refinery, laboratory, and Pipeline Area 28 tailings storage facility; and
- Modifying the authorized Robertson Exploration Plan (NVN–067688) (Exploration Plan) boundary.

The Partial Backfill Alternative and No Action Alternative are described in the Draft EIS. Under the Partial Backfill Alternative, the Gold Pan Pit would be backfilled to prevent the establishment of a post-mining pit lake. All other aspects of the Partial Backfill Alternative are the same as those described for the Proposed Action. Under the No Action Alternative, the development of the Robertson Mine Project would not be authorized and NGM would not construct, operate, and close a new surface mine. Modifications to the Exploration Plan boundary, the Cortez Mine Plan boundary, and the Pipeline-South Pipeline-Gold Acres Exploration Plan boundary would not occur.

**Draft EIS Review Process**

On August 18, 2023, a Notice of Intent to prepare an EIS was published in the **Federal Register**, announcing the beginning of the public scoping process. The BLM held virtual public scoping meetings for the Robertson Mine Project on August 31 and September 1, 2023. During the scoping period, 30 comment documents were received containing a total of 141 individual comments.

This Notice of Availability initiates the draft EIS review process. There will be a 45-day public comment period. Public meetings to discuss the draft EIS will be announced. The date and times of the meetings will be posted on the BLM's Robertson Mine Project website.

The purpose of public review of the draft EIS is to provide an opportunity for meaningful collaborative public engagement and for the public to provide substantive comments, such as identification of factual errors, data gaps, relevant methods, or scientific studies. The BLM will respond to substantive comments by making appropriate revisions to the EIS or explaining why a comment did not warrant a change.

The BLM has and will continue to use and coordinate the draft EIS review process to help fulfill the public involvement requirements under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). Information about historic and cultural resources within the area potentially affected by the Proposed Action will assist the BLM in identifying and evaluating impacts to such resources. The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Agencies will give due consideration to Tribal concerns, including impacts on Indian trust assets and treaty rights and potential impacts to cultural resources.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10)

**Douglas W. Furtado,**

*District Manager, Battle Mountain District.*

[FR Doc. 2024–05331 Filed 3–14–24; 8:45 am]

BILLING CODE 4331–21–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRNHL–DTS#–37620; PPWOCRADI0, PCU00RP14.R50000]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting electronic comments on the significance of properties nominated before March 9, 2024, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted electronically by April 1, 2024.

**ADDRESSES:** Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before March 9, 2024. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

*Key:* State, County, Property Name, Multiple Name(if applicable), Address/ Boundary, City, Vicinity, Reference Number.

**CONNECTICUT**

**Hartford County**

Trinity College Long Walk Historic District, 300 Summit Street, Hartford, SG100010225

**FLORIDA**

**Sarasota County**

Newtown Historic District, Bounded by: Myrtle St., Washington Blvd., 18th St., and Seminole Gulf Railway, Sarasota, SG100010223

**ILLINOIS**

**Cook County**

Immanuel Lutheran Church and Parsonage, 1124–1134 South Ashland Avenue, Chicago, SG100010215

Craig and Estella Hazelwood House, 16 Canterbury Court, Wilmette, SG100010216

Our Lady of the Holy Rosary Church/Holy Rosary Church, 11300 S Dr. Martin Luther King Jr., Drive, Chicago, SG100010217

**Madison County**

Mitchell Archeological Site (Boundary Increase), Address Restricted, Mitchell vicinity, BC100010214

**Peoria County**

Zion Episcopal Church, 205 East Van Buren Street, Brimfield, SG100010213

**Perry County**

Paradise Missionary Baptist Church, 9023 State Route 154, Tamaroa vicinity, SG100010212

**Winnebago County**

Rockford Gas Light & Coke Fitting and Meter Shops Building, 915 Cedar Street, Rockford, SG100010211

**LOUISIANA**

**Claiborne Parish**

Mt. Sinai Rosenwald School, (Rosenwald Schools in Louisiana, 1917—1932MPS), 1800 Parish Road 234, Bernice vicinity, MP100010221

Fellowship Rosenwald School Teacher's Home, (Rosenwald Schools in Louisiana, 1917—1932MPS), 1138 Fellowship Church Road, Lillie vicinity, MP100010222

**MICHIGAN**

**Ingham County**

Washington Apartments, 927 South Washington Avenue, Lansing, SG100010207

**MONTANA**

**Silver Bow County**

Harding Way Historic District, MP 75.0 to Milepost 80.1, Butte vicinity, SG100010219

**Yellowstone County**

Crystal Ice & Fuel Company, 19 North 22nd Street, Billings, SG100010218

**NORTH CAROLINA**

**Guilford County**

One Plaza Center, 101 S Main Street, High Point, SG100010204

**TEXAS**

**Medina County**

Dan's Meat Market and Saloon, 1303 Lorenzo Street, Castroville, SG100010210

**Taylor County**

Borden Company, 309 South Pioneer Drive, Abilene, SG100010209

**WISCONSIN**

**Lafayette County**

Welty, Daniel and Catherine Barn, 11736 Fork Road, Darlington, SG100010205

**Marathon County**

Zion Lutheran Church, 709 North 6th Street, Wausau, SG100010206

Additional documentation has been received for the following resource(s):

**TENNESSEE**

**Warren County**

Northcutt Plantation (Additional Documentation), 2374 Wheeler Road, McMinnville vicinity, AD75001795

Nomination(s) submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nomination(s) and responded to the Federal Preservation Officer within 45 days of receipt of the nomination(s) and supports listing the properties in the National Register of Historic Places.

**CALIFORNIA**

**San Bernardino County**

Watson Buttes, Address Restricted, Essex vicinity, SG100010224

*Authority:* Section 60.13 of 36 CFR part 60.

**Sherry A. Frear,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

[FR Doc. 2024–05575 Filed 3–14–24; 8:45 am]

BILLING CODE 4312–52–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–704–705 and 731–TA–1664–1666 (Preliminary)]**

### Paper Plates From China, Thailand, and Vietnam; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of paper plates from China, Thailand, and Vietnam, provided for in subheading 4823.69.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the governments of China and Vietnam.[2]

**Commencement of Final Phase Investigations**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 13043 (February 21, 2024) and 89 FR 14046 (February 26, 2024).

section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

**Background**

On January 25, 2024, the American Paper Plate Coalition, which is comprised of AJM Packaging Corporation, Bloomfield Hills, Michigan; Aspen Products, Inc., Kansas City, Missouri; Dart Container Corporation, Mason, Michigan; Hoffmaster Group, Inc., Oshkosh, Wisconsin; Huhtamaki Americas, Inc., De Soto, Kansas; and Unique Industries, Inc., Philadelphia, Pennsylvania, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of paper plates from China and Vietnam and LTFV imports of paper plates from China, Thailand, and Vietnam. Accordingly, effective January 25, 2024, the Commission instituted countervailing duty investigation Nos. 701–TA–704–705 and antidumping duty investigation Nos. 731–TA–1664–1666 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 31, 2024 (89 FR 6130). The Commission conducted its conference on February 15, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on March 11, 2024. The views of the Commission are contained in USITC Publication 5499 (March 2024), entitled *Paper Plates from China, Thailand, and Vietnam: Investigation Nos. 701–TA–704–705 and 731–TA–1664–1666 (Preliminary).*

By order of the Commission.

Issued: March 11, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024–05470 Filed 3–14–24; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint regarding *Certain Cellular Base Station Communication Equipment, Components Thereof, and Products Containing Same,* DN 3730; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Motorola Mobility LLC on March 11, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cellular base station communication equipment, components thereof, and products containing same. The complaint names as respondents: Ericsson AB of Sweden; Telefonaktiebolaget LM Ericsson of Sweden; and Ericsson Inc. Plano, TX. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondent 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, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice

are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3730'') 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 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: March 12, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024–05593 Filed 3–14–24; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

**[OMB Number 1110–0053]**

## Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; FBI eFOIA Form

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Federal Bureau of Investigation, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until May 14, 2024.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Shannon Hammer, Public Information Officer, FBI, at 200 Constitution Drive, Winchester, VA 22602, or 540.868.4593 or *foipaquestions@fbi.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Abstract:* This voluntary form allows requesters to make a FOIA request via an electronic submission. This information collection is to allow the Federal Bureau of Investigation to accept and responded to Freedom of Information Act (FOIA) requester as defined in 28 CFR part 16.3:

**Overview of This Information Collection**

1. Type of Information Collection: Extension of a previously approved collection.

2. The Title of the Form/Collection: FBI eFOIA Form.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: DOJ, FBI.

4. Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public: Individuals or households. The obligation to respond is voluntary.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 32,100 FOIA requests are completed annually. The requests can be submitted via free-form letter or the eFOIA form. In FY2023 approximately 1,053 online eFOIA forms were submitted. An average of 8 minutes per respondent is needed to complete the eFOIA form.

6. An estimate of the total annual burden (in hours) associated with the collection: The burden hours for collecting data sum is 140 hours.

7. An estimate of the total annual cost burden associated with the collection, if applicable: $1,000.00.

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[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

TOTAL BURDEN HOURS

| Activity | Number of respondents | Frequency | Total annual responses | Time per response (min) | Total annual burden (hours) |
|---|---|---|---|---|---|
| e-FOIA Form | 1,053 | 1/annually | 1,053 | 8 | 140 |

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: March 11, 2024.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2024–05469 Filed 3–14–24; 8:45 am]

BILLING CODE 4410–02–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 24–018]**

### Information Collection: Remotely Administered Psychoacoustic Test for Advanced Air Mobility Noise Human Response

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of new information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

**DATES:** Comments are due by May 14, 2024.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ‘‘Currently under Review—Open for Public Comments’’ or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Bill Edwards-Bodmer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, phone 757–864–7998, or email *hq-ocio-pra-program@mail.nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

Advanced Air Mobility (AAM)/Urban Air Mobility (UAM) aircraft are expected to form a new transportation system to move people and cargo between places previously not served or underserved by aviation. Representative AAM/UAM vehicles involve the use of electrically driven rotors, and the noise from these air vehicles in communities may restrict their operation. The human response to noise from these vehicles needs to be better understood to help minimize the noise impact. The National Aeronautics and Space Administration (NASA) seeks to execute a remotely administered test on human response to noise, which is called a psychoacoustic test, to acquire response to AAM/UAM vehicle noise. This psychoacoustic test is called the Varied AAM Noise and Geographic Area Response Difference (VANGARD) test. It will utilize the recently developed Remote Psychoacoustic Test Platform of NASA to administer the test to subjects from the public from geographic regions of the United States where AAM/UAM aircraft are likely to operate in the future. Test subjects will participate in an online test application using their own computers and audio playback devices, such as headphones, to listen to calibrated sound stimuli.

The primary research objective of the VANGARD test is to determine if there are statistically significant differences in annoyance between subjects who live in low versus high ambient noise environments; and to determine as a covariate if there is a difference between specific geographical regions. Subjects will be drawn from low and high ambient noise areas of geographical regions within the United States that are likely to see initial AAM/UAM operations, such as Los Angeles, Dallas, and New York City. ‘‘High’’ ambient noise environments are locations proximate to urban centers of each region, while ‘‘Low’’ ambient environments are suburban areas along likely AAM/UAM flight paths within 100 miles of the urban center. NASA will identify the targeted geographic regions and low and high ambient noise environments by Zip Code, based on noise survey data obtained by the National Park Service. NASA will then seek a balanced number of subjects to adequately cover the geographic regions and noise environments.

Meeting this primary research objective is critical to allow NASA to test additional hypothesis research questions based on the obtained data, including:

- Do annoyance responses differ significantly by phase of flight (takeoff, landing, and level cruise) of the AAM/UAM aircraft noise stimuli?
- Do annoyance responses differ significantly as a function of sound level, based on distance from flight operation?
- To what degree are the results explained by objective parameter analyses of the data (*e.g.,* sound quality metrics; spectra; amplitude envelope)?
- To what degree are the results explained by noise sensitivity, obtained via post-experiment questionnaires?

*Authority:* The National Aeronautics and Space Administration (NASA) is committed to effectively performing the Agency's communication function in accordance with the Space Act Section 203 (a)(3) to ‘‘provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof,’’ and to enhance public understanding of, and participation in, the nation's aeronautical and space program in accordance with the NASA Strategic Plan.

### II. Methods of Collection

Test subjects will electronically indicate their annoyance rating to test AAM/UAM aircraft noise stimuli into an interface displayed on their own computers.

### III. Data

*Title:* Varied Advanced air mobility Noise and Geographic Area Response Difference Test.

*OMB Number:* 2700-new.

*Type of review:* New collection.

*Affected Public:* Individuals and households.

*Estimated Annual Number of Activities:* 1.

*Estimated Number of Respondents per Activity:* 360.

*Annual Responses:* 360.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 360 hours.

**IV. Request for Comments**

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**William Edwards-Bodmer,**

*NASA PRA Clearance Officer.*

[FR Doc. 2024–05569 Filed 3–14–24; 8:45 am]

**BILLING CODE 7510–13–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99709; File No. SR–NYSEAMER–2024–15]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

March 11, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 29, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify the NYSE American Options Fee Schedule (''Fee Schedule'') regarding the Professional Step-Up Incentive program. The Exchange proposes to implement the fee changes effective March 1, 2024. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing [sic] to modify the Fee Schedule to replace the Professional Step-Up Incentive program with the Professional Volume Incentive program.

Currently, the Exchange offers an incentive program known as the Professional Step-Up Incentive (the ''Step-Up Program''), designed to encourage ATP Holders to increase their electronic volume in the ''Professional'' range.[4] The Step-Up Program offers discounted rates on monthly Professional volume and credits on Customer electronic volume at the same rate as ATP Holders that qualify for Tier 1 of the American Customer Engagement (''ACE'') Program[5] to ATP Holders that increase their Professional volume by specified percentages of TCADV over their August 2019 volume, or in the case of new ATP Holders, above a base level of 10,000 contracts ADV. Volume from strategy executions, CUBE auctions, and QCC transactions are not included in the calculation of base volume amounts or volume to qualify for the Step-Up Program, nor is interest that takes liquidity from posted Customer interest.

[4] *See* Fee Schedule, Section I.H. (Professional Step-Up Incentive). For purposes of this filing, ''Professional'' electronic volume includes Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm.

[5] *See* Fee Schedule, Section I.E. (American Customer Engagement (''ACE'') Program).

The Exchange now proposes to rename the Step-Up Program as the Professional Volume Incentive program.[6] Under the Professional Volume Incentive program, ATP Holders would qualify for the same discounted rates and credits as in the Step-Up Program by achieving qualifying volume of specified percentages of TCADV (''Qualifying Volume) rather than increased volume over a certain base level. Volume from strategy executions, CUBE auctions, and QCC transactions, as well as interest that takes liquidity from posted Customer interest, will continue to be excluded from an ATP Holder's Qualifying Volume.

As proposed, Tier A of the Professional Volume Incentive program would have the same Qualifying Volume requirement as the Step-Up Program (0.20% of TCADV) and would provide qualifying ATP Holders with the same per contract Penny rate of $0.35 and the same per contract non-Penny rate of $0.65. The Exchange proposes that the Qualifying Volume requirement for Tier B would be 0.30% of TCADV under the Professional Volume Incentive program (rather than an increase of 0.25% of TCADV under the Step-Up Program), and that the per contract Penny and non-Penny rates ($0.20 and $0.55, respectively) would remain the same. ATP Holders that qualify for either tier of the proposed Professional Volume Incentive program will also continue to receive benefits offered in Tier 1 of the ACE program.

Currently, under the Step-Up Program, ATP Holders would also qualify for an additional discount on the Tier B rates by increasing their program-qualifying volume and executing a qualifying amount of posted Professional volume. The Exchange proposes to eliminate this additional discount and instead introduce additional discounts available to ATP Holders that achieve higher levels of Qualifying Volume. ATP Holders that achieve Qualifying Volume as set forth in the table below would earn the corresponding additional discount on the Tier B Penny and non-Penny rates (applicable from the first contract) as set forth in the table below:

[6] Consistent with this change, the Exchange also proposes to amend the Fee Schedule's Table of Contents to update the title of Section I.H. to ''Professional Volume Incentive.''

| Qualifying volume as % of TCADV | Additional discount on tier B per contract penny and non-penny rate |
|---|---|
| 0.40% | $0.01 |
| 0.50% | 0.02 |
| 0.60% | 0.03 |

The proposed change is intended to continue to encourage ATP Holders to increase both Professional and Customer electronic order flow to the Exchange by continuing to offer the discounted rates and credits that were available in the Step-Up Program through the new Professional Volume Incentive program, as well as additional discounts for qualifying ATP Holders. The Exchange believes the proposed change to the qualifications for the Professional Volume Incentive Program, which are based on ATP Holders' Qualifying Volume rather than increased volume over a certain base volume, is reasonable and that the volume requirements are attainable by ATP Holders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Professional Volume Incentive program is reasonable, equitable, and not unfairly discriminatory because it is designed to continue to incent ATP Holders to increase the amount of Professional and Customer electronic order flow directed to the Exchange. The Professional Volume Incentive program, as proposed, would continue to offer discounted rates and credits as under the Step-Up Program, as well as additional discounts for qualifying ATP Holders, based on Qualifying Volume rather than increased volume over a certain base volume. As noted above, the Exchange believes the proposed volume requirements for the Professional Volume Incentive program, including for the additional discounts on Tier B rates, are attainable by ATP Holders and are reasonably designed to incentivize ATP Holders to achieve increasingly higher levels of Qualifying Volume to earn the corresponding higher discounts. In addition, with respect to the additional discounts that would be available under the Professional Volume Incentive program, the Exchange believes that the Qualifying Volume requirements and discount amounts are reasonably designed to encourage ATP Holders to direct increased Professional and Customer electronic volume to the Exchange, thereby providing additional liquidity, attracting additional order flow from other market participants, and improving market quality for all market participants. To the extent the proposed change achieves its purpose in attracting greater volume and liquidity to the Exchange, the Exchange believes that all market participants stand to benefit from increased electronic transaction volume, whether Professional or Customer, as greater volume and liquidity would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it would apply to all similarly-situated market participants on an equal and non-discriminatory basis. The qualifications for and benefits offered in the Professional Volume Incentive program are based on the amount and type of business transacted by ATP Holders, and all ATP Holders are eligible to qualify for the Professional Volume Incentive program by achieving the same Qualifying Volume as a percentage of TCADV.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[9]

*Intramarket Competition.* The proposed change to replace the Step-Up Program with the Professional Volume Incentive program is designed to continue to attract additional order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Professional and Customer electronic volume could increase opportunities for execution of other trading interest. Because the Professional Volume Incentive program would be available to all similarly-situated market participants, the Exchange does not believes that the proposed change would impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[10] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January of 2024, the Exchange had less than 8% market share of executed volume of multiply-listed equity & ETF options trades.[11] The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to encourage ATP Holders to direct trading

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04).

[10] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[11] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchange's market share in equity-based options decreased from 7.96% for the month of January 2023 to 7.82% for the month of January 2024.

interest to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased trading opportunities. The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues by encouraging additional orders to be sent to the Exchange for execution.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–15 and should be submitted on or before April 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–05486 Filed 3–14–24; 8:45 am]

BILLING CODE 8011–01–P

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–99708; File No. SR–NYSEARCA–2024–24]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule**

March 11, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 29, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding certain fees and credits applicable to Lead Market Makers. The Exchange proposes to implement the fee change effective March 1, 2024. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to modify the Fee Schedule, effective March 1, 2024, regarding the Lead Market Maker (''LMM'') Rights Fee and LMM posting credits for electronic transactions in Penny issues.

LMM Rights Fee

The LMM Rights Fee (''Rights Fee'') is charged on a per issue basis to the OTP Firm acting as LMM in the issue.[4] The Rights Fee applies to each issue in an LMM's allocation, where the monthly fee is based on the average national daily Customer contracts in such issue as follows:

| Average national daily customer contracts | Monthly issue fee |
|---|---|
| 0 to 100 | $25 |
| 101 to 1,000 | 35 |
| 1,001 to 2,000 | 75 |
| 2,001 to 5,000 | 200 |
| 5,001 to 15,000 | 750 |
| 15,001 to 100,000 | 1,500 |
| Over 100,000 | 3,000 |

Currently, the Exchange also offers opportunities for LMMs to earn discounts on Rights Fees for issues in the four highest activity tiers. The discounts are based on the amount of monthly (i) total electronic volume and/or (ii) total posted volume executed in the Market Maker range relative to other Market Makers appointed in that issue. The discounts are cumulative, and an LMM is eligible to achieve the discount for both monthly volume categories.[5]

The Exchange also offers a 50% discount on Rights Fees to LMMs who achieve either (1) daily contract volume traded electronically of at least 0.32% total industry Customer equity and ETF option ADV (''TCADV), of which 0.08% TCADV is in its LMM appointment, or (2) daily contract volume traded manually of at least 0.75% of TCADV in all account types, which can include transaction volume from the OTP Holder's or OTP Firm's affiliates (per Endnote 8) or its Appointed OFP (per Endnote 15). Qualifying LMM volume is based on an average of the daily contract volume traded electronically by an LMM or traded manually by an LMM and affiliated/appointed entities each trading day in a calendar month.

The Exchange proposes to eliminate both of the discounts currently offered on Rights Fees. To effect this change, the Exchange proposes to delete the text following the asterisk below the table in the Fee Schedule setting forth Rights Fees (as well as the asterisks in the table itself) describing the discounts based on monthly volume, as well as text in Endnote 2 describing the discount based on daily volume.

Although the proposed change would eliminate discounts currently offered to LMMs on Rights Fees, the Exchange believes it would not discourage LMMs from seeking appointments or from continuing to direct order flow to the Exchange, particularly in conjunction with the proposed change described below to offer LMMs additional posting credits in Penny issues.

LMM Post Liquidity Credits

Currently, LMMs receive a credit of $0.32 per contract for posted liquidity in electronic executions in Penny Issues.[6] LMMs also receive an additional $0.04 per contract credit for executions in Penny issues in their LMM appointment, in addition to credits they qualify for through the Market Maker Penny and SPY Posting Credit Tiers.

The Exchange proposes to increase the Post Liquidity credit for LMMs in all Penny issues other than SPY to $0.33 per contract. In addition, the Exchange proposes to increase the credit for executions in Penny issues in an LMM's appointment, other than SPY, to an additional $0.05 above the tiered credits outlined in the Market Maker Penny and SPY Posting Credit Tiers. The Exchange further proposes to clarify the Fee Schedule to provide that the post liquidity credit for the LMM in SPY will continue to be $0.32 per contract and that the LMM in SPY will continue to be eligible for an additional $0.04 per contract credit over the tiered credits set forth in the Market Maker Penny and SPY Posting Credit Tiers for eligible executions in SPY.

Although the Exchange cannot predict with certainty whether the proposed change would incent LMMs to direct additional posted liquidity to the Exchange, the Exchange believes that the proposed change could encourage LMMs to increase their transactions executed on the Exchange to earn the increased posting credits in Penny issues other than SPY or to continue to achieve the existing credits available for executions in SPY. The Exchange notes that these credits are not volume-based and are available to all LMMs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because, although it would eliminate the volume-based discounts on the LMM Rights Fee, it would offer LMMs increased posting credits (which are not based on volume) on trades in Penny issues other than SPY. The Exchange further believes that the proposed change is equitable and not unfairly discriminatory because it would generally apply to all LMMs equally. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to maintain the current posted liquidity credits for the LMM in SPY because Market Makers in SPY are already eligible for a higher credit through the Market Maker Penny and SPY Posting Credit Tiers, and the Exchange offers certain Market Maker incentives for SPY that are not applicable to other Penny issues.[9] The Exchange also believes that offering increased credits to LMMs is equitable and not unfairly discriminatory to non-LMM market participants because of LMMs' heightened quoting obligations and because increased LMM posting liquidity in Penny issues would continue to make the Exchange a more competitive venue for, among other things, order execution. To the extent the proposed change encourages LMMs to continue or increase their liquidity posting business in Penny issues on the Exchange, it would encourage active quoting and improved market quality to the benefit of all market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change will impose any burden on competition that

[4] *See* Fee Schedule, Lead Market Maker Rights and Endnote 2, *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[5] For example, if an LMM was first in Total Electronic Volume in an issue (qualifying for a 50% discount), and third in Total Posting Volume in the same issue (qualifying for a 30% discount), the LMM would receive an 80% discount on the Rights Fee for that issue.

[6] *See* Fee Schedule, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS—PER CONTRACT.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See* Fee Schedule, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS Super Tier; Market Maker Incentives for SPY.

is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed change is designed to continue to encourage LMMs to increase liquidity directed to the Exchange by increasing the credits available to LMMs on posted liquidity in Penny issues other than SPY. Although the proposed change would eliminate the volume-based Rights Fee discounts, it would offer increased posting credits to LMMs that are not based on volume achieved. The proposed change would apply to all similarly-situated market participants and would not impose a disparate burden on competition. The Exchange does not believe that maintaining the current posted liquidity credits for the LMM in SPY would impose a disparate burden on competition given the unique incentives available to Market Makers in SPY.[10] The Exchange further believes that, to the extent the proposed change results in increased liquidity on the Exchange, it would improve market quality for the benefit of all market participants.

The Exchange also does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act; as order execution venues are free to modify their own fees in response to competitors' fees, the Exchange believes that the degree to which the proposed change could impose any burden on competition is limited. The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues to the extent the proposed change encourages increased order flow to the Exchange, thereby making the Exchange a more attractive venue for, among other things, order execution. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

[10] *See id.*

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEARCA–2024–24 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–24 and should be submitted on or before April 5, 2024.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–05490 Filed 3–14–24; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 35153; 812–15531]**

## James Alpha Funds Trust d/b/a Easterly Funds Trust and Easterly Investment Partners LLC

March 12, 2024.

**AGENCY:** Securities and Exchange Commission (''Commission'' or ''SEC'').

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from Section 15(a) of the Act, as well as from certain disclosure requirements in Rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

**SUMMARY OF APPLICATION:** The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with certain subadvisors without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisors.

**APPLICANTS:** James Alpha Funds Trust d/b/a Easterly Funds Trust and Easterly Investment Partners LLC.

**FILING DATES:** The application was filed on December 8, 2023, and amended on February 9, 2024.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on April 8, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov.* Applicants: Darrell Crate, *dcrate@easterlyam.com;* Matthew DiClemente, Esq., *mdiclemente@stradley.com;* and Michael W. Mundt, Esq., *mmundt@stradley.com.*

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended application, dated February 9, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–05595 Filed 3–14–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99704; File No. SR–NYSEARCA–2024–21]**

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 7.31–E

March 11, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 26, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7.31–E regarding Primary Pegged Orders. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 7.31–E regarding Primary Pegged Orders.

Rule 7.31–E(h) defines a Pegged Order as a Limit Order that does not route with a working price that is pegged to a dynamic reference price. If the designated reference price is higher (lower) than the limit price of a Pegged Order to buy (sell), the working price will be the limit price of the order.

Rule 7.31–E(h)(2) defines a Primary Pegged Order as a Pegged Order to buy (sell) with a working price that is pegged to the PBB (PBO), with no offset allowed. A Primary Pegged Order to buy (sell) will be rejected on arrival, or cancelled when resting, if there is no PBB (PBO) against which to peg. A Primary Pegged Order is eligible to participate in auctions at the limit price of the order, provided that, a Primary Pegged Order is not eligible to participate in the Closing Auction.

Rule 7.31–E(h)(2)(A) currently provides that a Primary Pegged Order must include a minimum of one round lot displayed. Rule 7.31–E(h)(2)(A) further provides that the working price of a Primary Pegged Order equals the display price, the display quantity is ranked Priority 2—Display Orders, and the reserve interest is ranked Priority 3—Non-Display Orders.

Rule 7.31–E(h)(2)(B) provides that a Primary Pegged Order will be rejected if the PBBO is locked or crossed. If the PBBO is locked or crossed when the display quantity of a Primary Pegged Reserve Order is replenished, the entire order will be cancelled. If after arrival, the PBBO becomes locked or crossed, the Primary Pegged Order will wait for a PBBO that is not locked or crossed before the display and working price are adjusted and remains eligible to trade at its current working price.

The Exchange proposes to modify Rule 7.31–E(h)(2)(A) to permit Primary Pegged Orders to be entered in any size and thus proposes to eliminate rule text currently providing that a Primary Pegged Order must include a minimum of one round lot displayed. The Exchange believes that requiring Primary Pegged Orders to be entered in round lots is unnecessary and that providing ETP Holders with the option to enter Primary Pegged Orders in odd lots could increase liquidity and enhance opportunities for order execution on the Exchange. The Exchange notes that permitting odd-lot

order quantities is not novel on the Exchange or other cash equity exchanges and believes that this proposed change would align the Exchange's handling of Primary Pegged Orders with the treatment of equivalent order types on other cash equity exchanges.[4]

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be in the first quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because it would provide ETP Holders with the option to enter Primary Pegged Orders in odd-lot sized orders, which could encourage order flow to the Exchange and promote opportunities for order execution on the Exchange, to the benefit of all market participants. The Exchange notes that the proposed change would not otherwise impact the operation of Primary Pegged Orders as provided under current Exchange rules. The Exchange also believes that the proposed change would align Exchange rules with the treatment of orders analogous to Primary Pegged Orders on other cash equity exchanges, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.[7]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange believes the proposed rule change would allow the Exchange to accept Primary Pegged Orders of any size and align the Exchange's handling of such orders with other cash equity exchanges' handling of similar order types,[8] thereby promoting competition among exchanges by offering ETP Holders options available on other cash equity exchanges. The Exchange also believes that, to the extent the proposed change would increase opportunities for order execution, the proposed change would promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow it to accept Primary Pegged Orders of any size as soon as the technology associated with the proposed change is available. The Exchange states that the proposal raises no novel issues and that waiver of the operative delay would allow the Exchange to more expeditiously offer increased flexibility to member organizations and promote additional trading opportunities for all market participants. The Commission finds that, because the proposal does not change the operation of Primary Pegged Orders, other than to expand their use to odd-lot orders, waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[4] *See, e.g.,* Members Exchange Rules 11.8(c)(2) (providing that a Primary Peg Order may be entered as an odd lot, round lot, or mixed lot). The Exchange also notes that the rules of the Nasdaq Stock Market LLC (''Nasdaq''), Cboe BZX Exchange, Inc. (''BZX''), and Cboe BYX Exchange, Inc. (''BYX'') appear to permit orders, including orders analogous to Primary Pegged Orders, to be entered in any size. *See* Nasdaq Rule 4703(b) (providing that an order may be entered in any whole share size, except as otherwise provided); BZX Rule 11.2 (providing that orders are eligible for odd-lot, round-lot, and mixed-lot executions unless otherwise indicated); BYX Rule 11.2 (same).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* note 4, *supra.*

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–21 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–SR–NYSEARCA–2024–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–SR–NYSEARCA–2024–21 and should be submitted on or before April 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–05485 Filed 3–14–24; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–563, OMB Control No. 3235–0694]**

### Proposed Collection; Comment Request; Extension: Rule 17g–10 and Form ABS Due Diligence–15E

*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 existing collection of information provided for in Rule 17g–10 and Form ABS Due Diligence–15E (17 CFR 240.17g–10 and 17 CFR 249b.500) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–10 requires a provider of third-party due diligence services to provide the written certification required by Section 15E(s)(4) of the Exchange Act on Form ABS Due Diligence–15E. Based on Commission staff's experience, it is estimated that third-party due diligence service providers would be required to spend, on average, 0.20 hours to complete and transmit Form ABS Due Diligence–15E, for a total annual burden of 470 hours.[1] The cost for a compliance manager to complete and submit Form ABS Due Diligence–15E pursuant to Rule 17g–10 is estimated at $372 per hour,[2] resulting in an industry-wide annual internal cost to third-party service providers of $175,000 per year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; 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 by May 14, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Please direct your written comments to: Dave Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F St. NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 12, 2024.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–05542 Filed 3–14–24; 8:45 am]

**BILLING CODE 8011–01–P**

[1] This figure is calculated by multiplying the per year average number of offerings of asset-backed securities, as the term is defined in Section 3(a)(79) of the Exchange Act, which was estimated at 1,410 offerings, by the hour burden to complete and transmit Form ABS Due Diligence–15E, estimated at 0.20 hours (1,410 offerings × 0.20 hours = 470 hours).

[2] The $372 figure for a compliance manager is based on SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, as adjusted for inflation using the Bureau of Labor Statistics' CPI Inflation Calculator.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99712; File No. SR–FICC–2024–801]**

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Extension of Review Period of Advance Notice To Adopt a Minimum Margin Amount at GSD

March 11, 2024.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on February 27, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice SR–FICC–2024–801 (''Advance Notice'') as described in Items I, II and III below, which Items have been prepared primarily by the clearing agency.[3] The Commission is

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] On February 27, 2024, FICC filed this Advance Notice as a proposed rule change (SR–FICC–2024–003) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the

Continued

publishing this notice to solicit comments on the Advance Notice from interested persons and to extend the review period of the Advance Notice.

## I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of amendments to FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'')[4] in order to (1) enhance the VaR Floor by incorporating a ''Minimum Margin Amount'' and (2) expand the application of the enhanced VaR Floor to include Margin Proxy, as described in greater detail below.

The proposed rule change would necessitate changes to the Methodology Document—GSD Initial Market Risk Margin Model (the ''QRM Methodology''), which is filed as Exhibit 5b.[5] FICC is requesting confidential treatment of the QRM Methodology and has filed it separately with the Commission.[6]

## II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

proposed rule change is *available at www.dtcc.com/legal/sec-rule-filings.*

[4] Terms not defined herein are defined in the GSD Rules, *available at www.dtcc.com/legal/rules-and-procedures.*

[5] The QRM Methodology was filed as a confidential exhibit as part of proposed rule change SR–FICC–2018–001 (the ''VaR Filing''). *See* Securities Exchange Act Release No. 83362 (June 1, 2018), 83 FR 26514 (June 7, 2018) (SR–FICC–2018–001) (''VaR Filing Approval Order''). FICC also filed the VaR Filing proposal as an advance notice pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5465(e)(1) and Rule 19b–4(n)(1)(i) under the Act (17 CFR 240.19b–4(n)(1)(i)), with respect to which the Commission issued a Notice of No Objection. *See* Securities Exchange Act Release No. 83223 (May 11, 2018), 83 FR 23020 (May 17, 2018) (SR–FICC–2018–801). The QRM Methodology has been subsequently amended following the VaR Filing Approval Order. *See* Securities Exchange Act Release Nos. 85944 (May 24, 2019), 84 FR 25315 (May 31, 2019) (SR–FICC–2019–001), 90182 (Oct. 14, 2020), 85 FR 66630 (Oct. 20, 2020) (SR–FICC–2020–009), 93234 (Oct. 1, 2021), 86 FR 55891 (Oct. 7, 2021) (SR–FICC–2021–007), 95605 (Aug. 25, 2022), 87 FR 53522 (Aug. 31, 2022) (SR–FICC–2022–005), 97342 (Apr. 21, 2023), 88 FR 25721 (Apr. 27, 2023) (SR–FICC–2023–003), and 99447 (Jan. 30, 2024), 89 FR 8260 (Feb. 6, 2024) (SR–FICC–2024–001).

[6] 17 CFR 240.24b–2.

*(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others*

FICC has not received or solicited any written comments relating to this proposal. If any additional written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto. FICC reserves the right not to respond to any comments received.

*(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act*

Nature of the Proposed Change

FICC is proposing to enhance the VaR Floor by incorporating a Minimum Margin Amount in order to supplement the VaR model and improve its responsiveness and resilience to extreme market volatility. Specifically, FICC is proposing to modify the VaR Floor and the corresponding description in the GSD Rules to incorporate a Minimum Margin Amount. In addition, FICC is proposing to expand the application of the enhanced VaR Floor to include Margin Proxy. The proposed change would necessitate changes to the QRM Methodology.

FICC has observed extreme market volatility in the fixed income market due to monetary policy changes, inflation, and recession fears. The extreme market volatility has led to greater risk exposures for FICC. Specifically, the extreme market volatilities during the two arguably most stressful market periods, *i.e.,* the COVID period during March of 2020 and the successive interest rate hikes that began in March 2022, have led to market price changes that exceeded the VaR model's projections, which yielded insufficient VaR Charges. As a result, FICC's VaR backtesting metrics fell below the performance target due to unprecedented levels of extreme market volatility. This highlighted the need for FICC to enhance its VaR model so that it can better respond to extreme market volatility.

In order to better manage its risk exposures during extreme market volatility events, FICC is proposing to adopt a Minimum Margin Amount that would be applied as a minimum volatility calculation to ensure that FICC calculates sufficient margin to cover its risk exposures, particularly during extreme market volatility. The proposed Minimum Margin Amount would be incorporated into the VaR Floor to supplement the VaR model and enhance its responsiveness to extreme market volatility. As proposed, the Minimum Margin Amount is designed to improve the margin backtesting performance during periods of heightened market volatility by maintaining a VaR Charge that is appropriately calibrated to reflect the current market volatility. The proposed Minimum Margin Amount aims to enhance backtesting coverage when there are potential VaR model performance challenges, particularly when securities price changes significantly exceed those implied by the VaR model risk factors, as observed during the recent periods of extreme market volatility. FICC believes the proposed Minimum Margin Amount would provide a more reliable estimate for the portfolio risk level when current market conditions significantly deviate from historical observations.

The proposed Minimum Margin Amount would be determined using historical price returns to represent risk along with amounts calculated (i) using a filtered historical simulation approach, (ii) using a haircut method, and (iii) to incorporate other risk factors. By using a filtered historical simulation approach in which historical returns are scaled to current market volatility, the proposed Minimum Margin Amount would operate as a floor to the VaR Charge to improve the responsiveness of the VaR model to extreme volatility. Because the use of historical price return-based risk representation is not dependent on any sensitivity data vendor, it would allow the proposed Minimum Margin Amount to also operate as a floor to the Margin Proxy and improve the responsiveness of Margin Proxy to extreme volatility.

As a result of this proposal, Members may experience increases in their Required Fund Deposits to the Clearing Fund. Based on an impact study conducted by FICC, on average, at the Member level, the proposed Minimum Margin Amount would have increased the SOD VaR Charge by approximately $22.45 million, or 17.69%, and the noon VaR Charge by approximately $23.22 million, or 17.44%, over a 2-year impact study period.

Background

FICC, through GSD, serves as a central counterparty and provider of clearance and settlement services for transactions in the U.S. government securities, as well as repurchase and reverse repurchase transactions involving U.S. government securities.[7] As part of its

[7] GSD also clears and settles certain transactions on securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.

market risk management strategy, FICC manages its credit exposure to Members by determining the appropriate Required Fund Deposit to the Clearing Fund and monitoring its sufficiency, as provided for in the GSD Rules.[8] The Required Fund Deposit serves as each Member's margin.

The objective of a Member's Required Fund Deposit is to mitigate potential losses to FICC associated with liquidating a Member's portfolio in the event FICC ceases to act for that Member (hereinafter referred to as a ''default'').[9] The aggregate amount of all Members' Required Fund Deposit constitutes the Clearing Fund. FICC would access the Clearing Fund should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to FICC caused by the liquidation of that Member's portfolio.

FICC regularly assesses market and liquidity risks as such risks relate to its margin methodologies to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market. For example, FICC employs daily backtesting to determine the adequacy of each Member's Required Fund Deposit.[10] FICC compares the Required Fund Deposit[11] for each Member with the simulated liquidation gains/losses, using the actual positions in the Member's portfolio(s) and the actual historical security returns. A backtesting deficiency occurs when a Member's Required Fund Deposit would not have been adequate to cover the projected liquidation losses and highlights exposure that could subject FICC to potential losses in the event that a Member defaults.

FICC investigates the cause(s) of any backtesting deficiencies and determines if there is an identifiable cause of repeat backtesting deficiencies. FICC also evaluates whether multiple Members may experience backtesting deficiencies for the same underlying reason.

Pursuant to the GSD Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by FICC, as identified within the GSD Rules.[12] These components include the VaR Charge, Blackout Period Exposure Adjustment, Backtesting Charge, Holiday Charge, Margin Liquidity Adjustment Charge, special charge, and Portfolio Differential Charge.[13] The VaR Charge generally comprises the largest portion of a Member's Required Fund Deposit amount.

VaR Charge

The VaR Charge is based on the potential price volatility of unsettled positions using a sensitivity-based Value-at-Risk (VaR) methodology. The VaR methodology provides an estimate of the possible losses for a given portfolio based on: (1) confidence level, (2) a time horizon and (3) historical market volatility. The VaR methodology is intended to capture the risks related to market price that are associated with the Net Unsettled Positions in a Member's Margin Portfolios. This risk-based margin methodology is designed to project the potential losses that could occur in connection with the liquidation of a defaulting Member's Margin Portfolio, assuming a Margin Portfolio would take three days to liquidate in normal market conditions. The projected liquidation gains or losses are used to determine the amount of the VaR Charge to each Margin Portfolio, which is calculated to capture the market price risk[14] associated with each Member's Margin Portfolio(s) at a 99% confidence level.

FICC's VaR model is designed to provide a margin calculation that covers the market risk in a Member's Margin Portfolio. The VaR model calculates the risk profile of each Member's Margin Portfolio by applying certain representative risk factors to measure the degree of responsiveness of the Margin Portfolio's value to the changes of these risk factors over a historical lookback period of at least 10 years that may be supplemented with an additional stressed period.

The VaR model has been shown to perform well in low to moderate volatility markets. From January 2013 to March 2020, the VaR model has generally performed above the 99% performance target, with deterioration in backtesting coverage only during the two arguably most stressful market periods, *i.e.,* the COVID period during March of 2020 and the successive interest rate hikes that began in March 2022. The market events during these two stressful periods, including monetary policy changes, inflation and recession fears, have resulted in significant market volatility in the fixed income market that exceeded the 99-percentile of the observed historical data set. Specifically, the extreme market volatilities during these two periods have led to market price changes that exceeded the VaR model's projections, which yielded insufficient VaR Charges. As a result, FICC's VaR backtesting metrics fell below the performance target due to unprecedented levels of extreme market volatility. This highlighted the need for FICC to enhance its VaR model so that it can better respond to extreme market volatility. Accordingly, FICC is proposing changes to the VaR Floor that FICC believes would mitigate the risk of potential underperformance of its VaR model under extreme market volatility.

Current VaR Floor

On June 1, 2018, the Commission approved FICC's VaR Filing to make changes to GSD's method of calculating a Member's Required Fund Deposit amount, including the VaR Charge.[15] The VaR Filing amended the definition of VaR Charge to, among other things, incorporate the VaR Floor.[16] FICC established the VaR Floor to address the risk that in a long/short portfolio the VaR model could calculate a VaR Charge that is erroneously low where

[8] *See* GSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 4. FICC's market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4).

[9] The GSD Rules identify when FICC may cease to act for a Member and the types of actions FICC may take. For example, FICC may suspend a firm's membership with FICC or prohibit or limit a Member's access to FICC's services in the event that Member defaults on a financial or other obligation to FICC. *See* GSD Rule 21 (Restrictions on Access to Services) of the GSD Rules, *supra* note 4.

[10] The Model Risk Management Framework (''Model Risk Management Framework'') sets forth the model risk management practices of FICC and states that Value at Risk (''VaR'') and Clearing Fund requirement coverage backtesting would be performed on a daily basis or more frequently. *See* Securities Exchange Act Release Nos. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (SR–FICC–2017–014), 84458 (Oct. 19, 2018), 83 FR 53925 (Oct. 25, 2018) (SR–FICC–2018–010), 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (SR–FICC–2020–004), 92380 (July 13, 2021), 86 FR 38140 (July 19, 2021) (SR–FICC–2021–006), 94271 (Feb. 17, 2022), 87 FR 10411 (Feb. 24, 2022) (SR–FICC–2022–001), and 97890 (July 13, 2023), 88 FR 46287 (July 19, 2023) (SR–FICC–2023–008).

[11] Members may be required to post additional collateral to the Clearing Fund in addition to their Required Fund Deposit amount. *See e.g.,* Section 7 of GSD Rule 3 (Ongoing Membership Requirements), *supra* note 4 (providing that adequate assurances of financial responsibility of a member may be required, such as increased Clearing Fund deposits). For backtesting comparisons, FICC uses the Required Fund Deposit amount, without regard to the actual, total collateral posted by the member to the GSD Clearing Fund.

[12] *Supra* note 4.

[13] *See* GSD Rule 4 (Clearing Fund and Loss Allocation), Section 1b. *Supra* note 4.

[14] Market price risk refers to the risk that volatility in the market causes the price of a security to change between the execution of a trade and settlement of that trade. This risk is sometimes also referred to as volatility risk.

[15] *See* VaR Filing Approval Order, *supra* note 5.

[16] The term ''VaR Floor'' is currently defined within the definition of VaR Charge. *See* GSD Rule 1 (Definitions), *supra* note 4.

the gross market value of unsettled positions in a Member's portfolio is high and the cost of liquidation in the event of the Member default is also high. This is likely to occur when the VaR model applies substantial risk offsets among long and short unsettled positions in different classes of securities that have a high degree of historical price correlation.[17] When this high degree of historical price correlations does not apply as a result of changing market conditions, the VaR Charge derived from the VaR model can be inadequate, and the VaR Floor would then be applied by FICC to mitigate such risk.

Currently, the VaR Floor is based upon the market value of the gross unsettled positions in the Member's portfolio. The VaR Floor is determined by multiplying the absolute value of the sum of Net Long Positions and Net Short Positions of Eligible Securities, grouped by product and remaining maturity, by a percentage designated by FICC from time to time for such group. For U.S. Treasury and agency securities, such percentage shall be a fraction, no less than 10%, of the historical minimum volatility of a benchmark fixed income index for such group by product and remaining maturity. For mortgage-backed securities, such percentage shall be a fixed percentage that is no less than 0.05%.[18]

The current VaR Floor is not designed to address the risk of potential underperformance of the VaR model under extreme market volatility.

Incorporate a Minimum Margin Amount Into the VaR Floor

In order to mitigate the risk of potential underperformance of its VaR model under extreme market volatility, FICC proposes to incorporate a Minimum Margin Amount into the VaR Floor to supplement the VaR model and enhance its responsiveness to extreme market volatility. FICC believes this proposal would complement and improve the VaR model performance during stressed market conditions. Specifically, FICC believes this proposal would improve the margin backtesting performance during periods of heightened market volatility by maintaining a VaR Charge that is appropriately calibrated to reflect the current market volatility.

FICC is proposing to introduce a new calculation called the ''Minimum Margin Amount'' to complement the existing VaR Floor in the GSD Rules. The Minimum Margin Amount would enhance backtesting coverage when there are potential VaR model performance challenges, particularly when securities price changes significantly exceed those implied by the VaR model risk factors, as observed during the recent periods of extreme market volatility. FICC believes the proposed Minimum Margin Amount would provide a more reliable estimate for the portfolio risk level when current market conditions significantly deviate from historical observations.

The Minimum Margin Amount would be defined in the GSD Rules as, with respect to each Margin Portfolio, a minimum volatility calculation for specified Net Unsettled Positions of a Netting Member as of the time of such calculation. The proposed definition would provide that the Minimum Margin Amount shall use historical price returns to represent risk [19] and be calculated as the sum of the following: (a) amounts calculated using a filtered historical simulation (''FHS'') approach [20] to assess volatility by scaling historical market price returns to current market volatility, with market volatility being measured by applying exponentially weighted moving average to the historical market price returns with a decay factor between 0.93 and 0.99, as determined by FICC from time to time based on sensitivity analysis, macroeconomic conditions, and/or backtesting performance, (b) amounts calculated using a haircut method to measure the risk exposure of those securities that lack sufficient historical price return data, (c) amounts calculated to incorporate risks related to (i) repo interest volatility (''repo interest volatility charge'') [21] and (ii) transaction costs related to bid-ask spread in the market that could be incurred when liquidating a portfolio (''bid-ask spread risk charge'').[22] In addition, the proposed definition would require FICC to provide Members with at a minimum one Business Day advance notice of any change to the decay factor via an Important Notice.[23]

FICC is proposing to revise the definition of the VaR Floor to incorporate the Minimum Margin Amount, such that the VaR Floor would be the greater of (i) the VaR Floor Percentage Amount and (ii) the Minimum Margin Amount.

The ''VaR Floor Percentage Amount'' would be the new defined term used to describe the current VaR Floor percentage calculation in the GSD Rules. This rule change is not proposing to change the VaR Floor percentage or the manner in which this component is calculated.

As proposed, the Minimum Margin Amount would be utilized as the VaR Charge for a Member's Margin Portfolio when it is greater than the current VaR Charge of the Margin Portfolio and the VaR Floor Percentage Amount.

Under the proposed changes to the QRM Methodology, the Minimum Margin Amount would use a price return-based risk representation (*i.e.,* use historical price returns to represent risk) [24] and be calculated as the sum of (i) amounts calculated using a FHS method that scales historical market price returns to current market volatility, (ii) amounts calculated using a haircut method for securities that lack sufficient historical price return data,

[17] As an example, certain securities may have highly correlated historical price returns, but if market conditions were to substantially change, these historical correlations could break down, leading to model-generated offsets that could not adequately capture a portfolio's risk.

[18] *See* ''VaR Charge'' definition in GSD Rule 1 (Definitions). *Supra* note 4.

[19] This proposed approach is referred to as the ''price return-based risk representation'' in the QRM Methodology. Given the availability and accessibility of historical price returns data, FICC believes the proposed approach would help minimize and diversify FICC's risk exposure from external data vendors.

[20] The FHS method differs from the historical simulation method by incorporating the volatilities of historical price returns as a crucial element. In particular, the FHS method constructs the filtered historical price returns in two steps: first, ''devolatilizing'' the historical price returns by dividing them by a volatility estimate for the day of the price return, and second, ''revolatilizing'' the devolatilized price returns by multiplying them by a volatility estimate based on the current market. For additional background on the FHS method, *see* Filtered historical simulation Value-at-Risk models and their competitors, Pedro Gurrola-Perez and David Murphy, Bank of England, March 2015, *at www.bankofengland.co.uk/working-paper/2015/filtered-historical-simulation-value-at-risk-models-and-their-competitors.*

[21] The ''repo interest volatility charge'' is a component of the VaR Charge that is designed to address repo interest volatility. The repo interest volatility charge is calculated based on internally constructed repo interest rate indices. This rule change is proposing to also include the repo interest volatility charge as a component of the Minimum Margin Amount; however, it is not proposing to change the repo interest volatility charge or the manner in which this component is calculated.

[22] The ''bid-ask spread risk charge'' is a component of the VaR Charge that is designed to address transaction costs related to bid-ask spread in the market that could be incurred when liquidating a portfolio. This rule change is proposing to also include the bid-ask spread risk charge as a component of the Minimum Margin Amount; however, it is not proposing to change the bid-ask spread risk charge or the manner in which this component is calculated.

[23] Although the QRM Methodology is being submitted as a confidential Exhibit 5b to this proposal due to its proprietary content, FICC makes available to Members a Value-at-Risk (VaR) calculator that can be used to estimate their Clearing Fund requirements based on their portfolios.

[24] *Supra* note 19.

and (iii) amounts calculated to incorporate additional risk factors.

FHS Method

Following the FHS method, FICC would first construct historical price returns using certain mapped fixed income securities benchmarks. As proposed, the mapped fixed income securities benchmarks to be used with the FHS method when calculating the Minimum Margin Amount in the QRM Methodology would be Bloomberg Treasury indexes for U.S. Treasury and agency securities, Bloomberg TIPS indexes for Treasury Inflation-Protected Securities (''TIPS''), and to-be-announced (''TBA'') securities for mortgage-backed securities (''MBS'') pools. These benchmarks were selected because their price movements generally closely track those of the securities mapped to them and that their price history is generally readily available and accessible.

After constructing historical price returns, FICC would estimate a market volatility associated with each historical price return by applying exponentially weighted moving average (''EWMA'') to the historical price returns. The historical price returns are then ''devolatilized'' by dividing them by the corresponding EWMA volatilities to obtain the residual returns. The residual returns are then ''revolatilized'' by multiplying them by the current EWMA volatility to obtain the filtered returns.

The filtered return time series are then used to simulate the profits and losses of a Member's Margin Portfolio and derive the volatility of the Margin Portfolio using the standard historical simulation approach. In particular, each security that is in a Member's Margin Portfolio would be mapped to a respective fixed income securities benchmark, as applicable, based on the security's asset class and remaining maturity. The filtered returns of the benchmark are used as the simulated returns of the mapped security to calculate the simulated profits and losses of a Member's Margin Portfolio. The Minimum Margin Amount is then calculated as the 99-percentile of the simulated portfolio loss.

Haircut Method

Occasionally, a Member's Margin Portfolio(s) contain classes of securities that reflect market price changes that are not consistently related to historical price moves. The value of these securities is often uncertain because the securities' market volume varies widely, thus the price histories are limited. Because the volume and price information for such securities are not robust, the FHS method would not generate Minimum Margin Amounts that adequately reflect the risk profile of such securities. Accordingly, the proposed changes to the QRM Methodology would provide that the Minimum Margin Amount would use a haircut method to assess the market risk of those securities that are more difficult to simulate, for example, because of thin trading history.

Specifically, the proposed haircut method would be used for MBS pools that are not TBA securities eligible, floating rate notes and U.S. Treasury/agency securities with remaining time to maturities of less than or equal to one year.

A haircut method would also be used to size up the basis risk between an agency security and the mapped U.S. Treasury index to supplement the historical market price moves generated by the FHS method for agency securities to reflect any residual risks between agency securities and the mapped fixed income securities benchmarks, *i.e.,* Bloomberg Treasury indexes. Similarly, a haircut method would be used to size up the MBS pool/TBA basis risk to address the residual risk for using TBA price returns as proxies for MBS pool returns used in the FHS method.

Minimum Margin Amount Calculation

FICC is proposing to modify the QRM Methodology to specify that the Minimum Margin Amount would use a price return-based risk representation and be calculated per Member Margin Portfolio as the sum of (i), (ii), and (iii):

(i) FHS Method

(a) the amount calculated using historical market price returns of mapped fixed income securities benchmarks derived based on the FHS method.

(ii) Haircut Method

(a) the haircut charge for MBS pools that are not TBA securities eligible,

(b) the supplemental haircut charge for agency securities,

(c) the haircut charge for floating rate notes and U.S. Treasury/agency securities with remaining time to maturities of less than or equal to one year, and

(d) the supplemental basis haircut charge for mortgage pool securities.

(iii) Additional Risk Factors

(a) the repo interest volatility charge,[25] and

(b) the bid-ask spread risk charge.[26]

The mapped fixed income securities benchmarks, historical market price returns, parameters and volatility assessments to be used to calculate the Minimum Margin Amount would be determined by FICC from time to time in accordance with FICC's model risk management practices and governance set forth in the Clearing Agency Model Risk Management Framework.[27]

Minimum Margin Amount Parameters

The proposed Minimum Margin Amount uses a lookback period for the filtered historical simulation and a decay factor for calculating the EWMA volatility of the historical prices returns.

In particular, the lookback period of the proposed Minimum Margin Amount is the same as the lookback period used for the VaR model, which is 10 years, plus, to the extent applicable, a stressed period. Consistent with the VaR methodology outlined in the QRM Methodology and pursuant to the model performance monitoring required under the Model Risk Management Framework,[28] the lookback period would be analyzed to evaluate its sensitivity and impact to the model performance.

The decay factor in general affects (i) whether and how the Minimum Margin Amount would be invoked, (ii) the peak level of margin increase or the degree of procyclicality, and (iii) how quickly the margin would fall back to pre-stress levels. Similar to the lookback period, the decay factor of the proposed Minimum Margin Amount would also be analyzed to evaluate its sensitivity and impact to the model performance pursuant to the model performance monitoring required under the Model Risk Management Framework.[29] The decay factor would be, as proposed, between 0.93 and 0.99, and any update thereto is expected to be an infrequent event and would typically happen only when there is an unprecedented market volatility event which resulted in risk exposures to FICC that cannot be adequately mitigated by the then calibrated decay factor. The decision to update the decay factor would be based on the above-mentioned sensitivity analysis with considerations to factors, such as the impact to the VaR Charges,

[25] *Supra* note 21.

[26] *Supra* note 22.

[27] *See* Model Risk Management Framework, *supra* note 10.

[28] The Model Risk Management Framework provides that all models undergo ongoing model performance monitoring and backtesting which is the process of (i) evaluating an active model's ongoing performance based on theoretical tests, (ii) monitoring the model's parameters through the use of threshold indicators, and/or (iii) backtesting using actual historical data/realizations to test a VaR model's predictive power. *Supra* note 10.

[29] *Supra* note 28.

macroeconomic conditions, and/or backtesting performance. The initial decay factor for the Minimum Margin Amount calculation would be 0.97 but may be adjusted as set forth above in accordance with FICC's model risk management practices and governance set forth in the Model Risk Management Framework.[30]

The Model Risk Management Framework would also require FICC to conduct ongoing model performance monitoring of the Minimum Margin Amount methodology.[31] FICC's current model performance monitoring practices would provide for sensitivity analysis of relevant model parameters and assumptions to be conducted monthly, or more frequently when markets display high volatility. In addition, FICC would monitor each Member's Required Fund Deposit and the aggregate Clearing Fund requirements versus the requirements calculated by the Minimum Margin Amount. Specifically, FICC would review and assess the robustness of the Required Fund Deposit inclusive of the Minimum Margin Amount by comparing the results versus the three-day profit and loss of each Member's Margin Portfolio based on actual market price moves. Based on the results of the sensitivity analysis and/or backtesting, FICC could consider adjustments to the Minimum Margin Amount, including changing the decay factor as appropriate. Any adjustment to the Minimum Margin Amount calculation would be subject to the model risk management practices and governance process set forth in the Model Risk Management Framework.[32]

Expand Application of VaR Floor To Include Margin Proxy

The GSD Margin Proxy methodology is currently deployed as an alternative volatility calculation in the event that the requisite vendor data used for the VaR model is unavailable for an extended period of time.[33] In circumstances where the Margin Proxy is applied by FICC, FICC is proposing to have the VaR Floor operate as a floor for the Margin Proxy. Specifically, FICC is proposing to expand the application of the VaR Floor to include Margin Proxy so that if the Margin Proxy, when deployed, is lower than the VaR Floor, then the VaR Floor would be utilized as the VaR Charge with respect to a Member's Margin Portfolio. FICC believes this proposed change would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress, thereby enhancing the overall resilience of the FICC risk management.

Proposed GSD Rule Changes

In connection with incorporating the Minimum Margin Amount into the VaR Floor, FICC would modify the GSD Rules to:

I. Add a definition of ''Minimum Margin Amount'' and define it as, with respect to each Margin Portfolio, a minimum volatility calculation for specified Net Unsettled Positions of a Member as of the time of such calculation. The definition would provide that the Minimum Margin Amount shall use historical price returns to represent risk and be calculated as the sum of the following: (a) amounts calculated using a filtered historical simulation approach to assess volatility by scaling historical market price returns to current market volatility, with market volatility being measured by applying exponentially weighted moving average to the historical market price returns with a decay factor between 0.93 and 0.99, as determined by FICC from time to time based on sensitivity analysis, macroeconomic conditions, and/or backtesting performance, (b) amounts calculated using a haircut method to measure the risk exposure of those securities that lack sufficient historical price return data, and (c) amounts calculated to incorporate risks related to (i) repo interest volatility (''repo interest volatility charge'') and (ii) transaction costs related to bid-ask spread in the market that could be incurred when liquidating a portfolio (''bid-ask spread risk charge''). In addition, the proposed definition would require FICC to provide Members with at a minimum one Business Day advance notice of any change to the decay factor via an Important Notice;

II. Add a definition of ''VaR Floor Percentage Amount'' which would be defined the same as the current calculation for the VaR Floor percentage with non-substantive modifications to reflect that the calculated amount is a separate defined term; and

III. Move the defined term VaR Floor out of the definition of VaR Charge and define it as the greater of (i) the VaR Floor Percentage Amount and (ii) the Minimum Margin Amount.

In connection with applying the VaR Floor to include Margin Proxy, FICC would modify the GSD Rules to revise the definition of ''VaR Charge'' by adding a reference to the Margin Proxy with respect to the VaR Floor application and clarifying that VaR Charge is calculated at the Margin Portfolio-level.

Proposed QRM Methodology Changes

In connection with incorporating the Minimum Margin Amount into the VaR Floor, FICC would modify the QRM Methodology to:

I. Describe how the Minimum Margin Amount, as defined in the GSD Rules, would be calculated, including:

(i) Establishing mapped fixed income securities benchmarks for purposes of the calculation using historical market price returns of such securities with the FHS method;

(ii) Using a haircut method to assess the market risk of certain securities that are more difficult to simulate due to thin trading history; and

(iii) Detailing other risk factors that would be incorporated in the calculation.

II. Describe the developmental evidence and impacts to backtesting performance and margin charges relating to Minimum Margin Amount.

In connection with applying the VaR Floor to include Margin Proxy, FICC would modify the QRM Methodology to reflect that the Minimum Margin Amount would serve as a floor for the Margin Proxy.

In addition, FICC would modify the QRM Methodology to:

I. Make certain clarifying changes to the QRM Methodology to delete an out-of-date description of the Margin Proxy being used as an adjustment factor to the VaR,[34] enhance the description of the VaR Floor Percentage Amount, and update the list of key model parameters to reflect the Margin Proxy lookback period; and

II. Make certain technical changes to the QRM Methodology to renumber sections and tables, correct grammatical and typographical errors, delete out-of-date index names, and update certain formula notations and section titles as necessary.

Impact Study

FICC performed an impact study on Members' Margin Portfolios for the period beginning July 1, 2021 through June 30, 2023 (''Impact Study Period').[35] [36] If the proposed rule

[30] *See* Model Risk Management Framework, *supra* note 10.

[31] *See* note 28.

[32] *See* Model Risk Management Framework, *supra* note 10.

[33] FICC may deem such data to be unavailable and deploy Margin Proxy when there are concerns with the quality of data provided by the vendor.

[34] FICC currently does not use Margin Proxy as an adjustment factor to the VaR and does not intend to use it as such in the future.

[35] GSD increased the minimum Required Fund Deposit for Members to $1 million on Dec. 5, 2022 (*see* Securities Exchange Act Release No. 96136 (Oct. 24, 2022), 87 FR 65268 (Oct. 28, 2022) (SR–

changes[37] had been in place during the Impact Study Period compared to the existing GSD Rules, the aggregate average daily start-of-day (''SOD'') VaR Charges would have increased by approximately $2.9 billion or 13.89%, the aggregate average daily noon VaR Charges would have increased by approximately $3.03 billion or 14.05%, and the aggregate average daily Backtesting Charges would have decreased by approximately $622 million or 64.46%.

The impact study indicated that if the proposed rule changes had been in place, the VaR model backtesting coverage would have increased from approximately 98.86% to 99.46% during the Impact Study Period. Specifically, if the proposed rule changes had been in place during the Impact Study Period, the number of VaR model backtesting deficiencies would have been reduced by 443 (from 843 to 400, or approximately 53%).

The impact study also indicated that if the proposed rule changes had been in place, overall margin backtesting coverage would have increased from approximately 98.87% to 99.33% during the Impact Study Period. Specifically, if the proposed rule changes had been in place during the Impact Study Period, the number of overall margin backtesting deficiencies would have been reduced by 280 (from 685 to 405, or approximately 41%) and the overall margin backtesting coverage for 94 Members (approximately 72% of the GSD membership) would have improved with 36 Members who were below 99% coverage would be brought back to above 99%.

FICC–2022–006)); however, for the purpose of this Impact Study, the $1 million minimum Requirement Fund Deposit is assumed to be in effect for the entirety of the Impact Study period.

[36] GSD adopted a Portfolio Differential Charge (''PD Charge'') as an additional component to the GSD Required Fund Deposit on Oct. 30, 2023 (*see* Securities Exchange Act Release No. 98494 (Sep. 25, 2023), 88 FR 67394 (Sep. 29, 2023) (SR–FICC–2023–011)); however, for the purpose of this Impact Study, the PD Charge is assumed to be in effect for the entirety of the Impact Study period.

[37] Margin Proxy was not deployed during the Impact Study Period; however, if the proposed rule changes had been in place and the Margin Proxy were deployed during the Impact Study Period, the aggregate average daily SOD VaR Charges would have increased by approximately $4.2 billion or 20.98%. The impact study also indicated that if the proposed rule changes had been in place and the Margin Proxy were deployed, the VaR model backtesting coverage would have increased from approximately 98.17% to 99.38% during the Impact Study Period. Specifically, if the proposed rule changes had been in place and the Margin Proxy were deployed during the Impact Study Period, the number of the VaR model backtesting deficiencies would have been reduced by 901 (from 1358 to 457, or approximately 66.3%).

### Impacts to Members Over the Impact Study Period

On average, at the Member level, the proposed Minimum Margin Amount would have increased the SOD VaR Charge by approximately $22.45 million, or 17.69%, and the noon VaR Charge by approximately $23.22 million, or 17.44%, over the Impact Study Period. The largest average percentage increase in SOD VaR Charge for any Member would have been approximately 66.88%, or $97,051 (0.21% of the Member's average Net Capital),[38] and the largest average percentage increase in noon VaR Charge for any Member would have been approximately 64.79%, or $61,613 (0.13% of the Member's average Net Capital). The largest average dollar increase in SOD VaR Charge for any Member would have been approximately $268.35 million (0.34% of the Member's average Net Capital), or 19.05%, and the largest dollar increase in noon VaR Charge for any Member would have been approximately $288.57 million (1.07% of the Member's average Net Capital), or 13.65%. The top 10 Members based on the size of their average SOD VaR Charges and average noon VaR Charges would have contributed approximately 51.84% and 53.63% of the aggregated SOD VaR Charges and aggregated noon VaR Charges, respectively, during the Impact Study Period had the proposed Minimum Margin Amount been in place. The same Members would have contributed to 49.86% and 51.48% of the increase in aggregated SOD VaR Charges and aggregated noon VaR Charges, respectively, had the proposed Minimum Margin Amount been in place during the Impact Study Period.

### Implementation Timeframe

FICC would implement the proposed rule changes by no later than 60 Business Days after the later of the approval of the related proposed rule change filing[39] and no objection to the advance notice by the Commission. FICC would announce the effective date of the proposed changes by an Important Notice posted to its website.

[38] The term ''Net Capital'' means, as of a particular date, the amount equal to the net capital of a broker or dealer as defined in SEC Rule 15c3–1(c)(2), or any successor rule or regulation thereto. *See* GSD Rule 1 (Definitions), *supra* note 4.

[39] FICC filed this advance notice as a proposed rule change (File No. SR–FICC–2024–003) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at www.dtcc.com/legal/sec-rule-filings.*

### Anticipated Effect on and Management of Risk

FICC believes that the proposed change, which consists of a proposal to (i) modify the calculation of the VaR Floor and the corresponding description in the GSD Rules and QRM Methodology to incorporate a Minimum Margin Amount and (ii) expand the application of the VaR Floor to include Margin Proxy, would enable FICC to better limit its exposure to Members arising out of the activity in their portfolios. As stated above, the proposed change is designed to enhance the GSD VaR model performance and improve the backtesting coverage during periods of extreme market volatility. The proposed charge would help ensure that FICC maintains an appropriate level of margin to address its risk management needs.

Specifically, the proposed rule change seeks to remedy potential situations that are described above where FICC's VaR model and/or Margin Proxy, including the existing VaR Floor, does not respond effectively to increased market volatility and the VaR Charge amounts do not achieve a 99% confidence level. Therefore, by enabling FICC to collect margin that more accurately reflects the risk characteristics of its Members, the proposal would enhance FICC's risk management capabilities.

By providing FICC with a more effective limit on its exposures, the proposed change would also mitigate risk for Members because lowering the risk profile for FICC would in turn lower the risk exposure that Members may have with respect to FICC in its role as a central counterparty. Further, the proposal is designed to meet FICC's risk management goals and its regulatory obligations, as described below.

### Consistency With the Clearing Supervision Act

Although Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') does not specify a standard of review for an advance notice, its stated purpose is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[40]

[40] 12 U.S.C. 5461(b).

FICC believes that the proposal is consistent with the Clearing Supervision Act, specifically with the risk management objectives and principles of Section 805(b), and with certain of the risk management standards adopted by the Commission pursuant to Section 805(a)(2), for the reasons described below.

(i) Consistency With Section 805(b) of the Clearing Supervision Act

Section 805(b) of the Clearing Supervision Act [41] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to, among other things, promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. For the reasons described below, FICC believes that the proposed changes in this advance notice are consistent with the objectives and principles of the risk management standards as described in Section 805(b) of the Clearing Supervision Act.

FICC is proposing to (i) modify the calculation of the VaR Floor and the corresponding description in the GSD Rules and QRM Methodology to incorporate a Minimum Margin Amount and (ii) expand the application of the VaR Floor to include Margin Proxy, both of which would enable FICC to better limit its exposure to Members arising out of the activity in their portfolios. FICC believes these proposed changes are consistent with promoting robust risk management because the changes would better enable FICC to limit its exposure to Members in the event of a Member default by collecting adequate prefunded financial resources to cover its potential losses resulting from the default of a Member and the liquidation of a defaulting Member's portfolio.

Specifically, the proposed Minimum Margin Amount would modify the VaR Floor to cover circumstances, such as extreme market volatility, where the current VaR Charge calculation and the VaR Floor are both lower than market price volatility from corresponding securities benchmarks. The proposed changes are designed to more effectively measure and address risk characteristics in situations where the risk factors used in the VaR method do not adequately predict market price movements and associated credit risk exposure. As reflected in backtesting studies, FICC believes the proposed changes would appropriately limit FICC's credit exposure to Members in the event that the VaR model yields too low a VaR Charge in such situations. Such backtesting studies indicate that the aggregate average daily Backtesting Charges would have decreased by approximately $622 million or 64.46% during the Impact Study Period, and the overall margin backtesting coverage (based on 12-month trailing backtesting) would have improved from approximately 98.87% to 99.33% during the Impact Study Period if the Minimum Margin Amount calculation had been in place. Improving the overall backtesting coverage level would help FICC ensure that it maintains an appropriate level of margin to address its risk management needs.

The use of the Minimum Margin Amount would reduce risk by allowing FICC to calculate the exposure in each portfolio using historical price returns to represent risk along with amounts calculated (i) using a FHS method that scales historical market price returns to current market volatility, (ii) using a haircut method for those securities that lack sufficient historical price return data, and (iii) to incorporate other risk factors. As reflected by backtesting studies during the Impact Study Period, using the FHS method would provide a more reliable estimate than the FICC VaR historical data set for the portfolio risk level when current market conditions deviate from historical observations. Adding the Minimum Margin Amount to the VaR Floor and applying the VaR Floor to include Margin Proxy would help to ensure that the risk exposure during periods of extreme market volatility is adequately captured in the VaR Charges. FICC believes that would help to ensure that FICC continues to accurately calculate and assess margin and in turn, collect sufficient margin from its Members and better enable FICC to limit its exposures that could be incurred when liquidating a portfolio.

The proposed change to expand the application of VaR Floor to include Margin Proxy would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress. By improving the effectiveness of Margin Proxy as a risk mitigant under extreme market volatility and heightened market stress would help ensure that the margin that FICC collects from Members is sufficient to mitigate the credit exposure presented by the Members.

For these reasons, FICC believes the proposed changes would help to promote GSD's robust risk management, which, in turn, is consistent with reducing systemic risks and supporting the stability of the broader financial system, consistent with Section 805(b) of the Clearing Supervision Act.[42]

FICC also believes the changes proposed in this advance notice are consistent with promoting safety and soundness, which, in turn, is consistent with reducing systemic risks and supporting the stability of the broader financial system, consistent with Section 805(b) of the Clearing Supervision Act.[43] As described above, the proposed changes are designed to help ensure that FICC is collecting adequate prefunded financial resources to cover its potential losses resulting from the default of a Member and the liquidation of a defaulting Member's portfolio in times of extreme market volatility. Because the proposed changes would better position FICC to limit its exposures to Members in the event of a Member default, FICC believes the proposed changes are consistent with promoting safety and soundness, which, in turn, is consistent with reducing systemic risks and supporting the stability of the broader financial system.

(ii) Consistency With 805(a)(2) of the Clearing Supervision Act

Section 805(a)(2) of the Clearing Supervision Act [44] authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like FICC, and financial institutions engaged in designated activities for which the Commission is the supervisory agency or the appropriate financial regulator. The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act [45] and Section 17A of the Act [46] (the risk management standards are referred to as the ''Covered Clearing Agency Standards'').[47]

The Covered Clearing Agency Standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to be consistent with the minimum requirements for their operations and risk management practices on an ongoing basis.[48] FICC believes that this proposal is consistent with Rules 17Ad–22(e)(4)(i) and (e)(6)(i), each promulgated under the Act,[49] for the reasons described below.

[41] 12 U.S.C. 5464(b).

[42] *Id.*

[43] *Id.*

[44] 12 U.S.C. 5464(a)(2).

[45] *Id.*

[46] 15 U.S.C. 78q–1.

[47] 17 CFR 240.17Ad–22.

[48] *Id.*

[49] 17 CFR 240.17Ad–22(e)(4)(i) and (e)(6)(i).

Rule 17Ad–22(e)(4)(i) under the Act[50] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. As described above, FICC believes that the proposed changes would enable it to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. More specifically, as indicated by backtesting studies, implementation of a Minimum Margin Amount by changing the GSD Rules and QRM Methodology as described herein would allow FICC to limit its credit exposures to Members in the event that the current VaR model yields too low a VaR Charge for such portfolios and improve backtesting performance. As indicated by the backtesting studies, the aggregate average daily SOD VaR Charges would have increased by approximately $2.90 billion or 13.89%, the aggregate average daily noon VaR Charges would have increased by approximately $3.03 billion or 14.05%, the aggregate average daily Backtesting Charges would have decreased by approximately $622 million or 64.46% during the Impact Study Period, and the overall margin backtesting coverage (based on 12-month trailing backtesting) would have improved from approximately 98.87% to 99.33% during the Impact Study Period if the Minimum Margin Amount calculation had been in place. By identifying and providing for appropriate VaR Charges, adding the Minimum Margin Amount to the VaR Floor would help to ensure that the risk exposure during periods of extreme market volatility is adequately identified, measured and monitored. Similarly, the proposed change to expand the application of VaR Floor to include Margin Proxy would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress. By improving the effectiveness of Margin Proxy as a risk mitigant under extreme market volatility and heightened market stress would help ensure that the margin that FICC collects from Members is sufficient to mitigate the credit exposure presented by the Members. As a result, FICC believes that the proposal would enhance FICC's ability to effectively identify, measure and monitor its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence, consistent with the requirements of Rule 17Ad–22(e)(4)(i) of the Act.[51]

Rule 17Ad–22(e)(6)(i) under the Act[52] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. FICC believes that the proposed changes to adjust the VaR Floor to include the Minimum Margin Amount by changing the GSD Rules and QRM Methodology as described herein are consistent with the requirements of Rule 17Ad–22(e)(6)(i) cited above. The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit FICC's credit exposures to Members. FICC is proposing changes that are designed to more effectively measure and address risk characteristics in situations where the risk factors used in the VaR method do not adequately predict market price movements. As reflected in backtesting studies, FICC believes the proposed changes would appropriately limit FICC's credit exposure to Members in the event that the VaR model yields too low a VaR Charge in such situations. Such backtesting studies indicate that the aggregate average daily SOD VaR Charges would have increased by approximately $2.90 billion or 13.89%, the aggregate average daily noon VaR Charges would have increased by approximately $3.03 billion or 14.05%, the aggregate average daily Backtesting Charges would have decreased by approximately $622 million or 64.46% during the Impact Study Period, and the overall margin backtesting coverage (based on 12-month trailing backtesting) would have improved from approximately 98.87% to 99.33% during the Impact Study Period if the Minimum Margin Amount calculation had been in place. By identifying and providing for appropriate VaR Charges, adding the Minimum Margin Amount to the VaR Floor would help to ensure that margin levels are commensurate with the risk exposure of each portfolio during periods of extreme market volatility. Similarly, the proposed change to expand the application of VaR Floor to include Margin Proxy would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress. By improving the effectiveness of Margin Proxy as a risk mitigant under extreme market volatility and heightened market stress would help ensure that the margin that FICC collects from Members is sufficient to mitigate the credit exposure presented by the Members. Overall, the proposed changes would allow FICC to more effectively address the risks presented by Members. In this way, the proposed changes enhance the ability of FICC to produce margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market. As such, FICC believes that the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(6)(i) under the Act.[53]

## III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required

[50] 17 CFR 240.17Ad–22(e)(4)(i).

[51] *Id.*

[52] 17 CFR 240.17Ad–22(e)(6)(i).

[53] *Id.*

with respect to the proposal are completed.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2024–801 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2024–801. 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 (*www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*www.dtcc.com/legal/sec-rule-filings*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–FICC–2024–801 and should be submitted on or before April 5, 2024.

## V. Date and Timing for Commission Action

Section 806(e)(1)(G) of the Clearing Supervision Act provides that FICC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives an advance notice or (ii) the date that any additional information requested by the Commission is received,[54] unless extended as described below.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.[55]

Here, as the Commission has not requested any additional information, the date that is 60 days after OCC filed the advance notice with the Commission is April 27, 2024. However, the Commission is extending the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act [56] because the Commission finds the Advance Notice is both novel and complex, as discussed below.

The Commission believes that the changes proposed in the Advance Notice raise novel and complex issues. Specifically, FICC developed this proposal in response to extreme market volatility experienced during the two arguably most stressed market periods, *i.e.,* the pandemic-related volatility in March 2020 and the successive interest rate hikes that began in March 2022. As noted above, these extreme market volatility events led to market price changes that exceeded the VaR model's projections, resulting in insufficient VaR Charges and poor backtesting metrics. Therefore, FICC has developed the proposal described in the Advance Notice to better manage its risk exposures during extreme market volatility events. Determining the appropriate method to address this particular set of circumstances in the context of FICC's margin model presents novel and complex issues.

Accordingly, the Commission, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,[57] extends the review period for an additional 60 days so that the Commission shall have until June 26, 2024 to issue an objection or non-objection to advance notice SR–FICC–2024–801.

All submissions should refer to File Number SR–FICC–2024–801 and should be submitted on or before April 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

**Sherry R. Haywood,**

*Assistant Secretary.*

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[54] 12 U.S.C. 5465(e)(1)(G).

[55] 12 U.S.C. 5465(e)(1)(H).

[56] *Id.*

[57] *Id.*

[58] 17 CFR 200.30–3(a)(91) and 17 CFR 200.30–3(a)(94).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–399, OMB Control No. 3235–0456]**

## Submission for OMB Review; Comment Request; Extension: Form 24F–2

*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. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 24f–2 (17 CFR 270.24f–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) requires any open-end management companies (''mutual funds''), unit investment trusts (''UITs''), registered closed-end investment companies that make periodic repurchase offers under rule 23c–3 under the Investment Company Act [17 CFR 270.23c–3] (''interval funds''), or face-amount certificate companies (collectively, ''funds'') deemed to have registered an indefinite amount of securities to file, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, Form 24F–2 (17 CFR 274.24) with the Commission. Form 24F–2 is the annual notice of securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 2,074 funds file Form 24F–2 on the required annual basis. The average annual burden per respondent for Form 24F–2 is estimated to be four hours. The total annual burden for all respondents to

Form 24F–2 is estimated to be 8,296 hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information required by Form 24F–2 is mandatory. The Form 24F–2 filing that must be made to the Commission is available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by April 15, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: March 11, 2024.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–05501 Filed 3–14–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99710; File No. SR–FICC–2024–003]**

## Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Adopt a Minimum Margin Amount at GSD

March 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'') [4] to (1) enhance the VaR Floor by incorporating a ''Minimum Margin Amount'' and (2) expand the application of the enhanced VaR Floor to include Margin Proxy, as described in greater detail below.

The proposed rule change would necessitate changes to the Methodology Document—GSD Initial Market Risk Margin Model (the ''QRM Methodology''), which is filed as Exhibit 5b.[5] FICC is requesting confidential treatment of the QRM Methodology and has filed it separately with the Commission.[6]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FICC is proposing to enhance the VaR Floor by incorporating a Minimum Margin Amount in order to supplement the VaR model and improve its responsiveness and resilience to extreme market volatility. Specifically, FICC is proposing to modify the VaR Floor and the corresponding description in the GSD Rules to incorporate a Minimum Margin Amount. In addition, FICC is proposing to expand the application of the enhanced VaR Floor to include Margin Proxy. The proposed change would necessitate changes to the QRM Methodology.

FICC has observed extreme market volatility in the fixed income market due to monetary policy changes, inflation, and recession fears. The extreme market volatility has led to greater risk exposures for FICC. Specifically, the extreme market volatilities during the two arguably most stressful market periods, *i.e.,* the COVID period during March of 2020 and the successive interest rate hikes that began in March 2022, have led to market price changes that exceeded the VaR model's projections, which yielded insufficient VaR Charges. As a result, FICC's VaR backtesting metrics fell below the performance target due to unprecedented levels of extreme market volatility. This highlighted the need for FICC to enhance its VaR model so that it can better respond to extreme market volatility.

In order to better manage its risk exposures during extreme market volatility events, FICC is proposing to adopt a Minimum Margin Amount that would be applied as a minimum volatility calculation to ensure that FICC calculates sufficient margin to cover its risk exposures, particularly during extreme market volatility. The proposed Minimum Margin Amount would be incorporated into the VaR Floor to supplement the VaR model and enhance its responsiveness to extreme market volatility. As proposed, the Minimum Margin Amount is designed to improve the margin backtesting performance during periods of heightened market volatility by maintaining a VaR Charge that is appropriately calibrated to reflect

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 27, 2024, FICC filed this proposed rule change as an advance notice (SR–FICC–2024–801) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at www.dtcc.com/legal/sec-rule-filings.*

[4] Terms not defined herein are defined in the GSD Rules, *available at www.dtcc.com/legal/rules-and-procedures.*

[5] The QRM Methodology was filed as a confidential exhibit as part of proposed rule change SR–FICC–2018–001 (the ''VaR Filing''). *See* Securities Exchange Act Release No. 83362 (June 1, 2018), 83 FR 26514 (June 7, 2018) (SR–FICC–2018–001) (''VaR Filing Approval Order''). FICC also filed the VaR Filing proposal as an advance notice pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5465(e)(1) and Rule 19b–4(n)(1)(i) under the Act (17 CFR 240.19b–4(n)(1)(i)), with respect to which the Commission issued a Notice of No Objection. *See* Securities Exchange Act Release No. 83223 (May 11, 2018), 83 FR 23020 (May 17, 2018) (SR–FICC–2018–801). The QRM Methodology has been subsequently amended following the VaR Filing Approval Order. *See* Securities Exchange Act Release Nos. 85944 (May 24, 2019), 84 FR 25315 (May 31, 2019) (SR–FICC–2019–001), 90182 (Oct. 14, 2020), 85 FR 66630 (Oct. 20, 2020) (SR–FICC–2020–009), 93234 (Oct. 1, 2021), 86 FR 55891 (Oct. 7, 2021) (SR–FICC–2021–007), 95605 (Aug. 25, 2022), 87 FR 53522 (Aug. 31, 2022) (SR–FICC–2022–005), 97342 (Apr. 21, 2023), 88 FR 25721 (Apr. 27, 2023) (SR–FICC–2023–003), and 99447 (Jan. 30, 2024), 89 FR 8260 (Feb. 6, 2024) (SR–FICC–2024–001).

[6] 17 CFR 240.24b–2.

the current market volatility. The proposed Minimum Margin Amount aims to enhance backtesting coverage when there are potential VaR model performance challenges, particularly when securities price changes significantly exceed those implied by the VaR model risk factors, as observed during the recent periods of extreme market volatility. FICC believes the proposed Minimum Margin Amount would provide a more reliable estimate for the portfolio risk level when current market conditions significantly deviate from historical observations.

The proposed Minimum Margin Amount would be determined using historical price returns to represent risk along with amounts calculated (i) using a filtered historical simulation approach, (ii) using a haircut method, and (iii) to incorporate other risk factors. By using a filtered historical simulation approach in which historical returns are scaled to current market volatility, the proposed Minimum Margin Amount would operate as a floor to the VaR Charge to improve the responsiveness of the VaR model to extreme volatility. Because the use of historical price return-based risk representation is not dependent on any sensitivity data vendor, it would allow the proposed Minimum Margin Amount to also operate as a floor to the Margin Proxy and improve the responsiveness of Margin Proxy to extreme volatility.

As a result of this proposal, Members may experience increases in their Required Fund Deposits to the Clearing Fund. Based on an impact study conducted by FICC, on average, at the Member level, the proposed Minimum Margin Amount would have increased the SOD VaR Charge by approximately $22.45 million, or 17.69%, and the noon VaR Charge by approximately $23.22 million, or 17.44%, over a 2-year impact study period.

Background

FICC, through GSD, serves as a central counterparty and provider of clearance and settlement services for transactions in the U.S. government securities, as well as repurchase and reverse repurchase transactions involving U.S. government securities.[7] As part of its market risk management strategy, FICC manages its credit exposure to Members by determining the appropriate Required Fund Deposit to the Clearing Fund and monitoring its sufficiency, as provided for in the GSD Rules.[8] The Required Fund Deposit serves as each Member's margin.

The objective of a Member's Required Fund Deposit is to mitigate potential losses to FICC associated with liquidating a Member's portfolio in the event FICC ceases to act for that Member (hereinafter referred to as a ''default'').[9] The aggregate amount of all Members' Required Fund Deposit constitutes the Clearing Fund. FICC would access the Clearing Fund should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to FICC caused by the liquidation of that Member's portfolio.

FICC regularly assesses market and liquidity risks as such risks relate to its margin methodologies to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market. For example, FICC employs daily backtesting to determine the adequacy of each Member's Required Fund Deposit.[10] FICC compares the Required Fund Deposit [11] for each Member with the simulated liquidation gains/losses, using the actual positions in the Member's portfolio(s) and the actual historical security returns. A backtesting deficiency occurs when a Member's Required Fund Deposit would not have been adequate to cover the projected liquidation losses and highlights exposure that could subject FICC to potential losses in the event that a Member defaults.

FICC investigates the cause(s) of any backtesting deficiencies and determines if there is an identifiable cause of repeat backtesting deficiencies. FICC also evaluates whether multiple Members may experience backtesting deficiencies for the same underlying reason.

Pursuant to the GSD Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by FICC, as identified within the GSD Rules.[12] These components include the VaR Charge, Blackout Period Exposure Adjustment, Backtesting Charge, Holiday Charge, Margin Liquidity Adjustment Charge, special charge, and Portfolio Differential Charge.[13] The VaR Charge generally comprises the largest portion of a Member's Required Fund Deposit amount.

VaR Charge

The VaR Charge is based on the potential price volatility of unsettled positions using a sensitivity-based Value-at-Risk (VaR) methodology. The VaR methodology provides an estimate of the possible losses for a given portfolio based on: (1) confidence level, (2) a time horizon and (3) historical market volatility. The VaR methodology is intended to capture the risks related to market price that are associated with the Net Unsettled Positions in a Member's Margin Portfolios. This risk-based margin methodology is designed to project the potential losses that could occur in connection with the liquidation of a defaulting Member's Margin Portfolio, assuming a Margin Portfolio would take three days to liquidate in normal market conditions. The projected liquidation gains or losses are used to determine the amount of the VaR Charge to each Margin Portfolio, which is calculated to capture the market price risk [14] associated with each Member's Margin Portfolio(s) at a 99% confidence level.

FICC's VaR model is designed to provide a margin calculation that covers the market risk in a Member's Margin

[7] GSD also clears and settles certain transactions on securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.

[8] *See* GSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 4. FICC's market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4).

[9] The GSD Rules identify when FICC may cease to act for a Member and the types of actions FICC may take. For example, FICC may suspend a firm's membership with FICC or prohibit or limit a Member's access to FICC's services in the event that Member defaults on a financial or other obligation to FICC. *See* GSD Rule 21 (Restrictions on Access to Services) of the GSD Rules, *supra* note 4.

[10] The Model Risk Management Framework (''Model Risk Management Framework'') sets forth the model risk management practices of FICC and states that Value at Risk (''VaR'') and Clearing Fund requirement coverage backtesting would be performed on a daily basis or more frequently. *See* Securities Exchange Act Release Nos. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (SR–FICC–2017–014), 84458 (Oct. 19, 2018), 83 FR 53925 (Oct. 25, 2018) (SR–FICC–2018–010), 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (SR–FICC–2020–004), 92380 (July 13, 2021), 86 FR 38140 (July 19, 2021) (SR–FICC–2021–006), 94271 (Feb. 17, 2022), 87 FR 10411 (Feb. 24, 2022) (SR–FICC–2022–001), and 97890 (July 13, 2023), 88 FR 46287 (July 19, 2023) (SR–FICC–2023–008).

[11] Members may be required to post additional collateral to the Clearing Fund in addition to their Required Fund Deposit amount. *See e.g.,* Section 7 of GSD Rule 3 (Ongoing Membership Requirements), *supra* note 4 (providing that adequate assurances of financial responsibility of a member may be required, such as increased Clearing Fund deposits). For backtesting comparisons, FICC uses the Required Fund Deposit amount, without regard to the actual, total collateral posted by the member to the GSD Clearing Fund.

[12] *Supra* note 4.

[13] *See* GSD Rule 4 (Clearing Fund and Loss Allocation), Section 1b. *Supra* note 4.

[14] Market price risk refers to the risk that volatility in the market causes the price of a security to change between the execution of a trade and settlement of that trade. This risk is sometimes also referred to as volatility risk.

Portfolio. The VaR model calculates the risk profile of each Member's Margin Portfolio by applying certain representative risk factors to measure the degree of responsiveness of the Margin Portfolio's value to the changes of these risk factors over a historical lookback period of at least 10 years that may be supplemented with an additional stressed period.

The VaR model has been shown to perform well in low to moderate volatility markets. From January 2013 to March 2020, the VaR model has generally performed above the 99% performance target, with deterioration in backtesting coverage only during the two arguably most stressful market periods, *i.e.,* the COVID period during March of 2020 and the successive interest rate hikes that began in March 2022. The market events during these two stressful periods, including monetary policy changes, inflation and recession fears, have resulted in significant market volatility in the fixed income market that exceeded the 99-percentile of the observed historical data set. Specifically, the extreme market volatilities during these two periods have led to market price changes that exceeded the VaR model's projections, which yielded insufficient VaR Charges. As a result, FICC's VaR backtesting metrics fell below the performance target due to unprecedented levels of extreme market volatility. This highlighted the need for FICC to enhance its VaR model so that it can better respond to extreme market volatility. Accordingly, FICC is proposing changes to the VaR Floor that FICC believes would mitigate the risk of potential underperformance of its VaR model under extreme market volatility.

Current VaR Floor

On June 1, 2018, the Commission approved FICC's VaR Filing to make changes to GSD's method of calculating a Member's Required Fund Deposit amount, including the VaR Charge.[15] The VaR Filing amended the definition of VaR Charge to, among other things, incorporate the VaR Floor.[16] FICC established the VaR Floor to address the risk that in a long/short portfolio the VaR model could calculate a VaR Charge that is erroneously low where the gross market value of unsettled positions in a Member's portfolio is high and the cost of liquidation in the event of the Member default is also high. This is likely to occur when the VaR model applies substantial risk offsets among long and short unsettled positions in different classes of securities that have a high degree of historical price correlation.[17] When this high degree of historical price correlations does not apply as a result of changing market conditions, the VaR Charge derived from the VaR model can be inadequate, and the VaR Floor would then be applied by FICC to mitigate such risk.

Currently, the VaR Floor is based upon the market value of the gross unsettled positions in the Member's portfolio. The VaR Floor is determined by multiplying the absolute value of the sum of Net Long Positions and Net Short Positions of Eligible Securities, grouped by product and remaining maturity, by a percentage designated by FICC from time to time for such group. For U.S. Treasury and agency securities, such percentage shall be a fraction, no less than 10%, of the historical minimum volatility of a benchmark fixed income index for such group by product and remaining maturity. For mortgage-backed securities, such percentage shall be a fixed percentage that is no less than 0.05%.[18]

The current VaR Floor is not designed to address the risk of potential underperformance of the VaR model under extreme market volatility.

Incorporate a Minimum Margin Amount Into the VaR Floor

In order to mitigate the risk of potential underperformance of its VaR model under extreme market volatility, FICC proposes to incorporate a Minimum Margin Amount into the VaR Floor to supplement the VaR model and enhance its responsiveness to extreme market volatility. FICC believes this proposal would complement and improve the VaR model performance during stressed market conditions. Specifically, FICC believes this proposal would improve the margin backtesting performance during periods of heightened market volatility by maintaining a VaR Charge that is appropriately calibrated to reflect the current market volatility.

FICC is proposing to introduce a new calculation called the ''Minimum Margin Amount'' to complement the existing VaR Floor in the GSD Rules. The Minimum Margin Amount would enhance backtesting coverage when there are potential VaR model performance challenges, particularly when securities price changes significantly exceed those implied by the VaR model risk factors, as observed during the recent periods of extreme market volatility. FICC believes the proposed Minimum Margin Amount would provide a more reliable estimate for the portfolio risk level when current market conditions significantly deviate from historical observations.

The Minimum Margin Amount would be defined in the GSD Rules as, with respect to each Margin Portfolio, a minimum volatility calculation for specified Net Unsettled Positions of a Netting Member as of the time of such calculation. The proposed definition would provide that the Minimum Margin Amount shall use historical price returns to represent risk[19] and be calculated as the sum of the following: (a) amounts calculated using a filtered historical simulation (''FHS'') approach[20] to assess volatility by scaling historical market price returns to current market volatility, with market volatility being measured by applying exponentially weighted moving average to the historical market price returns with a decay factor between 0.93 and 0.99, as determined by FICC from time to time based on sensitivity analysis, macroeconomic conditions, and/or backtesting performance, (b) amounts calculated using a haircut method to measure the risk exposure of those securities that lack sufficient historical price return data, (c) amounts calculated to incorporate risks related to (i) repo interest volatility (''repo interest volatility charge'')[21] and (ii) transaction

[15] *See* VaR Filing Approval Order, *supra* note 5.

[16] The term ''VaR Floor'' is currently defined within the definition of VaR Charge. *See* GSD Rule 1 (Definitions), *supra* note 4.

[17] As an example, certain securities may have highly correlated historical price returns, but if market conditions were to substantially change, these historical correlations could break down, leading to model-generated offsets that could not adequately capture a portfolio's risk.

[18] *See* ''VaR Charge'' definition in GSD Rule 1 (Definitions). *Supra* note 4.

[19] This proposed approach is referred to as the ''price return-based risk representation'' in the QRM Methodology. Given the availability and accessibility of historical price returns data, FICC believes the proposed approach would help minimize and diversify FICC's risk exposure from external data vendors.

[20] The FHS method differs from the historical simulation method by incorporating the volatilities of historical price returns as a crucial element. In particular, the FHS method constructs the filtered historical price returns in two steps: first, ''devolatilizing'' the historical price returns by dividing them by a volatility estimate for the day of the price return, and second, ''revolatilizing'' the devolatilized price returns by multiplying them by a volatility estimate based on the current market. For additional background on the FHS method, *see* Filtered historical simulation Value-at-Risk models and their competitors, Pedro Gurrola-Perez and David Murphy, Bank of England, March 2015, *at www.bankofengland.co.uk/working-paper/2015/filtered-historical-simulation-value-at-risk-models-and-their-competitors.*

[21] The ''repo interest volatility charge'' is a component of the VaR Charge that is designed to address repo interest volatility. The repo interest volatility charge is calculated based on internally constructed repo interest rate indices. This rule

Continued

costs related to bid-ask spread in the market that could be incurred when liquidating a portfolio (''bid-ask spread risk charge'').[22] In addition, the proposed definition would require FICC to provide Members with at a minimum one Business Day advance notice of any change to the decay factor via an Important Notice.[23]

FICC is proposing to revise the definition of the VaR Floor to incorporate the Minimum Margin Amount, such that the VaR Floor would be the greater of (i) the VaR Floor Percentage Amount and (ii) the Minimum Margin Amount.

The ''VaR Floor Percentage Amount'' would be the new defined term used to describe the current VaR Floor percentage calculation in the GSD Rules. This rule change is not proposing to change the VaR Floor percentage or the manner in which this component is calculated.

As proposed, the Minimum Margin Amount would be utilized as the VaR Charge for a Member's Margin Portfolio when it is greater than the current VaR Charge of the Margin Portfolio and the VaR Floor Percentage Amount.

Under the proposed changes to the QRM Methodology, the Minimum Margin Amount would use a price return-based risk representation (*i.e.,* use historical price returns to represent risk)[24] and be calculated as the sum of (i) amounts calculated using a FHS method that scales historical market price returns to current market volatility, (ii) amounts calculated using a haircut method for securities that lack sufficient historical price return data, and (iii) amounts calculated to incorporate additional risk factors.

FHS Method

Following the FHS method, FICC would first construct historical price returns using certain mapped fixed income securities benchmarks. As proposed, the mapped fixed income securities benchmarks to be used with the FHS method when calculating the Minimum Margin Amount in the QRM Methodology would be Bloomberg Treasury indexes for U.S. Treasury and agency securities, Bloomberg TIPS indexes for Treasury Inflation-Protected Securities (''TIPS''), and to-be-announced (''TBA'') securities for mortgage-backed securities (''MBS'') pools. These benchmarks were selected because their price movements generally closely track those of the securities mapped to them and that their price history is generally readily available and accessible.

After constructing historical price returns, FICC would estimate a market volatility associated with each historical price return by applying exponentially weighted moving average (''EWMA'') to the historical price returns. The historical price returns are then ''devolatilized'' by dividing them by the corresponding EWMA volatilities to obtain the residual returns. The residual returns are then ''revolatilized'' by multiplying them by the current EWMA volatility to obtain the filtered returns.

The filtered return time series are then used to simulate the profits and losses of a Member's Margin Portfolio and derive the volatility of the Margin Portfolio using the standard historical simulation approach. In particular, each security that is in a Member's Margin Portfolio would be mapped to a respective fixed income securities benchmark, as applicable, based on the security's asset class and remaining maturity. The filtered returns of the benchmark are used as the simulated returns of the mapped security to calculate the simulated profits and losses of a Member's Margin Portfolio. The Minimum Margin Amount is then calculated as the 99-percentile of the simulated portfolio loss.

Haircut Method

Occasionally, a Member's Margin Portfolio(s) contain classes of securities that reflect market price changes that are not consistently related to historical price moves. The value of these securities is often uncertain because the securities' market volume varies widely, thus the price histories are limited. Because the volume and price information for such securities are not robust, the FHS method would not generate Minimum Margin Amounts that adequately reflect the risk profile of such securities. Accordingly, the proposed changes to the QRM Methodology would provide that the Minimum Margin Amount would use a haircut method to assess the market risk of those securities that are more difficult to simulate, for example, because of thin trading history.

Specifically, the proposed haircut method would be used for MBS pools that are not TBA securities eligible, floating rate notes and U.S. Treasury/agency securities with remaining time to maturities of less than or equal to one year.

A haircut method would also be used to size up the basis risk between an agency security and the mapped U.S. Treasury index to supplement the historical market price moves generated by the FHS method for agency securities to reflect any residual risks between agency securities and the mapped fixed income securities benchmarks, *i.e.,* Bloomberg Treasury indexes. Similarly, a haircut method would be used to size up the MBS pool/TBA basis risk to address the residual risk for using TBA price returns as proxies for MBS pool returns used in the FHS method.

Minimum Margin Amount Calculation

FICC is proposing to modify the QRM Methodology to specify that the Minimum Margin Amount would use a price return-based risk representation and be calculated per Member Margin Portfolio as the sum of (i), (ii), and (iii):

(i) FHS Method

(a) the amount calculated using historical market price returns of mapped fixed income securities benchmarks derived based on the FHS method.

(ii) Haircut Method

(a) the haircut charge for MBS pools that are not TBA securities eligible,

(b) the supplemental haircut charge for agency securities,

(c) the haircut charge for floating rate notes and U.S. Treasury/agency securities with remaining time to maturities of less than or equal to one year, and

(d) the supplemental basis haircut charge for mortgage pool securities.

(iii) Additional Risk Factors

(a) the repo interest volatility charge,[25] and

(b) the bid-ask spread risk charge.[26]

The mapped fixed income securities benchmarks, historical market price returns, parameters and volatility assessments to be used to calculate the Minimum Margin Amount would be determined by FICC from time to time in accordance with FICC's model risk management practices and governance

change is proposing to also include the repo interest volatility charge as a component of the Minimum Margin Amount; however, it is not proposing to change the repo interest volatility charge or the manner in which this component is calculated.

[22] The ''bid-ask spread risk charge'' is a component of the VaR Charge that is designed to address transaction costs related to bid-ask spread in the market that could be incurred when liquidating a portfolio. This rule change is proposing to also include the bid-ask spread risk charge as a component of the Minimum Margin Amount; however, it is not proposing to change the bid-ask spread risk charge or the manner in which this component is calculated.

[23] Although the QRM Methodology is being submitted as a confidential Exhibit 5b to this proposal due to its proprietary content, FICC makes available to Members a Value-at-Risk (VaR) calculator that can be used to estimate their Clearing Fund requirements based on their portfolios.

[24] *Supra* note 19.

[25] *Supra* note 21.

[26] *Supra* note 22.

set forth in the Clearing Agency Model Risk Management Framework.[27]

Minimum Margin Amount Parameters

The proposed Minimum Margin Amount uses a lookback period for the filtered historical simulation and a decay factor for calculating the EWMA volatility of the historical prices returns.

In particular, the lookback period of the proposed Minimum Margin Amount is the same as the lookback period used for the VaR model, which is 10 years, plus, to the extent applicable, a stressed period. Consistent with the VaR methodology outlined in the QRM Methodology and pursuant to the model performance monitoring required under the Model Risk Management Framework,[28] the lookback period would be analyzed to evaluate its sensitivity and impact to the model performance.

The decay factor in general affects (i) whether and how the Minimum Margin Amount would be invoked, (ii) the peak level of margin increase or the degree of procyclicality, and (iii) how quickly the margin would fall back to pre-stress levels. Similar to the lookback period, the decay factor of the proposed Minimum Margin Amount would also be analyzed to evaluate its sensitivity and impact to the model performance pursuant to the model performance monitoring required under the Model Risk Management Framework.[29] The decay factor would be, as proposed, between 0.93 and 0.99, and any update thereto is expected to be an infrequent event and would typically happen only when there is an unprecedented market volatility event which resulted in risk exposures to FICC that cannot be adequately mitigated by the then calibrated decay factor. The decision to update the decay factor would be based on the above-mentioned sensitivity analysis with considerations to factors, such as the impact to the VaR Charges, macroeconomic conditions, and/or backtesting performance. The initial decay factor for the Minimum Margin Amount calculation would be 0.97 but may be adjusted as set forth above in accordance with FICC's model risk management practices and governance set forth in the Model Risk Management Framework.[30]

The Model Risk Management Framework would also require FICC to conduct ongoing model performance monitoring of the Minimum Margin Amount methodology.[31] FICC's current model performance monitoring practices would provide for sensitivity analysis of relevant model parameters and assumptions to be conducted monthly, or more frequently when markets display high volatility. In addition, FICC would monitor each Member's Required Fund Deposit and the aggregate Clearing Fund requirements versus the requirements calculated by the Minimum Margin Amount. Specifically, FICC would review and assess the robustness of the Required Fund Deposit inclusive of the Minimum Margin Amount by comparing the results versus the three-day profit and loss of each Member's Margin Portfolio based on actual market price moves. Based on the results of the sensitivity analysis and/or backtesting, FICC could consider adjustments to the Minimum Margin Amount, including changing the decay factor as appropriate. Any adjustment to the Minimum Margin Amount calculation would be subject to the model risk management practices and governance process set forth in the Model Risk Management Framework.[32]

Expand Application of VaR Floor To Include Margin Proxy

The GSD Margin Proxy methodology is currently deployed as an alternative volatility calculation in the event that the requisite vendor data used for the VaR model is unavailable for an extended period of time.[33] In circumstances where the Margin Proxy is applied by FICC, FICC is proposing to have the VaR Floor operate as a floor for the Margin Proxy. Specifically, FICC is proposing to expand the application of the VaR Floor to include Margin Proxy so that if the Margin Proxy, when deployed, is lower than the VaR Floor, then the VaR Floor would be utilized as the VaR Charge with respect to a Member's Margin Portfolio. FICC believes this proposed change would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress, thereby enhancing the overall resilience of the FICC risk management.

Proposed GSD Rule Changes

In connection with incorporating the Minimum Margin Amount into the VaR Floor, FICC would modify the GSD Rules to:

I. Add a definition of ''Minimum Margin Amount'' and define it as, with respect to each Margin Portfolio, a minimum volatility calculation for specified Net Unsettled Positions of a Member as of the time of such calculation. The definition would provide that the Minimum Margin Amount shall use historical price returns to represent risk and be calculated as the sum of the following: (a) amounts calculated using a filtered historical simulation approach to assess volatility by scaling historical market price returns to current market volatility, with market volatility being measured by applying exponentially weighted moving average to the historical market price returns with a decay factor between 0.93 and 0.99, as determined by FICC from time to time based on sensitivity analysis, macroeconomic conditions, and/or backtesting performance, (b) amounts calculated using a haircut method to measure the risk exposure of those securities that lack sufficient historical price return data, and (c) amounts calculated to incorporate risks related to (i) repo interest volatility (''repo interest volatility charge'') and (ii) transaction costs related to bid-ask spread in the market that could be incurred when liquidating a portfolio (''bid-ask spread risk charge''). In addition, the proposed definition would require FICC to provide Members with at a minimum one Business Day advance notice of any change to the decay factor via an Important Notice;

II. Add a definition of ''VaR Floor Percentage Amount'' which would be defined the same as the current calculation for the VaR Floor percentage with non-substantive modifications to reflect that the calculated amount is a separate defined term; and

III. Move the defined term VaR Floor out of the definition of VaR Charge and define it as the greater of (i) the VaR Floor Percentage Amount and (ii) the Minimum Margin Amount.

In connection with applying the VaR Floor to include Margin Proxy, FICC would modify the GSD Rules to revise the definition of ''VaR Charge'' by adding a reference to the Margin Proxy with respect to the VaR Floor application and clarifying that VaR Charge is calculated at the Margin Portfolio-level.

[27] *See* Model Risk Management Framework, *supra* note 10.

[28] The Model Risk Management Framework provides that all models undergo ongoing model performance monitoring and backtesting which is the process of (i) evaluating an active model's ongoing performance based on theoretical tests, (ii) monitoring the model's parameters through the use of threshold indicators, and/or (iii) backtesting using actual historical data/realizations to test a VaR model's predictive power. *Supra* note 10.

[29] *Supra* note 28.

[30] *See* Model Risk Management Framework, *supra* note 10.

[31] *See* note 28.

[32] *See* Model Risk Management Framework, *supra* note 10.

[33] FICC may deem such data to be unavailable and deploy Margin Proxy when there are concerns with the quality of data provided by the vendor.

Proposed QRM Methodology Changes

In connection with incorporating the Minimum Margin Amount into the VaR Floor, FICC would modify the QRM Methodology to:

I. Describe how the Minimum Margin Amount, as defined in the GSD Rules, would be calculated, including:

(i) Establishing mapped fixed income securities benchmarks for purposes of the calculation using historical market price returns of such securities with the FHS method;

(ii) Using a haircut method to assess the market risk of certain securities that are more difficult to simulate due to thin trading history; and

(iii) Detailing other risk factors that would be incorporated in the calculation.

II. Describe the developmental evidence and impacts to backtesting performance and margin charges relating to Minimum Margin Amount.

In connection with applying the VaR Floor to include Margin Proxy, FICC would modify the QRM Methodology to reflect that the Minimum Margin Amount would serve as a floor for the Margin Proxy.

In addition, FICC would modify the QRM Methodology to:

I. Make certain clarifying changes to the QRM Methodology to delete an out-of-date description of the Margin Proxy being used as an adjustment factor to the VaR,[34] enhance the description of the VaR Floor Percentage Amount, and update the list of key model parameters to reflect the Margin Proxy lookback period; and

II. Make certain technical changes to the QRM Methodology to renumber sections and tables, correct grammatical and typographical errors, delete out-of-date index names, and update certain formula notations and section titles as necessary.

Impact Study

FICC performed an impact study on Members' Margin Portfolios for the period beginning July 1, 2021 through June 30, 2023 (''Impact Study Period').[35] [36] If the proposed rule changes[37] had been in place during the Impact Study Period compared to the existing GSD Rules, the aggregate average daily start-of-day (''SOD'') VaR Charges would have increased by approximately $2.9 billion or 13.89%, the aggregate average daily noon VaR Charges would have increased by approximately $3.03 billion or 14.05%, and the aggregate average daily Backtesting Charges would have decreased by approximately $622 million or 64.46%.

The impact study indicated that if the proposed rule changes had been in place, the VaR model backtesting coverage would have increased from approximately 98.86% to 99.46% during the Impact Study Period. Specifically, if the proposed rule changes had been in place during the Impact Study Period, the number of VaR model backtesting deficiencies would have been reduced by 443 (from 843 to 400, or approximately 53%).

The impact study also indicated that if the proposed rule changes had been in place, overall margin backtesting coverage would have increased from approximately 98.87% to 99.33% during the Impact Study Period. Specifically, if the proposed rule changes had been in place during the Impact Study Period, the number of overall margin backtesting deficiencies would have been reduced by 280 (from 685 to 405, or approximately 41%) and the overall margin backtesting coverage for 94 Members (approximately 72% of the GSD membership) would have improved with 36 Members who were below 99% coverage would be brought back to above 99%.

Impacts to Members Over the Impact Study Period

On average, at the Member level, the proposed Minimum Margin Amount would have increased the SOD VaR Charge by approximately $22.45 million, or 17.69%, and the noon VaR Charge by approximately $23.22 million, or 17.44%, over the Impact Study Period. The largest average percentage increase in SOD VaR Charge for any Member would have been approximately 66.88%, or $97,051 (0.21% of the Member's average Net Capital),[38] and the largest average percentage increase in noon VaR Charge for any Member would have been approximately 64.79%, or $61,613 (0.13% of the Member's average Net Capital). The largest average dollar increase in SOD VaR Charge for any Member would have been approximately $268.35 million (0.34% of the Member's average Net Capital), or 19.05%, and the largest dollar increase in noon VaR Charge for any Member would have been approximately $288.57 million (1.07% of the Member's average Net Capital), or 13.65%. The top 10 Members based on the size of their average SOD VaR Charges and average noon VaR Charges would have contributed approximately 51.84% and 53.63% of the aggregated SOD VaR Charges and aggregated noon VaR Charges, respectively, during the Impact Study Period had the proposed Minimum Margin Amount been in place. The same Members would have contributed to 49.86% and 51.48% of the increase in aggregated SOD VaR Charges and aggregated noon VaR Charges, respectively, had the proposed Minimum Margin Amount been in place during the Impact Study Period.

Implementation Timeframe

FICC would implement the proposed rule changes by no later than 60 Business Days after the later of the approval of the proposed rule change and no objection to the related advance notice[39] by the Commission. FICC would announce the effective date of the proposed changes by an Important Notice posted to its website.

2. Statutory Basis

FICC believes that this proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, FICC

[34] FICC currently does not use Margin Proxy as an adjustment factor to the VaR and does not intend to use it as such in the future.

[35] GSD increased the minimum Required Fund Deposit for Members to $1 million on Dec. 5, 2022 (*see* Securities Exchange Act Release No. 96136 (Oct. 24, 2022), 87 FR 65268 (Oct. 28, 2022) (SR–FICC–2022–006)); however, for the purpose of this Impact Study, the $1 million minimum Requirement Fund Deposit is assumed to be in effect for the entirety of the Impact Study period.

[36] GSD adopted a Portfolio Differential Charge (''PD Charge'') as an additional component to the GSD Required Fund Deposit on Oct. 30, 2023 (*see* Securities Exchange Act Release No. 98494 (Sep. 25, 2023), 88 FR 67394 (Sep. 29, 2023) (SR–FICC–2023–011)); however, for the purpose of this Impact Study, the PD Charge is assumed to be in effect for the entirety of the Impact Study period.

[37] Margin Proxy was not deployed during the Impact Study Period; however, if the proposed rule changes had been in place and the Margin Proxy were deployed during the Impact Study Period, the aggregate average daily SOD VaR Charges would have increased by approximately $4.2 billion or 20.98%. The impact study also indicated that if the proposed rule changes had been in place and the Margin Proxy were deployed, the VaR model backtesting coverage would have increased from approximately 98.17% to 99.38% during the Impact Study Period. Specifically, if the proposed rule changes had been in place and the Margin Proxy were deployed during the Impact Study Period, the number of the VaR model backtesting deficiencies would have been reduced by 901 (from 1358 to 457, or approximately 66.3%).

[38] The term ''Net Capital'' means, as of a particular date, the amount equal to the net capital of a broker or dealer as defined in SEC Rule 15c3–1(c)(2), or any successor rule or regulation thereto. *See* GSD Rule 1 (Definitions), *supra* note 4.

[39] FICC filed this proposed rule change as an advance notice (File No. SR–FICC–2024–801) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is available at *www.dtcc.com/legal/sec-rule-filings.*

believes that this proposal is consistent with Section 17A(b)(3)(F) of the Act[40] and Rules 17Ad–22(e)(4)(i) and (e)(6)(i), each promulgated under the Act,[41] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the GSD Rules be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[42] FICC believes the proposed changes are designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because they are designed to enable FICC to better limit its exposure to Members in the event of a Member default, as described below.

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit FICC's credit exposures to Members. FICC is proposing changes to the GSD Rules and QRM Methodology that are designed to more effectively measure and address risk characteristics in situations where the risk factors used in the VaR method do not adequately predict market price movements. The proposed changes above would adjust the VaR Floor to help ensure that FICC collects adequate margin from its Members, particularly in periods of extreme market volatility. During periods of extreme market volatility, the existing VaR model has been shown to underperform based on backtesting performances. Backtesting percentages covering such periods indicate the risk that VaR Charges would be insufficient to manage risk in the event of a Member default. FICC pays particular attention to Members with backtesting deficiencies that bring the backtesting results for that Member below the 99% confidence target to determine if there is an identifiable cause of repeat backtesting deficiencies. During the recent period of extreme market volatility, there was an increase in observed backtesting deficiencies. The Minimum Margin Amount, to be defined in the GSD Rules and further incorporated in the QRM Methodology as described herein, is a proposed targeted response to enhance the GSD VaR model performance and improve the backtesting coverage during periods of extreme market volatility.

As a result of the recent extreme market volatility, FICC's VaR model did not achieve a 99% confidence level for all Members during the COVID period during March of 2020 and the successive interest rate hikes that began in June 2022. The Minimum Margin Amount is intended to allow the VaR Charge to be more responsive during market conditions when the VaR model projections do not closely correspond with observed market price changes. Backtesting studies indicate that the aggregate average daily SOD VaR Charges would have increased by approximately $2.90 billion or 13.89%, the aggregate average daily noon VaR Charges would have increased by approximately $3.03 billion or 14.05%, the aggregate average daily Backtesting Charges would have decreased by approximately $622 million or 64.46% during the Impact Study Period, and the overall margin backtesting coverage (based on 12-month trailing backtesting) would have improved from approximately 98.87% to 99.33% during the Impact Study Period if the Minimum Margin Amount calculation had been in place. Improving the overall backtesting coverage level would help FICC ensure that it maintains an appropriate level of margin to address its risk management needs.

The use of the Minimum Margin Amount would reduce risk by allowing FICC to calculate the exposure in each portfolio using historical price returns to represent risk along with amounts calculated (i) using a FHS method that scales historical market price returns to current market volatility, (ii) using a haircut method for securities that lack sufficient historical price return data, and (iii) to incorporate other risk factors. As reflected by backtesting studies during the Impact Study Period, the proposed changes would appropriately limit FICC's credit exposure to Members when current market conditions deviate from historical observations, resulting in the risk factors used in the VaR method do not adequately predict market price movements and associated credit risk exposure. Adding the Minimum Margin Amount to the VaR Floor would help to ensure that the risk exposure during periods of extreme market volatility is adequately captured in the VaR Charges. Similarly, the proposed change to expand the application of VaR Floor to include Margin Proxy would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress. By improving the effectiveness of Margin Proxy as a risk mitigant under extreme market volatility and heightened market stress would help ensure that the margin that FICC collects from Members is sufficient to mitigate the credit exposure presented by the Members. Overall, FICC believes these proposed changes would help to ensure that FICC continues to accurately calculate and assess margin and in turn, collect sufficient margin from its Members and better enable FICC to limit its exposures that could be incurred when liquidating a portfolio.

FICC believes the proposed clarifying and technical changes to the GSD Rules and QRM Methodology described above would enhance the clarity of the GSD Rules and the QRM Methodology for FICC and its membership. Having clear and accurate rules would help Members better understand their rights and obligations under the GSD Rules, and Members would be more likely to act in accordance with the GSD Rules. Similarly, having a clear and accurate methodology document that describes how the VaR Charges are calculated would help to ensure that FICC continues to accurately calculate and assess margin and in turn, collect sufficient margin from its Members and better enable FICC to limit its exposures that could be incurred when liquidating a portfolio.

By better enabling FICC to limit its exposure to Members, the proposed changes to the GSD Rules and QRM Methodology are designed to better ensure that, in the event of a Member default, FICC would have adequate margin from the defaulting Member and non-defaulting Members would not be exposed to losses they cannot anticipate or control. Therefore, the proposed changes would be designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[43]

Rule 17Ad–22(e)(4)(i) under the Act[44] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. As described above, FICC believes that the proposed changes would enable it to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. More

[40] 15 U.S.C. 78q–1(b)(3)(F).

[41] 17 CFR 240.17Ad–22(e)(4)(i) and (e)(6)(i).

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] *Id.*

[44] 17 CFR 240.17Ad–22(e)(4)(i).

specifically, as indicated by backtesting studies, implementation of a Minimum Margin Amount by changing the GSD Rules and QRM Methodology as described herein would allow FICC to limit its credit exposures to Members in the event that the current VaR model yields too low a VaR Charge for such portfolios and improve backtesting performance. As indicated by the backtesting studies, the aggregate average daily SOD VaR Charges would have increased by approximately $2.90 billion or 13.89%, the aggregate average daily noon VaR Charges would have increased by approximately $3.03 billion or 14.05%, the aggregate average daily Backtesting Charges would have decreased by approximately $622 million or 64.46% during the Impact Study Period, and the overall margin backtesting coverage (based on 12-month trailing backtesting) would have improved from approximately 98.87% to 99.33% during the Impact Study Period if the Minimum Margin Amount calculation had been in place. By identifying and providing for appropriate VaR Charges, adding the Minimum Margin Amount to the VaR Floor would help to ensure that the risk exposure during periods of extreme market volatility is adequately identified, measured and monitored. Similarly, the proposed change to expand the application of VaR Floor to include Margin Proxy would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress. By improving the effectiveness of Margin Proxy as a risk mitigant under extreme market volatility and heightened market stress would help ensure that the margin that FICC collects from Members is sufficient to mitigate the credit exposure presented by the Members. As a result, FICC believes that the proposal would enhance FICC's ability to effectively identify, measure and monitor its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence, consistent with the requirements of Rule 17Ad–22(e)(4)(i) under the Act.[45]

Rule 17Ad–22(e)(6)(i) under the Act[46] requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. FICC believes that the proposed changes to adjust the VaR Floor to include the Minimum Margin Amount by changing the GSD Rules and QRM Methodology as described herein are consistent with the requirements of Rule 17Ad–22(e)(6)(i) cited above. The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit FICC's credit exposures to Members. FICC is proposing changes that are designed to more effectively measure and address risk characteristics in situations where the risk factors used in the VaR method do not adequately predict market price movements. As reflected in backtesting studies, FICC believes the proposed changes would appropriately limit FICC's credit exposure to Members in the event that the VaR model yields too low a VaR Charge in such situations. Such backtesting studies indicate that the aggregate average daily SOD VaR Charges would have increased by approximately $2.90 billion or 13.89%, the aggregate average daily noon VaR Charges would have increased by approximately $3.03 billion or 14.05%, the aggregate average daily Backtesting Charges would have decreased by approximately $622 million or 64.46% during the Impact Study Period, and the overall margin backtesting coverage (based on 12-month trailing backtesting) would have improved from approximately 98.87% to 99.33% during the Impact Study Period if the Minimum Margin Amount calculation had been in place. By identifying and providing for appropriate VaR Charges, adding the Minimum Margin Amount to the VaR Floor would help to ensure that margin levels are commensurate with the risk exposure of each portfolio during periods of extreme market volatility. Similarly, the proposed change to expand the application of VaR Floor to include Margin Proxy would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress. By improving the effectiveness of Margin Proxy as a risk mitigant under extreme market volatility and heightened market stress would help ensure that the margin that FICC collects from Members is sufficient to mitigate the credit exposure presented by the Members. Overall, the proposed changes would allow FICC to more effectively address the risks presented by Members. In this way, the proposed changes enhance the ability of FICC to produce margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market. As such, FICC believes that the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(6)(i) under the Act.[47]

*(B) Clearing Agency's Statement on Burden on Competition*

FICC believes the proposed rule changes to (i) modify the VaR Floor to incorporate a Minimum Margin Amount and (ii) expand the application of the VaR Floor to include Margin Proxy, each as described above, could impose a burden on competition. As a result of the proposed rule changes, Members may experience increases in their Required Fund Deposits. An impact study during the Impact Study Period indicates that on average each Member would have had an increase in the SOD VaR Charge and the noon VaR Charge of approximately $22.45 million, or 17.69%, and $23.22 million, or 17.44%, respectively. Such increases could burden Members that have lower operating margins or higher costs of capital than other Members. It is not clear whether the burden on competition would necessarily be significant because it would depend on whether the affected Members were similarly situated in terms of business type and size. Regardless of whether the burden on competition is significant, FICC believes that any burden on competition would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[48]

Specifically, FICC believes that the proposed rule changes would be necessary in furtherance of the Act, as described in this filing and further below. FICC believes that the above-described burden on competition that may be created by the proposed changes is necessary, because the GSD Rules must be designed to assure the safeguarding of securities and funds that are in FICC's custody or control or which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[49] As described above, FICC believes that the use of the Minimum Margin Amount would reduce risk by allowing FICC to calculate the exposure in each portfolio using historical price returns to represent risk along with amounts calculated (i) using a FHS method that scales historical market price returns to current market volatility, (ii) a haircut method for securities that lack sufficient historical price return data, and (iii) to

[45] *Id.*

[46] 17 CFR 240.17Ad–22(e)(6)(i).

[47] *Id.*

[48] 15 U.S.C. 78q–1(b)(3)(I).

[49] 15 U.S.C. 78q–1(b)(3)(F).

incorporate other risk factors, based on open positions within each portfolio. FICC believes the proposed change would provide a more reliable estimate than the FICC VaR historical data set for the portfolio risk level when current market conditions deviate from historical observations. Accurately calculating and assessing margin and in turn, collecting sufficient margin from its Members would better enable FICC to limit its exposures that could be incurred when liquidating a portfolio. Similarly, the proposed change to expand the application of VaR Floor to include Margin Proxy would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress. By improving the effectiveness of Margin Proxy as a risk mitigant under extreme market volatility and heightened market stress would help ensure that the margin that FICC collects from Members is sufficient to mitigate the credit exposure presented by the Members. By better enabling FICC to limit its exposure to Members, the proposed changes to the GSD Rules and QRM Methodology are designed to better ensure that, in the event of a Member default, FICC would have adequate margin from the defaulting Member and non-defaulting Members would not be exposed to losses they cannot anticipate or control. Therefore, the proposed changes would be designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[50]

FICC also believes these proposed changes are necessary to support FICC's compliance with Rule 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) under the Act,[51] which require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to (x) effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence and (y) cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.

As described above, FICC believes that implementing the Minimum Margin Amount into the VaR Floor would allow FICC to more effectively measure and address risk characteristics in situations where the risk factors used in the VaR method do not adequately predict market price movements, particularly in periods of extreme volatility and economic uncertainty. FICC's existing VaR model underperformed in response to the significant levels of extreme market volatility, and the VaR Charge amounts that were calculated using the profit and loss scenarios generated by FICC's VaR model did not achieve the 99% backtesting coverage target during the COVID period during March of 2020 and the successive interest rate hikes that began in March 2022. In addition, the current VaR Floor is not designed to address the risk of potential underperformance of the VaR model under extreme market volatility. As reflected in backtesting studies during the Impact Study Period, FICC believes the proposed changes would appropriately cover FICC's credit exposure to Members with a high degree of confidence in the event that the VaR model yields too low a VaR Charge in such situations. The proposed rule changes would limit FICC's exposure to Members by ensuring that each Member has an appropriate minimum VaR Charge applied to its portfolios in the event that the VaR model yields too low a VaR Charge for such portfolios. By identifying and providing for appropriate VaR Charges, adding the Minimum Margin Amount to the VaR Floor would help to ensure that margin levels are commensurate with the risk exposure of each portfolio during periods of extreme market volatility. Similarly, the proposed change to expand the application of VaR Floor to include Margin Proxy would enable Margin Proxy to be a more effective risk mitigant under extreme market volatility and heightened market stress. By improving the effectiveness of Margin Proxy as a risk mitigant under extreme market volatility and heightened market stress would help ensure that the margin that FICC collects from Members is sufficient to mitigate the credit exposure presented by the Members. Therefore, FICC believes that these proposed changes would allow FICC to effectively identify, measure, monitor, and manage its credit exposures to Members and better limit FICC's credit exposures to Members by maintaining sufficient financial resources to cover its credit exposure to each Member fully with a high degree of confidence and producing margin levels commensurate with the risks and particular attributes of each relevant product and portfolio consistent with the requirements of Rule 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) under the Act.[52]

FICC also believes that the above-described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible, as described in detail above. The proposed changes to incorporate the Minimum Margin Amount and apply the VaR Floor to include Margin Proxy would enable FICC to produce margin levels more commensurate with the risks and particular attributes of each Member's portfolio. Any increase in Required Fund Deposit as a result of such proposed changes for a particular Member would be in direct relation to the specific risks presented by such Members' portfolio, and each Member's Required Fund Deposit would continue to be calculated with the same parameters and at the same confidence level. Therefore, Members with portfolios that present similar risks, regardless of the type of Member, would have similar impacts on their Required Fund Deposit amounts. In addition, the proposed changes would improve the risk-based margining methodology that FICC employs to set margin requirements and better limit FICC's credit exposures to its Members. Impact studies indicate that the proposed methodology would result in backtesting coverage that more appropriately addresses the risks presented by each portfolio. Therefore, because the proposed changes are designed to provide FICC with a more appropriate and complete measure of the risks presented by Members' portfolios, FICC believes the proposals are appropriately designed to meet its risk management goals and its regulatory obligations.

Therefore, FICC does not believe that the proposed changes would impose any burden on competition that is not necessary or appropriate in furtherance of the Act.[53]

FICC does not believe the proposed clarifying and technical changes to the GSD Rules and the QRM Methodology would impact competition. These changes would help to ensure that the GSD Rules and the QRM Methodology remain clear. Specifically, the changes

[50] *Id.*

[51] 17 CFR 240.17Ad–22(e)(4)(i) and (e)(6)(i).

[52] *Id.*

[53] 15.U.S.C. 78q–1(b)(3)(I).

to the GSD Rules would facilitate members' understanding of the GSD Rules and their obligations thereunder, and the changes to the QRM Methodology would help ensure that FICC continues to accurately calculate and assess margin from its Members. These changes would not affect FICC's operations or the rights and obligations of the membership. As such, FICC believes the proposed clarifying and technical changes would not have any impact on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

FICC has not received or solicited any written comments relating to this proposal. If any additional written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right not to respond to any comments received.

**III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

**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 (*www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2024–003 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2024–003. 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 (*www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*dtcc.com/legal/sec-rule-filings*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–FICC–2024–003 and should be submitted on or before April 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–05502 Filed 3–14–24; 8:45 am]

BILLING CODE 8011–01–P

[54] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 12358]**

### Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Paula Modersohn-Becker: Ich bin Ich/I am Me" Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition "Paula Modersohn-Becker: Ich bin Ich/I am Me" at the Neue Galerie New York, in New York, New York; The Art Institute of Chicago, in Chicago, Illinois; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of

Authority No. 523 of December 22, 2021.

**Nicole L. Elkon,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2024–05546 Filed 3–14–24; 8:45 am]

**BILLING CODE 4710–05–P**

## STATE JUSTICE INSTITUTE

### SJI Board of Directors Meeting, Notice

**AGENCY:** State Justice Institute.

**ACTION:** Notice of meeting.

**SUMMARY:** The purpose of this meeting is to consider grant applications for the 2nd quarter of FY 2024, and other business.

**DATES:** The SJI Board of Directors will be meeting on Monday, April 8, 2024 at 1 p.m. PT.

**ADDRESSES:** Nevada Supreme Court Law Library, 201 South Carson Street, Room 107, Carson City, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Mattiello, Executive Director, State Justice Institute, 12700 Fair Lakes Circle, Suite 340, Fairfax, VA 22033, 703–660–4979, *contact@sji.gov.*

(Authority: 42 U.S.C. 10702(f))

**Jonathan D. Mattiello,**

*Executive Director.*

[FR Doc. 2024–05480 Filed 3–14–24; 8:45 am]

**BILLING CODE 6820–SC–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36486 (Sub-No. 6)]**

### Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company

Grainbelt Corporation (GNBC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to extend the term of the previously amended, local trackage rights on trackage owned by BNSF Railway Company (BNSF) between approximately milepost 668.73 in Long, Okla., and approximately milepost 723.30 in Quanah, Tex. (the Line). The trackage rights allow GNBC to (1) use the Line to access the Plains Cotton Cooperative Association (PCCA) facility near BNSF Chickasha Subdivision milepost 688.6 at Altus, Okla., and (2) operate additional trains on the Line to accommodate the movement of trains transporting BNSF customers' railcars (loaded or empty) located along the Line, to unit train facilities on the Line (collectively, the PCCA Trackage Rights).[1] GNBC and BNSF have entered into an amendment to extend the PCCA Trackage Rights until March 31, 2025.[2]

The transaction may be consummated on or after March 31, 2024, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 22, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36486 (Sub-No. 6), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on GNBC's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

According to GNBC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

[1] GNBC states that it originally acquired overhead trackage rights from BNSF's predecessor between Snyder Yard at milepost 664.00 and Quanah at milepost 723.30, allowing GNBC to interchange at Quanah with BNSF and Union Pacific Railroad Company. According to GNBC, these original trackage rights were amended over the years to allow various local services to be provided. In 2021, BNSF and GNBC amended the trackage rights to include the PCCA Trackage Rights, *see Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 36486 (STB served Mar. 12, 2021), and those trackage rights were extended in 2022, *see Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 36486 (Sub No. 2) (STB served Mar. 8, 2022), and again in 2023, *see Grainbelt Corp—Trackage Rts. Exemption—BNSF Ry.,* FD 36486 (Sub-No. 4) (STB served Mar. 9, 2023).

[2] GNBC states that its verified notice is related to a petition for partial revocation, in which GNBC seeks authority to allow the trackage rights at issue here to expire automatically on March 31, 2025, the termination date set forth in the amended trackage rights agreement. GNBC's petition for partial revocation will be addressed in a separate decision in Docket No. FD 36486 (Sub-No. 7).

Board decisions and notices are available at *www.stb.gov.*

Decided: March 12, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Raina White,**

*Clearance Clerk.*

[FR Doc. 2024–05565 Filed 3–14–24; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Buy America Waiver Notification

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** This notice provides information regarding FHWA's finding that it is appropriate to grant a Buy America waiver to the City of Mount Vernon, Washington, for procurement of non-domestic iron and steel products and components, used in construction of the Mount Vernon Library Commons Project (Project) in the City of Mount Vernon, Washington. The waiver relates specifically to manufactured products that are part of the elevator equipment; mechanical, electrical, and plumbing systems; and architectural elements of the Project.

**DATES:** The effective date of the waiver is March 18, 2024.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202–366–1562, or via email at *Brian.Hogge@dot.gov*. For legal questions, please contact Mr. David Serody, FHWA Office of the Chief Counsel, 202–366–1345, or via email at *David.Serody@dot.gov*. Office hours for FHWA are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: *www.FederalRegister.gov* and the Government Publishing Office's database at: *www.GovInfo.gov*.

#### Background

The FHWA's Buy America requirements for steel and iron are set forth at 23 U.S.C. 313 and 23 CFR 635.410 and require that all steel and iron that are permanently incorporated into a Federal-aid project must be

produced in the United States unless a waiver is granted, including predominantly steel and iron components of a manufactured product.[1] Under these requirements, all manufacturing processes, including the application of a coating, must occur in the United States.[2]

Under 23 U.S.C. 313(b) and 23 CFR 635.410(c), FHWA may waive the application of its Buy America requirement for steel and iron if the application would be inconsistent with the public interest; or when products are not produced in the United States in sufficient and reasonably available quantities of a satisfactory quality. This notice provides information regarding FHWA's finding that it is appropriate to grant the City of Mount Vernon a Buy America waiver for procurement of non-domestic iron and steel products that are part of the elevator equipment; mechanical, electrical, and plumbing systems; and architectural elements of the Project. The ''specified products'' include: (i) elevator conveying equipment; (ii) elevator sump pump; (iii) HVAC controls; (iv) hydronic pumps; (v) energy recovery ventilators; (vi) split system A/C; (vii) coalescing style air and sediment separator; (viii) air source water heat pumps; (ix) fan coil units Nailor; (x) fan coil units Daikin; (xi) switchboards; (xii) panelboards; (xiii) an intercom system; (xiv) an AV system wall rack; (xv) heat pump water heaters; (xvi) a backflow preventer; (xvii) metal wall and roof panel fasteners; (xviii) terracotta fasteners; (xix) a retractable acoustic wall; (xx) a folding glass panel partition; (xxi) electric bike charging lockers; (xxii) uni-strut fasteners; and (xxiii) a fire alarm system (collectively ''waiver items'').

*Background on the Project:* The Project is a multi-story structure that includes multiple civic elements including a public parking garage, public library, community center, meeting rooms, commercial kitchen, public restrooms, STEM center, and public computing area. The project also incorporates electric vehicle charging infrastructure.

The notice of waiver request stated that the City of Mount Vernon had not received FHWA financial assistance to that point but was applying for funding under the Charging and Fueling Infrastructure Discretionary Grant Program (CFI Program) and Transportation Infrastructure Finance and Innovation Act program (TIFIA). Since the notice of waiver request was published, FHWA recently awarded the City $12,500,000 in funding under the CFI Program;[3] the City continues to seek additional credit assistance under TIFIA.

*Background on Waiver Request:* The City of Mount Vernon and its contractor contacted numerous manufacturers regarding Buy America-compliant versions of the waiver items. The city and its consultants also conducted an independent search for Buy America-compliant versions of the waiver items with distributors and manufacturers and by contacting smaller but reputable manufacturers with whom they have previously worked. The City of Mount Vernon, the city's contractor, and the city's consultants were unable to locate any domestic manufacturers or fabricators of the waiver items that were able to provide Buy America-compliant products that satisfy the Project's design needs prior to requesting a waiver.

In accordance with section 123 of Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244), and 23 U.S.C. 313(g), FHWA posted a notice of the waiver request on its website on September 13, 2023, soliciting public comment on the intent to issue a waiver of the waiver items for a 15-day period.[4]

**Waiver Justification Summary**

*Comments to the Notice of Waiver Request:* The FHWA received 25 comments in response to the notice of the waiver request. Twenty-three commenters supported the waiver and two opposed it. One of the commenters opposing the waiver merely stated that the commenter did not support the waiver because the commenter does not support the use of FHWA funds for the Project. This commenter did not offer any specific information on the availability of Buy America-compliant waiver items, nor did the commenter suggest specific, additional actions that the City of Mount Vernon could take to maximize its use of goods, products, and materials produced in the United States.

The other commenter, who represented a manufacturer, indicated they can make many of the waiver items domestically. In subsequent discussions between FHWA, the City of Mount Vernon, and the manufacturer, the company stated that the only Buy America-compliant waiver item that it might be able to provide domestically would be the hydronic pumps. On October 18, 2023, the city provided the manufacturer with the timeline for when each hydronic pump would be needed on site based on the project schedule. The city also requested a response that included a commitment to provide the hydronic pumps by November 21, 2023. On November 27, 2023, the City of Mount Vernon notified FHWA that the city had received no further reply. Thus, the city did not receive any new information indicating that any of the waiver items could be produced by domestic manufacturers from any of the commenters opposing the waiver.

Accordingly, FHWA believes that the city has made substantial efforts to find suitable Buy America-compliant waiver items for the Library Commons project. The FHWA reviewed the market research conducted by the city and, in consultation with the National Institute of Standards and Technology Manufacturing Extension Partnership, determined that further supplier scouting would not be warranted. The waiver items include iron and steel components of manufactured products of unknown origin, and FHWA does not believe that additional supplier scouting would uncover items where all iron and steel components could be shown to be domestically produced or manufacturers who wish to modify their manufacturing processes to incorporate such domestically produced components.

[1] Under 23 U.S.C. 313, FHWA has a Buy America requirement for manufactured products; however, FHWA has a standing waiver under 23 U.S.C. 313(b), known as the Manufactured Products General Waiver, which covers manufactured products that are not predominantly steel and iron. *See* 48 FR 53099 (Nov. 25, 1983).

[2] While the Build America, Buy America Act (BABA), included in the Infrastructure Investment and Jobs Act (also known as the ''Bipartisan Infrastructure Law'' (BIL)) (Pub. L. 117–58), sets out Buy America preferences for steel, iron, manufactured products, and construction materials, these preferences only apply to the extent that a domestic content procurement preference, as described in section 70914 of BABA, does not already apply to iron, steel, manufactured products, and construction materials. BIL section 70917(a)–(b). As FHWA has existing domestic content preferences for steel, iron, and manufactured products at 23 U.S.C. 313, the requirements under 23 U.S.C. 313 apply to steel, iron, and manufactured products instead of the requirements under BABA. As FHWA's existing Buy America requirement does not specifically cover construction materials, the Buy America preference under section 70914 of BABA applies for construction materials.

[3] Under 23 U.S.C. 313(h), FHWA's Buy America requirement applies to the entire scope of the project, as defined in the applicable finding, determination, or decision under the National Environmental Policy Act, when Federal funds are used in any part of the project regardless of whether Federal funds are used in the actual component that is subject to the waiver.

[4] *https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=176.*

*Timing and Need for a Waiver:* The waiver items are essential to the Project. Further, the City of Mount Vernon maintains that approval of a Buy America waiver for use of the waiver items in the Project is critical to maintain the schedule of ongoing construction on the Project. The City explained that the Project is scheduled to be substantially complete in March 2024 and that it is now at a juncture where delays in the approval of the Buy America waiver may delay completion of construction with commensurate additional payments to the contractor.

In addition, the City of Mount Vernon has not located any domestic manufacturers for the waiver items, nor has any domestic manufacturer identified the ability to produce Buy America-compliant waiver items through the public comment process. These waiver items include many small iron and steel components of unknown origin incorporated into manufactured products that under FHWA's Buy America requirements must be domestically manufactured.[5] Due to the nature of the Project and the waiver items, however, many of the waiver items are not commonly used on FHWA-funded projects.

*Executive Order 14005:* Executive Order (E.O.) 14005, entitled ''Ensuring the Future is Made in All of America by All of America's Workers,'' provides that Federal Agencies should, consistent with applicable law, maximize the use of goods, products, and materials produced in, and services offered in, the United States. 86 FR 7475 (Jan. 28, 2021). Based on the information contained in the waiver request from the City of Mount Vernon and the lack of responsive comments to the notice of waiver request, FHWA concludes that issuing a waiver is not inconsistent with E.O. 14005.

**Finding and Request for Comments**

Based on all the information available to the Agency, FHWA concludes that, with respect to the specified products, there are no Buy America-compliant items and is waiving its Buy America requirements for steel and iron set forth at 23 U.S.C. 313 and 23 CFR 635.410 for recipient purchases of the following produces used in the Mount Vernon Library Commons Project (''specified products''): (i) elevator conveying equipment; (ii) elevator sump pump; (iii) HVAC controls; (iv) hydronic pumps; (v) energy recovery ventilators; (vi) split system A/C; (vii) coalescing style air and sediment separator; (viii) air source water heat pumps; (ix) fan coil units Nailor; (x) fan coil units Daikin; (xi) switchboards; (xii) panelboards; (xiii) an intercom system; (xiv) an AV system wall rack; (xv) heat pump water heaters; (xvi) a backflow preventer; (xvii) metal wall and roof panel fasteners; (xviii) terracotta fasteners; (xix) a retractable acoustic wall; (xx) a folding glass panel partition; (xxi) electric bike charging lockers; (xxii) uni-strut fasteners; and (xxiii) a fire alarm system. This finding only includes components identified in the waiver request and supporting documents included on FHWA's website.

The waiver applies to the specified products used in the Project that are subject to Buy America as a result of obligations of Federal financial assistance made by FHWA for the Project. FHWA will obligate award funds following the effective date of this waiver. The City of Mount Vernon and its contractors and subcontractors involved in the procurement of the relevant components are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

The OMB Memorandum M–24–02 provides that, before granting a waiver in the public interest, to the extent permitted by law, Federal Agencies shall assess whether a significant portion of any cost advantage of a foreign-sourced product is ''the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.''[6] However, because the waiver that FHWA is finalizing in this notice is not based on consideration of the cost advantage of any foreign-sourced steel, iron, or manufactured products, there is not a specific cost advantage for FHWA to now consider.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008, FHWA is providing this notice as its finding that a waiver of its Buy America requirements for steel and iron is appropriate. The FHWA invites public comment on this finding for an additional five days following the effective date of the finding. Comments may be submitted to FHWA's website via the link provided to the waiver page noted above.

*Authority:* 23 U.S.C. 313; Pub. L. 110–161; 23 CFR 635.410.

**Shailen P. Bhatt,**

*Administrator, Federal Highway Administration.*

[FR Doc. 2024–05533 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–22–P

[5] FHWA's Buy America requirements differ from requirements applicable to other Federal Agencies under BABA in that predominantly iron and steel components of manufactured products must be Buy America- compliant. Under BABA, manufactured products must be manufactured in the United States and the cost of the manufactured product's components that are mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the manufactured product; however, BABA does not specifically mandate that iron and steel components in particular must be domestically manufactured. *See* BABA section 70912(6)(B).

[6] *https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf.*

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0041]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: JULIA LYNN (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0041 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0041 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0041, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel JULIA LYNN is:

—*Intended Commercial Use of Vessel:* Requester intends to offer passenger charter fishing trips in and around Homer, Alaska.
—*Geographic Region Including Base of Operations:* Alaska. Base of Operations: Homer, AK.
—*Vessel Length and Type:* 30′ Sport fisher

The complete application is available for review identified in the DOT docket as MARAD 2024–0041 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0041 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05604 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

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# DEPARTMENT OF TRANSPORTATION

## Maritime Administration

**[Docket No. MARAD–2024–0042]**

## Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: EIGHTBALL II (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0042 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Search MARAD–2024–0042 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0042, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and

specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov*.

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel EIGHTBALL II is:

—*Intended Commercial Use of Vessel:* Requester intends to offer fishing charters from Point Pleasant, NJ.
—*Geographic Region Including Base of Operations:* New Jersey. Base of Operations: Point Pleasant, NJ.
—*Vessel Length And Type:* 34′ Powerboat

The complete application is available for review identified in the DOT docket as MARAD 2024–0042 at *https://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0042 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05612 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

# DEPARTMENT OF TRANSPORTATION

## Maritime Administration

**[Docket No. MARAD–2024–0037]**

## Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: THE LAZY TARPON (SAIL); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0037 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0037 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0037, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel THE LAZY TARPON is:

—*Intended Commercial Use of Vessel:* Requester intends to offer passenger day and overnight sailing trips in the Florida Keys.
—*Geographic Region Including Base of Operations:* Florida. Base of Operations: Key West, FL.
—*Vessel Length and Type:* 50.5′ Sailing Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0037 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0037 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05613 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0038]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: DONNA LEE (SAIL); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0038 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0038 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0038, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel DONNA LEE is:

—*Intended Commercial Use of Vessel:* Requester intends to offer sightseeing tours.
—*Geographic Region Including Base of Operations:* Florida. Base of Operations: Niceville, FL.
—*Vessel Length and Type:* 40′ Sailing Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0038 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0038 or visit the Docket Management Facility (see ADDRESSES for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05610 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0040]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PACIFIC SUN (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0040 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0040 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0040, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel PACIFIC SUN is:

—*Intended Commercial Use of Vessel:* Requester intends to offer passenger charter fishing trips in and around Homer, Alaska.
—*Geographic Region Including Base of Operations:* Alaska. Base of Operations: Homer, AK.
—*Vessel Length and Type:* 28′ fly bridge cruiser

The complete application is available for review identified in the DOT docket as MARAD 2024–0040 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0040 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05606 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0033]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MOJITO (SAIL); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0033 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0033 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0033, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov*.

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel MOJITO is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger charters around Marina Del Rey.
—*Geographic Region Including Base of Operations:* California. Base of Operations: Marina Del Rey, CA.
—*Vessel Length and Type:* 38.4″ Catamaran Sail.

The complete application is available for review identified in the DOT docket as MARAD 2024–0033 at *https://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0033 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05617 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

# DEPARTMENT OF TRANSPORTATION

## Maritime Administration

**[Docket No. MARAD–2024–0032]**

## Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PATIENCE (SAIL); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0032 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0032 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0032, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel PATIENCE is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger sunset cruises.
—*Geographic Region Including Base of Operations:* Delaware. Base of Operations: Lewes, DE.
—*Vessel Length and Type:* 39.9″ Sail

The complete application is available for review identified in the DOT docket as MARAD 2024–0032 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0032 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05601 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2024–0035]**

## Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: VALHALLA (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0035 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0035 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0035, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel VALHALLA is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger tours and excursions.
—*Geographic Region Including Base of Operations:* California. Base of Operations: Santa Cruz Harbor, CA.
—*Vessel Length and Type:* 46′ yacht trawler

The complete application is available for review identified in the DOT docket as MARAD 2024–0035 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0035 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05605 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

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# DEPARTMENT OF TRANSPORTATION

## Maritime Administration

**[Docket No. MARAD–2024–0034]**

## Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SKY (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0034 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0034 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0034, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel SKY is:

*Intended Commercial Use of Vessel:* Requester intends to use for passenger charters.

*Geographic Region Including Base of Operations:* New York, Connecticut,

Rhode Island, Massachusetts. Base of Operations: Miami, FL.

*Vessel Length and Type:* 78.5″ Motor yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0034 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0034 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05611 Filed 3–14–24; 8:45 am]

**BILLING CODE 4910–81–P**

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# DEPARTMENT OF TRANSPORTATION

## Maritime Administration

**[Docket No. MARAD–2024–0039]**

## Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PEACEFUL SOL (MOTOR); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0039 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0039 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0039, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel PEACEFUL SOL is:

—*Intended Commercial Use of Vessel:* Requester intends to offer passenger and fishing charters.

—*Geographic Region Including Base of Operations:* Florida. Base of Operations: Key West, FL.

—*Vessel Length and Type:* 38.5′ Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0039 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag

vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

## Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0039 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

## Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05608 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

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# DEPARTMENT OF TRANSPORTATION

## Maritime Administration

**[Docket No. MARAD–2024–0036]**

## Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: CRUISENAUTIC (SAIL); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 15, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2024–0036 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov*. Search MARAD–2024–0036 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0036, 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.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov*.

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel CRUISENAUTIC is:

—*Intended Commercial Use of Vessel:* Requester intends to offer passenger sailing charters in Florida and the East Coast.

—*Geographic Region Including Base of Operations:* Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine. Base of Operations: Stock Island, FL.

—*Vessel Length and Type:* 42′ Sailing Catamaran

The complete application is available for review identified in the DOT docket as MARAD 2024–0036 at *https://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel

in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0036 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov*. Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

**Privacy Act**

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy*.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2024–05607 Filed 3–14–24; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8971

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning, Information Regarding Beneficiaries Acquiring Property From a Decedent.

**DATES:** Written comments should be received on or before May 14, 2024 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–2264—Information Regarding Beneficiaries Acquiring Property From a Decedent'' in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Regarding Beneficiaries Acquiring Property From a Decedent.

*OMB Number:* 1545–2264.

*Form Number:* 8971.

*Abstract:* The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 requires executors of an estate and other persons who are required to file a Form 706, Form 706–NA, or Form 706–A, to report to the Internal Revenue Service (IRS) and to each beneficiary receiving property from an estate tax value of the property, if the return is filed after July 31, 2015. Form 8971 is used to report to the IRS and a Schedule A will be sent to each beneficiary and a copy of each Schedule A will be attached to the Form 8971. Some property received by a beneficiary may have a consistency requirement, meaning that the beneficiary must use the value reported on the Schedule A as the beneficiary's initial basis of the property. A beneficiary is an individual, trust, or other estate who has acquired (or is expected to acquire) property from the estate. If the executor is also a beneficiary who has acquired (or is expected to acquire) property from the estate, the executor is a beneficiary for purposes of the Form 8971 and the attached Schedule A.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organization, and not-for-profit institutions.

*Estimated Number of Responses:* 10,000.

*Estimated Time per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 200,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 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.

Approved: March 8, 2024.

**Martha R. Brinson,**

*Tax Analyst.*

[FR Doc. 2024–05467 Filed 3–14–24; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1099–C and TD 9793

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning, cancellation of debt and removal of the 36-month non-payment testing period rule.

**DATES:** Written comments should be received on or before May 14, 2024 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–1424—Cancellation of Debt'' in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Cancellation of Debt.

*OMB Number:* 1545–1424.

*Form Number:* 1099–C.

*Regulation Project Number:* TD 9793.

*Abstract:* This form is used by Federal Government agencies, financial institutions, and credit unions to report the cancellation or forgiveness of a debt of $600 or more, as required by section 6050P of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the debtor has included the proper amount of canceled debt in income on his or her income tax return.

**TD 9793**

*Abstract:* These regulations under section 6050P of the Internal Revenue Code (Code), relating to the rule in § 1.6050P–1(b)(2)(iv) that the 36-month non-payment testing period is an identifiable event triggering an information reporting obligation on Form 1099–C for discharge of indebtedness by certain entities.

*Current Actions:* There are no changes being made to the form or regulation at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, and the Federal Government.

*Estimated Number of Responses:* 6,540,900.

*Estimated Time per Response:* 13 minutes.

*Estimated Total Annual Burden Hours:* 1,438,998.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 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.

Approved: March 8, 2024.

**Martha R. Brinson,**

*Tax Analyst.*

[FR Doc. 2024–05466 Filed 3–14–24; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Privacy Act of 1974; System of Records

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or the ''Department''), Departmental Offices proposes to modify a current Treasury system of records titled, ''Department of the Treasury, Departmental Offices .190—Office of Inspector General Investigations Management Information System.'' This system's name is being amended to the ''Department of the Treasury, Departmental Offices .190—Office of Inspector General Electronic Case Management System,'' yet it will still maintain the same records and collected information that provides essential support for activities of the Treasury Office of Inspector General (OIG) relating to Treasury programs, operations, employees, contractors and other individuals or entities associated with the Department. Additionally, the Department proposes to amend this system of records by modifying one existing routine use, adding four new routine uses, and making technical changes and corrections.

**DATES:** Submit comments on or before April 15, 2024. The modification of the system of records notice will be applicable on April 15, 2024.

**ADDRESSES:** Written comments on this notice may be submitted electronically through the Federal government eRulemaking portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury to make the comments available to the public. Please note that comments submitted through *https://www.regulations.gov* will be public and

can be viewed by members of the public.

In general, Treasury will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit the information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: Dawn Lay, 202–927–9842 by mail at Office of the Inspector General, 875 15th Street NW, Washington, DC 20005.

For questions about this notice and privacy issues, contact: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, & Records, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; email: *privacy@treasury.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Treasury Departmental Offices proposes to modify a current Treasury system of records titled, ''Department of the Treasury, Departmental Offices .190—Office of Inspector General Investigations Management Information System.''

The proposed modification to the system of records makes the following substantive changes:

System name changed from ''Investigations Management Information System'' to ''Electronic Case Management System,'' as a more accurate depiction of the information maintained in the system and signifying that the system is not exclusively investigative. General administrative contact information was updated to reflect current information; the authority for maintenance of the system, the Inspector General Act of 1978, was updated to reflect the latest citation; the Department also amended the purpose section to remove regulation citations and instead describe in plain language how information collected and maintained in this system is used; and the Department amended, deleted, and added routine use information.

The routine use amendments, deletions, or additions include: amended routine use (8) by deleting release to the Bureau of Alcohol, Tobacco, and Firearms and the Department of Homeland Security OIG concerning investigations, and adding release to other OIGs in general, the Council of Inspectors General on Integrity and Efficiency, and to territorial or Tribal law enforcement or regulatory agencies in performance of their statutory and regulatory requirements; new routine use (9) release to foreign law enforcement entities for bona fide law enforcement purposes where release is not otherwise prohibited by law; new routine use (10) release to persons performing or working for the Federal government when accomplishing an agency function; routine use (11) release to the Merit Systems Protection Board, the Office of Special Counsel, or the Equal Employment Opportunity Office for official proceedings; routine use (12) was previously routine use (9); routine use (13) adds release to Treasury OIG Offices of Audit and Counsel, and to Treasury Department employees requiring such information for official purposes; and routine use (14) was previously routine use (10).

The policies and practices for the: storage of records section was modified to remove reference to paper and locked drawers; retrieval of records section has been limited to retrieval by name and case number; and the retention and disposal of records section was updated to the current applicable Department records and disposition schedules covering records in this system.

The notification procedures section was amended to include detailed instructions on requesting non-exempt information located in the system and how to contest its content.

Finally, the history section was added and notates this system of records' last full published date in the **Federal Register**, and final rule date.

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing how Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. In order to minimize the risk of unauthorized access to the system's contents, the Department abides by the following procedures: individuals may request access to their own records that are maintained in a system of records in the possession or under the control of Treasury by complying with Treasury Privacy Act regulations at 31 CFR part 1, subpart C, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

**Ryan Law,**

*Deputy Assistant Secretary for Privacy, Transparency, and Records.*

**SYSTEM NAME AND NUMBER:**

Department of the Treasury, DO .190—Office of Inspector General Electronic Case Management System.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Office of Inspector General (OIG), Assistant Inspector General for Investigations and Counsel to the Inspector General, 875 15th St. NW, Washington, DC 20005.

**SYSTEM MANAGER(S):**

Assistant Inspector General for Investigations, 875 15th St. NW, Suite 400, Washington, DC 20005 For internal investigations: Counsel to the Inspector General, 875 15th St. NW, Washington, DC 20005.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

*The Inspector General Act of 1978, 5 U.S.C. Chapter 4.;* 5 U.S.C. 301; 31 U.S.C. 321.

**PURPOSE(S) OF THE SYSTEM:**

The records and information collected and maintained in this system are used to discharge the duties of the Office of Investigations, including: (a) receipt and investigation of allegations regarding a violation of any criminal or civil law, regulation, policy, or standard applicable to employees of the U.S. Department of the Treasury; (b) receipt and/or investigation of allegations regarding a violation of criminal or civil law, regulation, policy, or standard having a nexus to the U.S. Department of the Treasury, including allegations of fraud against Treasury programs or operations by any person or entity; and (c) to conduct inquiries and investigations into allegations of

wrongdoing, whether criminal, civil, or administrative, made against Department of the Treasury employees, contractors, grantees, and other individuals or entities associated with the Department of the Treasury.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of the Treasury and persons whose association with current and former employees relate to the alleged violations of the rules of ethical conduct for employees of the Executive Branch, the Department's supplemental standards of ethical conduct, the Department's rules of conduct, merit system principles, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of the Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) initiated at the discretion of the Office of Inspector General in the conduct of assigned duties. Investigations of allegations against OIG employees are managed by the Assistant Inspector General for Investigations and the Counsel to the Inspector General; records are maintained in the electronic case management system.

(B) Individuals who are: Witnesses; complainants; confidential or nonconfidential informants; suspects; defendants; parties who have been identified by the Office of Inspector General, constituent units of the Department of the Treasury, other agencies, or members of the general public in connection with the authorized functions of the Inspector General.

(C) Current and former senior Treasury and bureau officials who are the subject of investigations initiated and conducted by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct.

(B) Investigative files which include: (1) reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigations; (2) transcripts and documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring; (3) body worn camera video footage, (4) reports from or to other law enforcement bodies; (5) prior criminal or noncriminal records of individuals as they relate to the investigations; and (6) reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to state, local, foreign agencies, or the Department of Justice for prosecution.

RECORD SOURCE CATEGORIES:

See ''Categories of Individuals . . .'' above. This system contains investigatory material for which sources need not be reported.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed:

(1) To the United States Department of Justice (''DOJ''), for the purpose of representing or providing legal advice to Treasury in a proceeding before a court, adjudicative body, or other administrative body before which Treasury is authorized to appear, when such proceeding involves:

(a) Treasury or any component thereof;

(b) Any employee of Treasury in his or her official capacity;

(c) Any employee of Treasury in his or her individual capacity where the DOJ or Treasury has agreed to represent the employee; or

(d) The United States, when Treasury determines that litigation is likely to affect Treasury or any of its components; and the use of such records by the DOJ is deemed by the DOJ or Treasury to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected;

(2) To appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) To a federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit;

(4) To a court, magistrate, or administrative tribunal in the course of presenting evidence,

including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a court order or in connection with criminal law proceedings;

(5) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) To the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(8) To the Department of Justice, other OIGs, the Council of Inspectors General on Integrity and Efficiency, the Federal Law Enforcement Training Center, and to other Federal, State, local, territorial or Tribal law enforcement or regulatory agencies for use in meeting their statutory and regulatory requirements;

(9) To foreign law enforcement, investigatory, or administrative authorities in order to comply with requirements set forth in international arrangements, such as memoranda of understanding.

(10) To contractors, grantees, volunteers, experts, students, and others performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government when necessary to accomplish an agency function;

(11) To the Merit Systems Protection Board, the Office of Special Counsel, or the Equal Employment Opportunity Office for official proceedings, including litigation, administrative proceedings, appeals, special studies of the civil service and other merit systems.

(12) To other OIGs, the Council of Inspectors General on Integrity and Efficiency, and the Department of Justice, in connection with their review of Treasury OIG's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, 5 U.S.C. Chapter 4;

(13) To the Treasury OIG Offices of Audit and Counsel and to employees within the U.S. Department of the Treasury requiring such information for official purposes; and

(14) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the

Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(15) To another Federal agency or Federal entity, when Treasury determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(16) To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

#### POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically or on paper per approved Office of Investigations policy. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM.

#### POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By name and by case number.

#### POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Case information is maintained for the later of: 10 years after the case is closed, or when no longer needed. Records are destroyed in accordance with approved Federal and Departmental guidelines.

#### ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls are imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. The records are available to Office of Inspector General personnel who have an appropriate security clearance on a need-to-know basis.

#### RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

#### CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

#### NOTIFICATION PROCEDURES:

This system of records contains records that are exempt from the notification, access, and contesting records requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Individuals seeking access to any non-exempt record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to: Freedom of Information Act Request, Counsel to the Inspector General, Office of Inspector General, Department of the Treasury, 875 15th St. NW, Washington, DC 20005.

#### EXEMPTIONS PROMULGATED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

#### HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on November 7, 2016 (81 FR 78298) as the Department of the Treasury, Departmental Offices .190— Office of Inspector General Investigations Management Information. Final Rule was published on May 15, 2012 (77 FR 28478).

[FR Doc. 2024–05536 Filed 3–14–24; 8:45 am]

BILLING CODE 4810–AK–P

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## DEPARTMENT OF THE TREASURY

### United States Mint

### Renewal for Currently Approved Generic Information Collection Request; Comment Request for Renewal of Customer Satisfaction and Opinion Surveys, Focus Group Interviews, and Web Usability Studies

**AGENCY:** United States Mint, Department of the 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 take this opportunity to comment on the currently approved information collection 1525–0012, as required by the Paperwork Reduction Act of 1995. Currently, the United States Mint, a bureau of the Department of the Treasury, is soliciting comments on the United States Mint customer satisfaction and opinion surveys, focus group interviews, and web usability studies.

**DATES:** Written comments should be received on or before May 14, 2024 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Manoj Pillai, Market Research Specialist, Sales and Marketing Directorate; United States Mint; 801 9th Street NW; Washington, DC 20220; (202) 354–7255 (this is not a toll-free number); or by email at *BusinessAnalysisBranchExternalComm@usmint.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection package should be directed to Manoj Pillai, Market Research Specialist, Sales and Marketing Directorate; United States Mint; 801 9th Street NW, Washington, DC 20220; (202) 354–7255 (this is not a toll-free number); or by email at *BusinessAnalysisBranchExternalComm@usmint.treas.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* United States Mint customer satisfaction and opinion surveys, focus group interviews, and web usability studies.

*OMB Number:* 1525–0012.

*Abstract:* The proposed customer satisfaction and opinion surveys, focus group interviews, web usability studies, and intercept surveys will allow the United States Mint to assess the acceptance of, potential demand for, and barriers to acceptance/increased and the needs and desires of customers for more efficient, economical services.

*Current Actions:* The United States Mint conducts customer satisfaction and opinion surveys, focus group interviews, and web usability studies to measure customer opinion and assess acceptance of, the potential demand for, and barriers to acceptance/increased demand for United States Mint products, and to determine the level of satisfaction of United States Mint customers and the general public.

*Type of Review:* Review of estimated annual respondents and estimated demand for current and future products, annual burden hours.

*Affected Public:* The affected public includes serious and casual numismatic collectors, dealers, and persons in the

numismatic business, and the general public.

*Estimated Number of Respondents:* The estimated number of annual respondents is 106,760.

*Estimated Total Annual Burden Hours:* The estimated number of annual burden hours is 33,560.

*Requests for Comments:* Comments submitted in response to this notice will be summarized and/or 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 shall have practical utility.

(b) the accuracy of the agency's estimate of the burden of the collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**Eric Anderson,**

*Executive Secretary, United States Mint.*

**Supporting Statement A—United States Mint Generic Clearance (January 31, 2025–January 31, 2028) 1525–0012**

*A. Justification*

A1. Circumstances Necessitating the Collection of Information

This is a request for a three-year generic clearance to conduct customer satisfaction and opinion surveys and focus group interviews. This clearance will allow the United States Mint to comply with Executive Order 12862 and assist the United States Mint in fulfilling its mission.

The mission of the United States Mint is to serve the American people by manufacturing and distributing the highest quality circulating coinage and national medals for the Nation to conduct its trade and commerce, and by providing security over assets entrusted to the United States Mint.

The United States Mint is responsible for producing proof, uncirculated, circulating, and commemorative coins, and medals, and platinum, gold, and silver bullion coins in response to programs legislated by Congress in support of domestic trade and commerce, civic, philanthropic and national organizations.

To effectively accomplish the goals of these programs, it is crucial for the United States Mint to know and maintain awareness of customer preferences and needs by continually monitoring customer satisfaction.

However, because the time period between program authorization, production, and product shipment is often short, the United States Mint has not always had adequate time to obtain needed information about customer preferences and market conditions.

Therefore, the use of generic clearance to conduct customer satisfaction and opinion surveys and focus group interviews will allow the United States Mint to quickly obtain useful data to create more profitable programs and to provide better service and products to the American public.

The Supporting Statement contains authorization under which these data collections efforts are implemented. Supporting Statement B contains a list of anticipated projects that may be submitted for approval through the generic clearance process between January 31, 2025, and January 31, 2028. This clearance covers data collection efforts by the United States Mint. An internal review of all proposed data collections will be performed to ensure the following:

- Consistency with United States Mint mission and strategic objectives.
- Appropriate priority within United States Mint's Strategic Plan and/or United States Mint annual business plan.
- Technical adequacy in issues such as frame, sample selection, response rates, quality control in data gathering, recording, and analysis.
- Minimized burden on respondents.
- Confidentiality of individual responses.
- Consistency with this generic clearance.
- Consistency with applicable laws and regulations.

A2. Use of Data

A variety of data collection methods will be employed, including web-based surveys, telephone CATI (computer-assisted telephone interviews) systems, focus group interviews, and other appropriate means. The information will be used to:

- Determine customer opinions about the quality of products, pricing, delivery, and other services provided by the United States Mint.
- Determine customer needs and wants regarding future products and services.
- Define the next steps/actions plans to improve customer satisfaction and United States Mint sales operations.

A3. Use of Information Technology To Reduce Burden

- In past instances, the United States Mint has used CATI systems and web-based surveys (both provided by contractors) for data collection efforts. The CATI systems and web-based surveys increase efficiency and validity of surveys and decrease the time required for each interview and, consequently, the overall burden on respondents. These methodologies use computers to perform several critical quality assurance routines that are monitored by survey supervisors. These include tracking average interview length and refusal and termination rates.

A4. Efforts To Identify Duplication

Survey questions will address United States Mint related products and do not duplicate the efforts of other agencies/organizations. Our internal review and approval process ensures that duplication of data gathering within the United States Mint is eliminated.

Additionally, no other organization can conduct a survey of the United States Mint customers because our customer list is unique and secured by the United States Mint.

A5. Methods To Minimize Burden on Small Businesses or Other Small Entities

The data collections for the most part will be targeted to individuals. Although some customers are coin and hobby dealers that may operate a small business, all information requests will be voluntary. In addition, respondents will rarely be required to consult or access their records for detailed information.

A6. Consequences of Less Frequent Collection on Federal Programs or Policy Activities

The United States Mint would not be following Executive Order 12862 if some of the collection efforts were not undertaken. Also, the United States Mint operates as a self-funding agency, and the information and the changes resulting from data collections are crucial to United States Mint numismatic sales efforts.

A7. Special Circumstance Requiring Data Collection To Be Inconsistent With Guidelines in 5 CFR 1320.6

No special circumstances require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

A8. Consultation With Individuals Outside of the Agency on Availability of Data, Frequency of Collection, Clarity of Instruction and Forms, and Data Elements

The United States Mint collaborates with professional marketing firms and contractors with expertise in marketing research, statistical analysis, and customer driven marketing. Their assistance is utilized in development, administration, and analysis research.

A9. Explanation of Decision To Provide Payment or Gift to Respondents

The United States Mint has compensated respondents only when it was necessary as an incentive for their extensive time or expertise. Specific justification has accompanied such requests. In the future, the United States Mint will use compensation for respondents only when it is deemed necessary.

A10. Assurance of Confidentiality of Responses

Survey respondents contacted by mail, fax, internet, or some other form of written communication will be advised on the survey form, cover letter, or other accompanying document that participation is voluntary, and that the data provided will be secured. As part of the introduction to a data gathering effort during telephone or personal interviews, the interviewer will inform the respondents that the survey is voluntary, and that each individual's responses will be secured. Focus group participants will verbally receive similar assurances during opening statements of the interview session.

A11. Justification of Sensitive Questions

Not applicable. Sensitive information is not collected.

A12. Estimated Burden of Information Collection

The following table is a breakdown of the estimated number of hours for a three-year generic clearance and estimated number of respondents for a three-year generic clearance.

However, due to changes in the market and possible new coin programs legislated by Congress, this figure could increase.

A13. Estimated Total Annual Burden to Respondents

The following table is a breakdown of estimated burden to respondents based on previous experience.

| Research | Estimated number of hours (3 years) | Estimated number of respondents (3 years) |
|---|---|---|
| Naxion Customer Acquisition Research | 4,600 | 12,000 |
| Naxion General Analytics Research | 13,000 | 39,000 |
| Naxion Product Fulfillment Tracking Research | | |
| Naxion Customer Satisfaction Tracking Research | 10,500 | 42,000 |
| | 3,000 | 12,000 |
| Naxion Focus Group Research | 2,100 | 1,400 |
| Web Usability Research | 360 | 360 |
| Total | 33,560 | 106,760 |

A14. Estimated Annualized Cost to the Federal Government

The following table is a breakdown of the estimated cost to the United States Mint based on previous experience.

| Research | Annual estimated cost | Total estimated—3 years |
|---|---|---|
| Naxion Customer Acquisition Research | $430,000 | $430,000 |
| Naxion General Analytics Research | 747,000 | 2,241,000 |
| Naxion Product Fulfillment Tracking Survey | | |
| Naxion Customer Satisfaction Tracking Research | 177,000 | 531,000 |
| | 381,000 | 1,143,000 |
| Naxion Focus Group Research | 750,000 | 2,250,000 |
| Web Usability Research | 567,000 | 1,701,000 |
| Total | 3,052,000 | 8,296,000 |

A15. Reason for Change in Burden

There is no change.

A16. Plans for Tabulation Statistical Analysis and Publication

Information from data collection will not be published for statistical purposes.

A17. Reasons Why Displaying the OMB Expiration Date Is Inappropriate

Displaying the expiration date may cause problems with respondents for data collection programs that overlap the three-year authorization periods. In addition, respondents might be declined to refuse to participate if the form carries an authorization date that is expired or soon to expire.

A18. Exceptions to the Certification Statement on OMB Form 83–1

Not applicable. There are no exceptions for certification.

**Supporting Statement B—United States Mint Generic Clearance (January 31, 2025–January 31, 2028) 1525–0012**

*B. Collection of Information Employing Statistical Methods*

B1. Universe and Respondent Selection

Surveys covered under this generic clearance will vary regarding the universe and respondent selection. The potential universe for some surveys will include our active and inactive customers, while others may include far fewer.

However, because the United States Mint is attempting to expand its numismatic markets and practically all Americans are users of circulating coinage, the universe for some surveys may include the entire United States population base, with a statistically valid sample selected for research.

B2. Procedures for Collecting Information

The specific method of data collection for each survey will be provided to OMB before each survey is conducted.

B3. Methods To Maximize Response

The United States Mint has found that by sending an advance notice letter to those customers participating in a telephone survey the rate of response can be increased and will employ this technically when possible and cost effective. The United States Mint will employ procedures to review and test questions by survey experts to ensure that questions and instructions are clear, relevant, and unambiguous. Surveys employing non-response follow-up techniques will use multiple contacts by telephone and/or additional mailing of the questionnaire to ensure an adequate response.

B4. Testing of Procedures

In most cases, a pretest of the data collection instruments will be conducted prior to its use. Pretests will include review by knowledgeable United States Mint staff and consultants. In the case of telephone surveys, the pretest will include monitoring of interviewers and respondents by United States Mint staff and/or consultants prior to the actual survey. No pretest will include provisions for contacting more than nine respondents.

B5. Contacts for Statistical Aspects and Data Collection

The contact person for questions regarding any statistical aspects employed or data collection procedures used will be provided to OMB before each survey. Administrative questions regarding the Mint use of this generic clearance should be directed to Manoj Pillai; Sales and Marketing, 5th Floor; United States Mint; 801 9th Street NW; Washington, DC 20220; or by email at *BusinessAnalysisBranch ExternalComm@usmint.treas.gov.*

[FR Doc. 2024–05474 Filed 3–14–24; 8:45 am]

BILLING CODE 4810–37–P

## DEPARTMENT OF VETERANS AFFAIRS

## Privacy Act of 1974; System of Records

**AGENCY:** Office of Information and Technology (OIT), Department of Veteran Affairs (VA).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974, notice is hereby given that VA is modifying the system of records titled, ''Call Detail Records-VA'' (90VA194). This system is used to generate call detail records to capture information regarding calls made on telephone systems, including who made the call (calling party number), who was called (called party number), the date and time the call was made, the duration of the call, and other usages and diagnostic information elements (*e.g.,* features used, reason for call termination).

**DATES:** Comments on this modified system of records must be received no later than April 15, 2024. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to Call Detail Records—VA 90VA194. Comments received will be available at regulations.gov for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** Office of Information and Technology System Owner, Bradley Mills, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (202) 215–1395 (Note: This is not a toll-free number) or *Bradley.mills@va.gov.*

**SUPPLEMENTARY INFORMATION:** VA is amending the system of records by revising the System Location; System Manager; Categories of Individuals Covered by the System; Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses; Policies and Practices for Storage of Records; Policies and Practices for Retrieval of Records; Policies and Practices for Retention and Disposal of Records; Record Access Procedures; Contesting Records Procedures; and Notification Procedures.

The Categories of Individuals Covered by the System is being updated to reflect ''Individuals who are assigned telephone numbers or are authorized to use VA telephone services, and individuals who receive or make calls billed to the VA.''

The System location will be updated to replace individual local VHA facilities with ''VA OIT Trusted internet Gateway Data Centers''.

The System Manager is being updated to ''Deputy Director for Operations, Unified Communications. Telephone number (202) 632–9603.''

Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses are being modified to remove current Uses number 1 and number 2; and to update current language for the remaining Routine Uses, numbers 3 through 17. This system will now have 15 Routine Uses.

Policies and Practices for Storage of Records is being updated to reflect ''Records are maintained in electronic form in VA Data Centers.''

Policies and Practices for Retrieval of Records is being updates to remove ''date, time, cost.''

Policies and Practices for Retention and Disposal of Records is being updated to reflect ''Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, Records Control Schedule 10–1 Item Number 2525.1''

Record Access Procedures is being updated to reflect ''Individuals wishing to request access to records pertaining to them should contact the System Manager in writing as indicated above. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.''

Contesting Records Procedures is being updated to reflect ''Individuals seeking to contest or amend records in this system pertaining to them should contact the System Manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.''

Notification Procedures is being updated to reflect ''Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.''

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

## Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on March 11, 2024 for publication.

Dated: March 12, 2024.

**Amy L. Rose,**

*Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.*

### SYSTEM NAME AND NUMBER:

Call Detail Records-VA 90VA194.

### SECURITY CLASSIFICATION:

Unclassified.

### SYSTEM LOCATION:

Electronic records are located in VA OIT Trusted internet Gateway Data Centers.

### SYSTEM MANAGER(S):

Deputy Director for Operations, Unified Communications. Telephone number (202) 632–9603. (Note: This is not a toll-free number)

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501.

### PURPOSE(S) OF THE SYSTEM:

The system is used to generate call detail records to capture information regarding calls made on telephone systems, including who made the call (calling party number), who was called (called party number), the date and time the call was made, the duration of the call, and other usages and diagnostic information elements.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are assigned telephone numbers or are authorized to use VA telephone services, and individuals who receive or make calls billed to the VA.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Call detail records consist of information on VA Enterprise Telephone system telephone calls placed from VA telephones or otherwise billed to VA including the originating and destination telephone number, date and time of call, duration of call, and Originating and Terminating Devices for internal VA organizational location of telephones.

### RECORD SOURCE CATEGORIES:

Records in this system are obtained from the following sources: (a) Local VA telephone directories and other telephone assignment records; (b) call detail records provided by suppliers of telephone services; and c) the individual on whom the record is maintained.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Congress:* To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data breach response and remediation, for VA:* To appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. *Data breach response and remediation, for another Federal agency:* To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal, or regulatory in nature, or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates such a violation or potential violation. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *DoJ, Litigation, Administrative Proceeding:* To the Department of Justice (DoJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. *Contractors:* To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *Office of Personnel Management (OPM):* To the OPM in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. *Equal Employment Opportunity Commission (EEOC):* To the EEOC in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or

other functions of the Commission as authorized by law.

9. *Federal Labor Relations Authority (FLRA):* To the FLRA in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

10. *Merit Systems Protection Board (MSPB):* To the MSPB in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *National Archives and Records Administration (NARA):* To the NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. *Federal Agencies, Courts, Litigants, for Litigation or Administrative Proceedings:* To another federal agency, court, or party in litigation before a court or in an administrative proceeding conducted by a Federal agency, when the government is a party to the judicial or administrative proceeding.

13. *Governmental Agencies, for VA Hiring, Security Clearance, Contract, License, Grant:* To a Federal, state, local, or other governmental agency maintaining civil or criminal violation records, or other pertinent information, such as employment history, background investigations, or personal or educational background, to obtain information relevant to VA's hiring, transfer, or retention of an employee, issuance of a security clearance, letting of a contract, or issuance of a license, grant, or other benefit. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701

14. *Unions:* To officials of labor organizations recognized under 5 U.S.C. Chapter 71 provided that the disclosure is limited to information identified in 5 U.S.C. 7114(b)(4) that is relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions

15. *Consumer Reporting Agencies:* To a consumer reporting agency for the purpose of locating the individual, obtaining a consumer report to determine the ability of the individual to repay an indebtedness to the United States, or assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(2) and (4) have been met, provided that the disclosure is limited to information that is reasonably necessary to identify such individual or concerning that individual's indebtedness to the United States by virtue of the person's participation in a benefits program administered by the Department.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are maintained in electronic form in VA Data Centers.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records may be retrieved by, VA organizational unit, originating telephone number, destination telephone number, location and/or duration of call.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, Records Control Schedule 10–1 Item Number 2525.1.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

1. Access to telecommunication areas at VA facilities is generally limited by appropriate locking devices and restricted to authorized employees and vendor personnel. Generally, VA areas are always locked, and the facilities are protected from outside access by the Federal Protective Service or other security personnel. 2. Access to file information or the database is controlled by VA Office of Information and Technology employees. The system recognizes authorized VA employees and Contractors by two factor authentication methods. Accessing the database remotely uses encryption and two factor authentication methods.

**RECORD ACCESS PROCEDURES:**

Individuals wishing to request access to records pertaining to them should contact the System Manager in writing as indicated above. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest or amend records in this system pertaining to them should contact the System Manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

**NOTIFICATION PROCEDURES:**

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

88 FR 87844 (December 19, 2023).

[FR Doc. 2024–05535 Filed 3–14–24; 8:45 am]
BILLING CODE 8320–01–P

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0856]**

## Agency Information Collection Activity Under OMB Review: Authorization To Disclose Personal Information To A Third Party

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain,* select "Currently under Review—Open for Public Comments", then search the list for the information collection by Title or "OMB Control No. 2900–0856."

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to "OMB Control No. 2900–0856" in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* Authorization to Disclose Personal Information to a Third Party VA Form 29–0975 and Authorization to Disclose Personal Information to a Third Party VA Form 29–0975e (DocuSign Version).

*OMB Control Number:* 2900–0856.

*Type of Review:* Extension of a previously approved collection.

*Abstract:* This form will be used by the Department of Veterans Affairs Insurance Center (VAIC) to enable a third party to act on behalf of the insured Veteran/beneficiary. Many of our customers are of advanced age or suffer from limiting disabilities and need assistance from a third party to conduct their affairs. The information collected provides an optional service and is not required to receive insurance benefits.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 2480 on January 12, 2024, page 2480.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 100 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,200.

By direction of the Secretary:.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2024–05553 Filed 3–14–24; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Advisory Committee on Women Veterans will conduct a virtual meeting on April 2–4, 2024. The meeting will begin and ends as follows:

| Date | Time | Location |
|---|---|---|
| April 2, 2024 | 1:00 p.m.–4:00 p.m. Eastern Standard Time (EST) | WEBEX link and call-in information below. |
| April 3, 2024 | 12:00 p.m.–3:30 p.m. (EST) | WEBEX link and call-in information below. |
| April 4, 2024 | 1:00 p.m.–3:30 p.m. (EST) | WEBEX link and call-in information below. |

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

On Tuesday, April 2, 2024, the agenda includes updates from the Veterans Health Administration and the Veterans Benefits Administration regarding 2020 and 2022 report recommendations. Time will also be allotted for the public to provide comments starting at 3:30 p.m. and ending no later than 4:00 p.m. (EST). The comment period may end sooner, if there are no comments presented or they are exhausted before the end time. Individuals interested in providing comments during the public comment period are allowed no more than three minutes for their statements.

On Wednesday, April 3, 2024, the Committee will receive updates from the Veterans Health Administration and the Veterans Benefits Administration regarding 2018 report recommendations. Thursday, April 4, 2024, the committee will receive an update from the Veterans Health Administration, and conduct a full committee discussion on the status of 2018, 2020, 2022 report recommendations.

Those who want to submit written statements for the Committee's review should submit them to the Center for Women Veterans at *00W@mail.va.gov* no later than March 21, 2024. Any member of the public who wishes to participate virtually may use the following access information: (*https://veteransaffairs.webex.com/veterans affairs/j.php?MTID=ma3058823e4 8303a8c0f0683912f4a761*); meeting number: 2823 307 1003; password: 6TShpns2k8@. Join by phone at 1–404–397–1596 (USA toll number); Access code: 2823 307 1003.

Dated: March 12, 2024.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2024–05577 Filed 3–14–24; 8:45 am]

BILLING CODE P

# FEDERAL REGISTER

Vol. 89 Friday,

No. 52 March 15, 2024


Part II

## Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers; Direct Final Rule

**DEPARTMENT OF ENERGY**

**10 CFR Part 430**

**[EERE–2017–BT–STD–0014]**

**RIN 1904–AF58**

# Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers

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

**ACTION:** Direct final rule.

**SUMMARY:** The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential clothes washers (''RCWs''). In this direct final rule, the U.S. Department of Energy (''DOE'') is adopting amended energy conservation standards for RCWs. DOE has determined that the amended energy conservation standards for these products would result in significant conservation of energy and are technologically feasible and economically justified.

**DATES:** The effective date of this rule is July 15, 2024. If adverse comments are received by July 3, 2024, and DOE determines that such comments may provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o), a timely withdrawal of this rule will be published in the **Federal Register**. If no such adverse comments are received, compliance with the amended standards established for RCWs in this direct final rule is required on and after March 1, 2028. Comments regarding the likely competitive impact of the standards contained in this direct final rule should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before April 15, 2024.

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0014.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the standards contained in this direct final rule. Interested persons may contact the Antitrust Division at *energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this direct final rule.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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## I. Synopsis of the Direct Final Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA[2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include consumer (residential)[3] clothes washers (''RCWs''), the subject of this direct final rule. (42 U.S.C. 6292(a)(7))

Pursuant to EPCA, any new or amended energy conservation standard must, among other things, be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

In light of the above and under the authority provided by 42 U.S.C. 6295(p)(4), DOE is issuing this direct final rule amending energy conservation standards for RCWs.

The adopted standard levels in this direct final rule were proposed in a letter submitted to DOE jointly by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility. This letter, titled ''Energy Efficiency Agreement of 2023'' (hereafter, the ''Joint Agreement''[4]), recommends specific energy conservation standards for RCWs that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). DOE subsequently received letters of support for the Joint Agreement from States including New York, California, and Massachusetts[5] and utilities including San Diego Gas and Electric (''SDG&E'') and Southern California Edison (''SCE'')[6] advocating for the adoption of the recommended standards.

In accordance with the direct final rule provisions at 42 U.S.C. 6295(p)(4), DOE has determined that the recommendations contained in the Joint Agreement are compliant with 42 U.S.C. 6295(o). As required by 42 U.S.C. 6295(p)(4)(A)(i), DOE is also simultaneously publishing a notice of proposed rulemaking (''NOPR'') that contains identical standards to those adopted in this direct final rule. Consistent with the statute, DOE is providing a 110-day public comment period on the direct final rule. (42 U.S.C. 6295(p)(4)(B)) If DOE determines that any comments received provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o) or any other applicable law, DOE will publish the reasons for withdrawal and continue the rulemaking under the NOPR. (42 U.S.C. 6295(p)(4)(C)) *See* section II.A of this document for more details on DOE's statutory authority.

The amended standards that DOE is adopting in this direct final rule are the efficiency levels recommended in the Joint Agreement (shown in Table I.1). The standards are expressed in terms of energy efficiency ratio (''EER''), measured in pounds per kilowatt-hour per cycle (''lb/kWh/cycle''), and water efficiency ratio (''WER''), measured in pounds per gallon per cycle (''lb/gal/cycle''), as determined in accordance with DOE's clothes washer test procedure codified at title 10 of the Code of Federal Regulations (''CFR''), part 430, subpart B, appendix J (''appendix J''). The EER metric includes active mode, inactive mode, and off mode energy use. The amended standards recommended in the Joint Agreement are represented as trial standard level (''TSL'') 2 in this document and described in section V.A of this document. The Joint Agreement's standards for RCWs apply to all products listed in Table I.1 manufactured in, or imported into, the United States starting on March 1, 2028.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

[Compliance starting March 1, 2028]

| Product class | Minimum energy efficiency ratio (lb/kWh/cycle) | Minimum water efficiency ratio (lb/gal/cycle) |
|---|---|---|
| Automatic Clothes Washers: | | |

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] DOE uses the ''residential'' nomenclature and ''RCW'' abbreviation for consumer clothes washers in order to distinguish from the ''CCW'' abbreviation used for commercial clothes washers, which are also regulated equipment under EPCA.

[4] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0505.*

[5] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0506.*

[6] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0507.*

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS—Continued

[Compliance starting March 1, 2028]

| Product class | Minimum energy efficiency ratio (lb/kWh/cycle) | Minimum water efficiency ratio (lb/gal/cycle) |
|---|---|---|
| Top-Loading Ultra-Compact (less than 1.6 ft³ capacity) | 3.79 | 0.29 |
| Top-Loading Standard-Size (1.6 ft³ or greater capacity) with an average cycle time of 30 minutes or greater | 4.27 | 0.57 |
| Front-Loading Compact (less than 3.0 ft³ capacity) * | 5.02 | 0.71 |
| Front-Loading Standard-Size (3.0 ft³ or greater capacity) with an average cycle time of 45 minutes or greater | 5.52 | 0.77 |
| Semi-Automatic Clothes Washers | 2.12 | 0.27 |

* The standards in this table do not apply to front-loading clothes washers with a capacity greater than or equal to 1.6 ft³ and less than 3.0 ft³ with an average cycle time of less than 45 minutes.

*A. Benefits and Costs to Consumers*

Table I.2 summarizes DOE's evaluation of the economic impacts of the adopted standards on consumers of RCWs, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[7] The average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of RCWs, which is estimated to be 13.4 years (*see* section IV.F.6 of this document).

TABLE I.2—IMPACTS OF ADOPTED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF RESIDENTIAL CLOTHES WASHERS

| Product class | Average LCC savings (2022$) | Simple payback period (years) |
|---|---|---|
| Automatic Clothes Washers: | | |
| Top-Loading Ultra-Compact (less than 1.6 ft³ capacity) * | n.a | n.a. |
| Top-Loading Standard-Size (1.6 ft³ or greater capacity) | $111 | 6.2 |
| Front-Loading Compact (less than 3.0 ft³ capacity) | 9 | 9.3 |
| Front-Loading Standard-Size (3.0 ft³ or greater capacity) | 46 | 1.4 |
| Semi-Automatic Clothes Washers | 284 | 0.5 |

* The entry ''n.a.'' means not applicable because the adopted standard is at the baseline level.

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

*B. Impact on Manufacturers* [8]

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the base year (2024) through the end of the analysis period, which is 30 years from the analyzed compliance date.[9] Using a real discount rate of 9.3 percent, DOE estimates that the INPV for manufacturers of RCWs in the case without amended standards is $1,707.9 million.[10] Under the adopted standards, which align with the efficiency levels recommended in the Joint Agreement (represented by TSL 2, hereafter, the ''Recommended TSL'') for RCWs, DOE estimates the change in INPV to range from −16.3 percent to −8.6 percent, which is −$278.3 million to −$146.9 million. In order to bring products into compliance with amended standards, it is estimated that industry will incur total conversion costs of $320.0 million.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in sections IV.J and V.B.2 of this document.

*C. National Benefits and Costs* [11]

DOE's analyses indicate that the adopted energy conservation standards for RCWs would save a significant amount of energy and water. Relative to the case without amended standards, the lifetime energy and water savings for RCWs purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2028–2057), amount to 0.67 quadrillion British thermal units (''Btu''), or quads of energy and 1.89 trillion gallons of water, respectively.[12] This represents a savings of 3.1 percent relative to the energy use of these products in the case without amended standards (referred to as the ''no-new-standards case'').

The cumulative net present value (''NPV'') of total consumer benefits of the standards for RCWs ranges from $3.28 billion (at a 7-percent discount rate) to $8.71 billion (at a 3-percent discount rate). This NPV expresses the

[7] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (*see* section IV.F.8 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (*see* section IV.F.9 of this document).

[8] All monetary values in this document are expressed in 2022 dollars and, where appropriate, are discounted to 2024 unless explicitly stated otherwise.

[9] DOE's analysis period extends 30-years from the compliance year. The analysis period ranges from 2024–2056 for the no-new-standards case and all TSLs, except for TSL 2 (the Recommended TSL). The analysis period for the Recommended TSL ranges from 2024–2057 due to the 2028 compliance year.

[10] The no-new-standards case INPV of $1,707.9 million reflects the sum of discounted free cash flows from 2024–2056 (from the reference year to 30 years after the 2027 compliance date) plus a discounted terminal value.

[11] All monetary values in this document are expressed in 2022 dollars and, where appropriate, are discounted to 2024 unless explicitly stated otherwise.

[12] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, *see* section IV.H.2 of this document.

estimated total value of future operating-cost savings minus the estimated increased product costs and installation costs for RCWs purchased during the period 2028–2057.

In addition, the adopted standards for RCWs are projected to yield significant environmental benefits. DOE estimates that the standards will result in cumulative emission reductions (over the same period as for energy savings) of 13.96 million metric tons (''Mt'')[13] of carbon dioxide (''$CO_2$''), 3.65 thousand tons of sulfur dioxide (''$SO_2$''), 27.74 thousand tons of nitrogen oxides (''$NO_X$''), 124.57 thousand tons of methane (''$CH_4$''), 0.12 thousand tons of nitrous oxide (''$N_2O$''), and 0.02 tons of mercury (''Hg'').[14] The estimated cumulative reduction in $CO_2$ emissions through 2030 amounts to 0.46 Mt, which is equivalent to the emissions resulting from the annual electricity use of more than 89 thousand homes.

DOE estimates the value of climate benefits from a reduction in greenhouse gases (''GHG'') using four different estimates of the social cost of $CO_2$ (''SC–$CO_2$''), the social cost of methane (''SC–$CH_4$''), and the social cost of nitrous oxide (''SC–$N_2O$''). Together these represent the social cost of GHG (''SC–GHG''). DOE used interim SC–GHG values (in terms of benefit per ton of GHG avoided) developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (''IWG'').[15] The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be $0.84 billion. DOE does not have a single central SC–GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

DOE estimated the monetary health benefits of $SO_2$ and $NO_X$ emissions reductions, using benefit per ton estimates from the Environmental Protection Agency,[16] as discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be $0.73 billion using a 7-percent discount rate, and $1.62 billion using a 3-percent discount rate.[17] DOE is currently only monetizing health benefits from changes in ambient fine particulate matter (''$PM_{2.5}$'') concentrations from two precursors ($SO_2$ and $NO_X$), and from changes in ambient ozone from one precursor (for $NO_X$), but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions.

Table I.3 summarizes the monetized benefits and costs expected to result from the amended standards for RCWs. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

TABLE I.3—SUMMARY OF MONETIZED BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

| | Billion $2022 |
|---|---|
| **3% discount rate** | |
| Consumer Operating Cost Savings | 17.92 |
| Climate Benefits * | 0.84 |
| Health Benefits ** | 1.62 |
| Total Benefits † | 20.38 |
| Consumer Incremental Product Costs ‡ | 9.20 |
| Net Monetized Benefits | 8.71 |
| Change in Producer Cash Flow (INPV ‡‡) | (0.28)–(0.15) |
| **7% discount rate** | |
| Consumer Operating Cost Savings | 8.65 |
| Climate Benefits * (3% discount rate) | 0.84 |
| Health Benefits ** | 0.73 |
| Total Benefits † | 10.22 |
| Consumer Incremental Product Costs ‡ | 5.37 |
| Net Monetized Benefits | 3.28 |
| Change in Producer Cash Flow (INPV ‡‡) | (0.28)–(0.15) |

**Note:** This table presents the costs and benefits associated with RCWs shipped in 2028–2057. These results include consumer, climate, and health benefits that accrue after 2057 from the products shipped in 2028–2057.

[13] A metric ton is equivalent to 1.1 short tons. Results for emissions other than $CO_2$ are presented in short tons.

[14] DOE calculated emissions reductions relative to the no-new-standards-case, which reflects key assumptions in the *Annual Energy Outlook 2023* (''*AEO2023*''). *AEO2023* reflects, to the extent possible, laws and regulations adopted through mid-November 2022, including the Inflation Reduction Act. *See* section IV.K of this document for further discussion of *AEO2023* assumptions that effect air pollutant emissions.

[15] To monetize the benefits of reducing GHG emissions this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG (''February 2021 SC–GHG TSD''). Available at *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[16] U.S. Environmental Protection Agency (''EPA''). Estimating the Benefit per Ton of Reducing Directly Emitted $PM_{2.5}$, $PM_{2.5}$ Precursors and Ozone Precursors from 21 Sectors. Available at *www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

[17] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

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

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

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but DOE does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

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

‡‡ Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. *See* sections IV.F and IV.H of this document. DOE's national impacts analysis includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the product and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (*i.e.,* manufacturer impact analysis, or "MIA"). *See* section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cash flow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. Change in INPV is calculated using the industry weighted average cost of capital value of 9.3 percent that is estimated in the MIA (*see* chapter 12 of the direct final rule technical support document ("TSD") for a complete description of the industry weighted average cost of capital). For RCWs, the change in INPV ranges from −$279 million to −$147 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. *See* section V.C of this document. DOE is presenting the range of impacts to the INPV under two manufacturer markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated change in INPV in the previous table, drawing on the MIA explained further in section IV.J of this document to provide additional context for assessing the estimated impacts of this direct final rule to society, including potential changes in production and consumption, which is consistent with Office of Management and Budget ("OMB") Circular A–4 and Executive Order ("E.O.") 12866. If DOE were to include the change in INPV into the net benefit calculation for this direct final rule, the net benefits would range from $8.43 billion to $8.56 billion at 3-percent discount rate and would range from $3.00 billion to $3.13 billion at 7-percent discount rate. Parentheses () indicate negative values.

The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of climate and health benefits of emission reductions, all annualized.[18]

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of RCWs shipped in 2028–2057. The benefits associated with reduced emissions achieved as a result of the adopted standards are also calculated based on the lifetime of RCWs shipped in 2028–2057. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of total benefits values are presented for all four SC–GHG discount rates in section V.B.6 of this document.

Table I.4 presents the total estimated monetized benefits and costs associated with the adopted standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced $NO_X$ and $SO_2$ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards adopted in this rule is $530.1 million per year in increased equipment costs, while the estimated annual benefits are $853.9 million in reduced equipment operating costs, $46.9 million in climate benefits, and $71.9 million in health benefits. In this case, the net benefit would amount to $442.5 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the standards is $513.1 million per year in increased equipment costs, while the estimated annual benefits are $998.9 million in reduced operating costs, $46.9 million in climate benefits, and $90.3 million in health benefits. In this case, the net benefit would amount to $623.0 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

[2028–2057]

| | Million 2022$/year | | |
|---|---|---|---|
| | Primary estimate | Low-net-benefits estimate | High-net-benefits estimate |
| **3% discount rate** | | | |
| Consumer Operating Cost Savings | 998.9 | 957.2 | 1,020.9 |
| Climate Benefits * | 46.9 | 45.2 | 47.5 |
| Health Benefits ** | 90.3 | 87.1 | 91.6 |
| Total Benefits † | 1,136.1 | 1,089.5 | 1,160.0 |
| Consumer Incremental Product Costs ‡ | 513.1 | 551.8 | 468.6 |

[18] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2024, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2024. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS FOR RESIDENTIAL CLOTHES WASHERS—Continued

[2028–2057]

| | Million 2022$/year | | |
|---|---|---|---|
| | Primary estimate | Low-net-benefits estimate | High-net-benefits estimate |
| Net Benefits | 623.0 | 537.7 | 691.4 |
| Change in Producer Cash Flow (INPV ‡‡) | (27)–(14) | (27)–(14) | (27)–(14) |
| **7% discount rate** | | | |
| Consumer Operating Cost Savings | 853.9 | 821.2 | 871.7 |
| Climate Benefits * (3% discount rate) | 46.9 | 45.2 | 47.5 |
| Health Benefits ** | 71.9 | 69.6 | 72.8 |
| Total Benefits † | 972.6 | 935.9 | 992.0 |
| Consumer Incremental Product Costs ‡ | 530.1 | 564.6 | 489.5 |
| Net Benefits | 442.5 | 371.3 | 502.5 |
| Change in Producer Cash Flow (INPV ‡‡) | (27)–(14) | (27)–(14) | (27)–(14) |

**Note:** This table presents the costs and benefits associated with RCWs shipped in 2028–2057. These results include consumer, climate, and health benefits that accrue after 2057 from the products shipped in 2028–2057. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2023* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

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

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

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

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

‡‡ Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. *See* sections IV.F and IV.H of this document. DOE's national impacts analysis includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the product and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (MIA). *See* section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cash flow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. The annualized change in INPV is calculated using the industry weighted average cost of capital value of 9.3 percent that is estimated in the MIA (*see* chapter 12 of the direct final rule TSD for a complete description of the industry weighted average cost of capital). For RCWs, the annualized change in INPV ranges from -$27 million to -$14 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. *See* section V.C of this document. DOE is presenting the range of impacts to the INPV under two manufacturer markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of this document to provide additional context for assessing the estimated impacts of this direct final rule to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the annualized change in INPV into the annualized net benefit calculation for this direct final rule, the annualized net benefits, using the primary estimate, would range from $596 million to $609 million at 3-percent discount rate and would range from $415 million to $428 million at 7-percent discount rate. Parentheses () indicate negative values.

DOE's analysis of the national impacts of the adopted standards is described in sections IV.H, IV.K, and IV.L of this document.

*D. Conclusion*

DOE has determined that the Joint Agreement was submitted jointly by interested persons that are fairly representative of relevant points of view, in accordance with 42 U.S.C. 6295(p)(4)(A). After considering the recommended standards and weighing the benefits and burdens, DOE has determined that the recommended standards are in accordance with 42 U.S.C. 6295(o), which contains the criteria for prescribing new or amended standards. Specifically, the Secretary of Energy (''Secretary'') has determined that the adoption of the recommended standards would result in the significant conservation of energy and water and is the maximum improvement in energy efficiency that is technologically feasible and economically justified. In determining whether the recommended standards are economically justified, the Secretary has determined that the benefits of the recommended standards exceed the burdens. The Secretary has further concluded that the recommended standards, when considering the benefits of energy and water savings, positive NPV of consumer benefits, emission reductions, the estimated monetary value of the emissions reductions, and positive average LCC savings, would yield benefits that outweigh the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

Using a 7-percent discount rate for consumer benefits and costs and $NO_X$ and $SO_2$ reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the standards for RCWs is $495.4 million per year in increased product costs, while the estimated annual benefits are $798.0 million in reduced product operating costs, $45.5 million in climate benefits, and $67.2 million in health benefits. The net benefit amounts to $415.2 million per year. DOE notes that the net benefits are substantial even in the absence of the climate benefits,[19] and DOE would adopt the same standards in the absence of such benefits.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[20] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings of 0.67 quads FFC, the equivalent of the primary annual energy use of 4.5 million homes. In addition, they are projected to reduce cumulative $CO_2$ emissions by 13.96 Mt. Based on these findings, DOE has determined the energy savings from the standard levels adopted in this direct final rule are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these conclusions is contained in the remainder of this document and the accompanying TSD.[21]

Under the authority provided by 42 U.S.C. 6295(p)(4), DOE is issuing this direct final rule amending the energy conservation standards for RCWs. Consistent with this authority, DOE is also simultaneously publishing elsewhere in this **Federal Register** a NOPR proposing standards that are identical to those contained in this direct final rule. *See* 42 U.S.C. 6295(p)(4)(A)(i).

## II. Introduction

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

### *A. Authority*

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include RCWs, the subject of this document. (42 U.S.C. 6292(a)(7)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(g)(2) and (g)(9)(A)), and directed DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4) and (g)(9)(B)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

In establishing energy conservation standards with both energy and water use performance standards for RCWs manufactured after January 1, 2011, Congress also directed DOE to ''determin[e] whether to amend'' those standards. (42 U.S.C. 6295(g)(9)(B)) Congress's directive, in section 6295(g)(9)(B), to consider whether ''to amend the standards in effect for RCWs'' refers to ''the standards'' established in the immediately preceding paragraph, 6295(g)(9)(A). There, Congress established energy conservation standards with *both* energy and water use performance standards for RCWs. Indeed, the energy and water use performance standards for RCWs (both top-loading and front-loading) are each contained within a single subparagraph. *See id.* Everything in section 6295(g)(9) suggests that Congress intended both of those twin standards to be evaluated when it came time, ''[n]ot later than December 13, 2011,'' to consider amending them. (*Id.* 6295(g)(9)(B)(i)) Accordingly, DOE understands its authority, under 6295(g)(9)(B), to include consideration of amended energy and water use performance standards for RCWs.

DOE similarly understands its authority under 42 U.S.C. 6295(m) to amend ''standards'' for covered products to include amending both the energy and water use performance standards for RCWs. Neither section 6295(g)(9)(B) nor section 6295(m) limit their application to ''energy use standards.'' Rather, they direct DOE to consider amending ''the standards,'' 42 U.S.C. 6295(g)(9)(B), or simply ''standards,'' *id.* 6295(m)(1)(B), which may include both energy use standards and water use standards.

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

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

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

[19] The information on climate benefits is provided in compliance with Executive Order 12866.

[20] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

[21] The TSD is available in the docket for this rulemaking at *www.regulations.gov/docket/EERE-2017-BT-STD-0014.*

product'' (42 U.S.C. 6291(1)), the definition of ''energy conservation standard'' (42 U.S.C. 6291(6)), the section governing the promulgation of test procedures (42 U.S.C. 6293), the criteria for prescribing new or amended energy conservation standards (42 U.S.C. 6295(o)), and elsewhere in EPCA.

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

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

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

It would similarly defeat congressional intent for a manufacturer to be permitted to distribute a covered product, *e.g.,* a clothes washer or dishwasher, that violates a water use performance standard because Congress added the standard to 42 U.S.C. 6295 without also updating the definition of energy conservation standard in 42 U.S.C. 6291(6). By prescribing directly, in 6295(g)(9), energy conservation standards for RCWs that include both energy and water use performance standards, Congress intended that energy conservation standards for RCWs include both energy use and water use.

DOE recognizes that some might argue that Congress's specific reference in section 6291(6) to water standards for showerheads, faucets, water closets, and urinals could ''create a negative implication'' that energy conservations standards for other covered products may not include water use standards. *See Marx* v. *Gen. Revenue Corp.,* 568 U.S. 371, 381 (2013). ''The force of any negative implication, however, depends on context.'' *Id.; see also NLRB* v. *SW Gen., Inc.,* 580 U.S. 288, 302 (2017) (''The *expressio unius* canon applies only when circumstances support a sensible inference that the term left out must have been meant to be excluded.'' (Alterations and quotation marks omitted)). In this context, the textual and structural cues discussed above show that Congress did not intend to exclude from the definition of energy conservation standard the water use performance standards that it specifically prescribed, and directed DOE to amend, in section 6295. To conclude otherwise would negate the plain text of 6295(g)(9). Furthermore, to the extent the definition of energy conservation standards in section 6291(6), which was last amended in the Energy Policy Act of 1992, could be read as in conflict with the energy and water use performance standards prescribed by Congress in EISA 2007, any such conflict should be resolved in favor of the more recently enacted statute. *See United States* v. *Estate of Romani,* 523 U.S. 517, 530–31 (1998) (''[A] specific policy embodied in a later Federal statute should control our construction of the priority statute, even though it had not been expressly amended.''). Accordingly, based on a complete reading of the statute, DOE has determined that products and standards added directly to 42 U.S.C. 6295 are appropriately considered ''covered products'' and ''energy conservation standards'' for the purposes of applying the various provisions in EPCA.

The energy conservation program under EPCA, consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of

EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for RCWs appear at 10 CFR part 430, subpart B, appendices J (''appendix J'') and J2 (''appendix J2'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including RCWs. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

Moreover, DOE may not prescribe a standard if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

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

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. A rule prescribing an energy conservation standard for a type (or class) of product must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE considers such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. (*Id.*) Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Additionally, pursuant to the amendments contained in the EISA 2007, Public Law 110–140, final rules for new or amended energy conservation standards promulgated after July 1, 2010, are required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for RCWs address standby mode and off mode energy use, as do the amended standards adopted in this direct final rule.

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

The direct final rule must be published simultaneously with a NOPR that proposes an energy or water conservation standard that is identical to the standard established in the direct final rule, and DOE must provide a public comment period of at least 110 days on the proposal. (42 U.S.C. 6295(p)(4)(A)–(B)) While DOE typically provides a comment period of 60 days on proposed standards, for a NOPR accompanying a direct final rule, DOE provides a comment period of the same length as the comment period on the direct final rule—*i.e.,* 110 days. Based on the comments received during this period, the direct final rule will either become effective, or DOE will withdraw it not later than 120 days after its issuance if: (1) one or more adverse comments is received, and (2) DOE determines that those comments, when viewed in light of the rulemaking record related to the direct final rule, may provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4)(C)) Receipt of an alternative joint recommendation may also trigger a DOE withdrawal of the direct final rule in the same manner. (*Id.*)

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

### *B. Background*

#### 1. Current Standards

In a direct final rule published on May 31, 2012 (''May 2012 Direct Final Rule''), DOE prescribed the current energy conservation standards for RCWs manufactured on or after January 1, 2018. 77 FR 32308.[22] These standards are set forth in DOE's regulations at 10 CFR 430.32(g)(4). These standards are consistent with a prior joint proposal submitted to DOE by interested parties representing manufacturers, energy and environmental advocates, and consumer groups.[23] The current standards are defined in terms of a minimum allowable integrated modified energy factor (''IMEF''), measured in cubic feet per kilowatt-hour per cycle (''ft$^3$/kWh/cycle''), and maximum allowable integrated water factor (''IWF''), measured in gallons per cycle per cubic foot (''gal/cycle/ft$^3$''), as measured according to appendix J2.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

| Product class | Minimum integrated modified energy factor *(ft$^3$/kWh/cycle)* | Maximum integrated water factor *(gal/cycle/ft$^3$)* |
|---|---|---|
| Top-Loading, Compact (less than 1.6 ft$^3$ capacity) | 1.15 | 12.0 |
| Top-Loading, Standard (1.6 ft$^3$ or greater capacity) | 1.57 | 6.5 |
| Front-Loading, Compact (less than 1.6 ft$^3$ capacity) | 1.13 | 8.3 |
| Front-Loading, Standard (1.6 ft$^3$ or greater capacity) | 1.84 | 4.7 |

For top-loading semi-automatic clothes washers, a design standard currently applies, which requires such products to have an unheated rinse water option. 10 CFR 430.32(g)(1).

#### 2. Current Test Procedure

As discussed, DOE's current energy conservation standards for RCWs are expressed in terms of IMEF and IWF as measured using appendix J2. (*See* 10 CFR 430.32(g)(4))

In a final rule published on June 1, 2022 (''June 2022 TP Final Rule''), DOE finalized a new test procedure (TP) at appendix J, which defines new energy efficiency metrics: an energy efficiency ratio (*i.e.,* EER) and a water efficiency ratio (*i.e.,* WER). 87 FR 33316, 33319. EER is defined as the quotient of the weighted-average load size divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of (1) the machine electrical energy consumption, (2) the hot water energy consumption, (3) the energy required for removal of the remaining moisture in the wash load, and (4) the combined low-power mode energy consumption. 10 CFR part 430 subpart B, appendix J, section 1. WER is defined as the quotient of the weighted-average load size divided by the total weighted per-cycle water consumption for all wash cycles in gallons. *Id.* For both EER and WER, a higher value indicates more efficient performance. The standards enacted by this direct final rule are expressed in terms of the EER and WER metrics as measured according to the newly established test procedure contained in appendix J.

#### 3. The Joint Agreement

On September 25, 2023, DOE received a joint statement (*i.e.,* the Joint Agreement) recommending standards

[22] DOE published a confirmation of effective date and compliance date for the direct final rule on October 1, 2012. 77 FR 59719.

[23] Available at *www.regulations.gov/document/EERE-2008-BT-STD-0019-0032.*

[24] The signatories to the Joint Agreement include AHAM, American Council for an Energy-Efficient Economy, Alliance for Water Efficiency, Appliance Standards Awareness Project, Consumer Federation of America, Consumer Reports, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company. Members of AHAM's Major Appliance Division that make the affected products include: Alliance Laundry Systems, LLC; Asko Appliances AB; Beko US Inc.; Brown Stove Works, Inc.; BSH Home Appliances Corporation; Danby Products, Ltd.; Electrolux Home Products, Inc.; Elicamex S.A. de C.V.; Faber; Fotile America; GE Appliances, a Haier Company; L'Atelier Paris Haute Design LLG; LG Electronics; Liebherr USA, Co.; Midea America Corp.; Miele, Inc.; Panasonic Appliances Refrigeration Systems (PAPRSA) Corporation of America; Perlick Corporation; Samsung Electronics America Inc.; Sharp Electronics Corporation; Smeg S.p.A; Sub-Zero Group, Inc.; The Middleby Corporation; U-Line Corporation; Viking Range, LLC; and Whirlpool Corporation.

for RCWs, that was submitted by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility.[24] In addition to the recommended standards for RCWs, the Joint Agreement also included separate recommendations for several other covered products.[25] And, while acknowledging that DOE may implement these recommendations in separate rulemakings, the Joint Agreement also stated that the recommendations were recommended as a complete package and each recommendation is contingent upon the other parts being implemented. DOE understands this to mean that the Joint Agreement is contingent upon DOE initiating rulemaking processes to adopt all of the recommended standards in the agreement. That is distinguished from an agreement where issuance of an amended energy conservation standard for a covered product is contingent on issuance of amended energy conservation standards for the other covered products. If the Joint Agreement were so construed, it would conflict with the anti-backsliding provision in 42 U.S.C. 6295(o)(1), because it would imply the possibility that, if DOE were unable to issue an amended standard for a certain product, it would have to withdraw a previously issued standard for one of the other products. The anti-backsliding provision, however, prevents DOE from withdrawing or amending an energy conservation standard to be less stringent. As a result, DOE will be proceeding with individual rulemakings that will evaluate each of the recommended standards separately under the applicable statutory criteria.

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

On February 14, 2024, following the Fifth Circuit's decision in *Louisiana* v. *United States Department of Energy,* DOE received a second joint statement from this same group of stakeholders in which the signatories reaffirmed the Joint Agreement, stating that the recommended standards represent the maximum levels of efficiency that are technologically feasible and economically justified.[26] In the letter, the signatories clarified that ''short-cycle'' product classes for RCWs, consumer clothes dryers, and dishwashers did not exist at the time that the signatories submitted their recommendations and it is their understanding that these classes also do not exist at the current time. Accordingly, the parties clarified that the Joint Agreement did not address short-cycle product classes. The signatories also stated that they did not anticipate that the recommended energy conservation standards in the Joint Agreement will negatively affect features or performance, including cycle time, for RCWs.

The Joint Agreement recommends amended standard levels for RCWs as presented in Table II.2. (Joint Agreement, No. 505 at p. 9) Details of the Joint Agreement recommendations for other products are provided in the Joint Agreement posted in the docket.[27]

TABLE II.2—RECOMMENDED AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

| Product class | Minimum energy efficiency ratio *(lb/kWh/cycle)* | Minimum water efficiency ratio *(lb/gal/cycle)* | Compliance date |
|---|---|---|---|
| Top-Loading, Ultra-Compact (less than 1.6 $ft^3$ capacity) | 3.79 | 0.29 | March 1, 2028. |
| Top-Loading, Standard-Size (1.6 $ft^3$ or greater capacity) | 4.27 | 0.57 | |
| Front-Loading, Compact (less than 1.6 $ft^3$ capacity) | 5.02 | 0.71 | |
| Front-Loading, Standard-Size (1.6 $ft^3$ or greater capacity) | 5.52 | 0.77 | |
| Semi-Automatic Clothes Washers | 2.12 | 0.27 | |

When the Joint Agreement was submitted, DOE was conducting a rulemaking to consider amending the standards for RCWs. As part of that process, DOE published a NOPR and announced a public meeting on March 3, 2023 (''March 2023 NOPR''), seeking comment on its proposed amended standards to inform its decision consistent with its obligations under EPCA and the Administrative Procedure Act (''APA''). 88 FR 13520. The March 2023 NOPR proposed amended standards defined in terms of the EER and WER metrics as measured according to appendix J. *Id.* at 88 FR 13522. The March 2023 NOPR also proposed to re-establish a product class, and establish new performance standards, for semi-automatic clothes washers. *Id.* at 88 FR 13541.[28] The March 2023 NOPR TSD is available at: *www.regulations.gov/document/EERE-2017-BT-STD-0014-0058.*

Although DOE is adopting the Joint Agreement as a direct final rule and no longer proceeding with its own rulemaking, DOE did consider relevant comments, data, and information obtained during that rulemaking process in determining whether the recommended standards from the Joint Agreement are in accordance with 42 U.S.C. 6295(o). Any discussion of comments, data, or information in this direct final rule that were obtained during DOE's prior rulemaking will include a parenthetical reference that

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

[26] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

[27] The Joint Agreement is available in the docket at *www.regulations.gov/comment/EERE–2017-BT-STD-0014-0505.*

[28] Top-loading semi-automatic clothes washers were subject to a design standard requiring an unheated rinse water option, as established by section 5(g) of the National Appliance Energy Conservation Act of 1987, Public Law 100–12.

provides the location of the item in the public record.[29]

## III. General Discussion

DOE is issuing this direct final rule after determining that the recommended standards submitted in the Joint Agreement meet the requirements in 42 U.S.C. 6295(p)(4). More specifically, DOE has determined that the recommended standards were submitted by interested persons that are fairly representative of relevant points of view and the recommended standards satisfy the criteria in 42 U.S.C. 6295(o).

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

Following the Fifth Circuit's decision, the signatories to the Joint Agreement submitted a second letter to DOE, which stated that Joint Recommendation did not ''address'' ''short-cycle product classes.'' [30] That is because, as the letter explained, such product classes ''did not exist'' at the time of the Joint Agreement.

In a recently issued request for information (''RFI''),[31] DOE is commencing a rulemaking process on remand from the Fifth Circuit (the ''Remand Proceeding'') by soliciting further information, relevant to the issues identified by the Fifth Circuit, regarding any short cycle product classes. In that Remand Proceeding, DOE will conduct the analysis required by 42 U.S.C. 6295(q)(1)(B) to determine whether any short-cycle products have a ''capacity or other performance-related feature [that] . . . justifies a higher or lower standard from that which applies (or will apply) to other products. . . .''

The current standards applicable to any products within the scope of that proceeding remain unchanged by this rule. *See* 10 CFR 430.32(g). Consistent with the Joint Parties' letter, short-cycle products are not subject to the amended standards adopted by this direct final rule (''DFR''). If the short-cycle products that DOE will consider in the Remand Proceeding were subject to these standards, that would have the practical effect of limiting the options available in the Remand Proceeding. That is because EPCA's anti-backsliding provision precludes DOE from prescribing any amended standard ''which increases the maximum allowable energy use'' of a covered product. 42 U.S.C. 6295(o)(1). Accordingly, were the products at issue in the Remand Proceeding also subject to the amended standards adopted here, the Department could only reaffirm the standards adopted in this direct final rule or adopt more stringent standards.

The Joint Agreement specifies the product classes for RCWs: semi-automatic; top-loading, ultra-compact; top-loading, standard-size; front-loading, compact; and front-loading, standard-size. Although these product classes were not further divided by cycle time, DOE understands them to exclude top-loading standard-size RCWs with an average cycle time of less than 30 minutes, and front-loading standard-size RCWs with an average cycle time of less than 45 minutes. As noted above, any such ''short-cycle'' RCWs will be considered in the Remand Proceeding; the current standards applicable to such ''short-cycle'' RCWs are unchanged by this rule.

Under the direct final rule authority at 42 U.S.C. 6295(p)(4), DOE evaluates whether recommended standards are in accordance with criteria contained in 42 U.S.C. 6295(o). DOE does not have the authority to revise recommended standards submitted under the direct final rule provision in EPCA. Therefore, DOE did not analyze any additional product classes beyond those product classes included in the Joint Agreement. That is, DOE has not separately considered or established amended standards applicable to any short-cycle product classes. In the event that DOE establishes short-cycle product classes, pursuant to the rulemaking on remand from the Fifth Circuit, DOE will necessarily consider what amended standards ought to apply to any such product classes and will do so in conformance with EPCA.

DOE notes that the data and analysis used to support this direct final rule includes information for standard-size, top-loading and front-loading clothes washers that is not distinguished by cycle time and is representative of all clothes washers currently on the market today. To the extent that any short cycle products were included in this data and analysis, DOE believes the amount of such data is negligible.

### *A. Scope of Coverage*

Before discussing how the Joint Agreement meets the requirements for issuing a direct final rule, it is important to clarify the scope of coverage for the recommended standards. EPCA does not define the term ''clothes washer.'' (*See* 42 U.S.C. 6291) DOE has defined a ''clothes washer'' as a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement, and must be one of the following classes: automatic clothes washers, semi-automatic clothes washers, and other clothes washers. 10 CFR 430.2. This direct final rule covers those consumer products that meet the definition of ''clothes washer,'' as codified at 10 CFR 430.2.

An ''automatic clothes washer'' is a class of clothes washer that has a control system which is capable of scheduling a preselected combination of operations, such as regulation of water temperature, regulation of the water fill level, and performance of wash, rinse, drain, and spin functions without the need for user intervention subsequent to the initiation of machine operation. Some models may require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting the external water faucet valves. *Id.*

A ''semi-automatic clothes washer'' is a class of clothes washer that is the same as an automatic clothes washer except that user intervention is required to regulate the water temperature by adjusting the external water faucet valves. *Id.* ''Other clothes washer'' means a class of clothes washer that is not an automatic or semi-automatic clothes washer. *Id.*

*See* section IV.A.1 of this document for discussion of the product classes analyzed in this direct final rule.

### *B. Fairly Representative of Relevant Points of View*

Under the direct final rule provision in EPCA, recommended energy

[29] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for residential clothes washers. (Docket No. EERE–2017–BT–STD–0014, which is maintained at *www.regulations.gov*) The references are arranged as follows: (commenter name, comment docket ID number at page number of that document).

[30] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

[31] See *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=68.*

conservation standards must be submitted by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by DOE. (42 U.S.C. 6295(p)(4)(A)) With respect to this requirement, DOE notes that the Joint Agreement included a trade association, the Association of Home Appliance Manufacturers (''AHAM''), which represents 12 manufacturers of RCWs.[32] The Joint Agreement also included environmental and energy-efficiency advocacy organizations, consumer advocacy organizations, and a gas and electric utility company. Additionally, DOE received a letter in support of the Joint Agreement from the States of New York, California, and Massachusetts (*see* comment No. 506). DOE also received a letter in support of the Joint Agreement from the gas and electric utility, SDG&E, and the electric utility, SCE (*see* comment No. 507). As a result, DOE has determined that the Joint Agreement was submitted by interested persons who are fairly representative of relevant points of view.

### *C. Technological Feasibility*

#### 1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of the Process Rule.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety and (4) unique-pathway proprietary technologies. Section 7(b)(2)–(5) of the Process Rule. Section IV.B of this document discusses the results of the screening analysis for RCWs, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the direct final rule TSD.

#### 2. Maximum Technologically Feasible Levels

When DOE proposes to adopt a new or amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(o)(2)(A)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for RCWs, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this document and in chapter 5 of the direct final rule TSD.

### *D. Energy Savings*

#### 1. Determination of Savings

For each TSL, DOE projected energy savings from application of the TSL to RCWs purchased in the 30-year period that begins in the year of compliance with the amended standards (2027–2056 for all TSLs except the Recommended TSL, *i.e.,* TSL 2, and 2028–2057 for TSL 2).[33] The savings are measured over the entire lifetime of products purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet models to estimate national energy savings (''NES'') and national water savings (''NWS'') from potential amended standards for RCWs. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[34] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this document.

#### 2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[35] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors.

As stated, the standard levels adopted in this direct final rule are projected to result in national energy savings of 0.67 quads, the equivalent of the primary annual energy use of 4.5 million homes. Based on the amount of FFC savings, the corresponding reduction in emissions,

[32] These companies include: Alliance Laundry Systems, LLC; Asko Appliances AB; Beko US Inc.; BSH Home Appliances Corporation; Danby Products, Ltd.; Electrolux Home Products, Inc.; GE Appliances, a Haier Company; LG Electronics; Midea America Corp.; Miele, Inc.; Samsung Electronics America Inc.; and Whirlpool Corporation.

[33] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[34] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011); as amended at 77 FR 49701 (Aug. 17, 2012).

[35] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

and the need to confront the global climate crisis, DOE has determined the energy savings from the standard levels adopted in this direct final rule are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

*E. Economic Justification*

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential new or amended standards on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and payback period (''PBP'') associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards adopted in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this direct final rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will consider DOJ's comments on the rule in determining whether to withdraw the direct final rule. DOE will also publish and respond to the DOJ's comments in the **Federal Register** in a separate document.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the adopted standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The adopted standards are likely to result in environmental

benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effect potential amended energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this document.

## IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to RCWs. Separate subsections address each component of DOE's analyses, including relevant comments DOE received during its separate rulemaking to amend the energy conservation standards for RCWs prior to receiving the Joint Agreement.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www.regulations.gov/docket/EERE-2017-BT-STD-0014.* Additionally, DOE used output from the latest version of the U.S. Energy Information Administration (''EIA'') *Annual Energy Outlook* (''*AEO*'') for the emissions and utility impact analyses.

### *A. Market and Technology Assessment*

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include (1) identification of product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of RCW. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the direct final rule TSD for further discussion of the market and technology assessment.

1. Product Classes

The Joint Agreement specifies the five product classes for RCWs. (Joint Agreement, No. 505 at p. 9) In this direct final rule, DOE is adopting the product classes from the Joint Agreement, as listed in Table IV.1.

TABLE IV.1—JOINT AGREEMENT RESIDENTIAL CLOTHES WASHER PRODUCT CLASSES

| Product class |
| --- |
| Automatic Clothes Washers: |
| Top-Loading Ultra-Compact (less than 1.6 $ft^3$ capacity). |
| Top-Loading Standard-Size (1.6 $ft^3$ or greater capacity). |
| Front-Loading Compact (less than 3.0 $ft^3$ capacity). |
| Front-Loading Standard-Size (3.0 $ft^3$ or greater capacity). |
| Semi-Automatic Clothes Washers. |

DOE further notes that product classes established through EPCA's direct final rule authority are not subject to the criteria specified at 42 U.S.C. 6295(q)(1) for establishing product classes. Nevertheless, in accordance with 42 U.S.C. 6295(o)(4)—which is applicable to direct final rules—DOE has concluded that the standards adopted in this direct final rule will not result in the unavailability in any covered product type (or class) of performance characteristics, features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States currently.[36] DOE's findings in this regard are discussed in detail in section V.B.4 of this document.

2. Technology Options

In this direct final rule, DOE considered the technology options listed in Table IV.2, consistent with the table of technology options presented in the March 2023 NOPR. See 88 FR 13520, 13541. DOE notes that it did not receive any comments regarding the technology options analyzed in the March 2023 NOPR.

In general, technology options for RCWs may reduce energy use alone, water use alone, or both energy and water use together. Because the energy used to heat any hot water consumed by the RCW is included as part of the EER metric, technologies that decrease hot water use also inherently decrease energy use. In Table IV.2, the technology options that reduce energy use alone are those indicated as methods for decreasing machine energy, drying energy, and standby energy. One

[36] EPCA specifies that DOE may not prescribe an amended or new standard if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4)).

technology option—spray rinse—reduces water use alone, listed among the methods for decreasing water use.[37] The technology options that reduce both energy and water use together are the remaining three options among the methods for decreasing water use, as well as those indicated as methods for reducing water heating energy.

Chapter 3 of the TSD for this direct final rule includes a detailed list and descriptions of all technology options identified for RCWs, including a discussion of how each technology option reduces energy use only, water use only, or both energy and water use together.

TABLE IV.2—TECHNOLOGY OPTIONS FOR RESIDENTIAL CLOTHES WASHERS

| |
|---|
| *Methods for Decreasing Water Use:* * |
| Adaptive water fill controls. |
| Hardware features enabling lower water levels. |
| Spray rinse. |
| Polymer bead cleaning. |
| *Methods for Decreasing Machine Energy:* |
| More efficient motor. |
| Direct drive motor. |
| *Methods for Decreasing Water Heating Energy:* |
| Wash temperature decrease. |
| Ozonated laundering. |
| *Methods for Decreasing Drying Energy:* |
| Hardware features enabling spin speed increase. |
| Spin time increase. |
| *Methods for Decreasing Standby Energy:* |
| Lower standby power components. |
| *Methods for Increasing Overall Efficiency:* |
| Capacity increase. |

* Most of the methods for decreasing water use are also methods for decreasing water heating energy, since less hot water is used.

*B. Screening Analysis*

DOE uses the following screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have a significant adverse impact on the utility of the product to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

The subsequent sections of this document discuss DOE's evaluation of each technology option against the screening analysis criteria and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria. The results of the screening analysis are discussed in greater detail in chapter 4 of the TSD for this direct final rule.

1. Screened-Out Technologies

DOE partially screened out capacity increase as a technology option. Specifically, DOE screened out any capacity increase that would require a corresponding increase in cabinet width larger than 27 inches, on the basis of the practicability to install and service RCWs with cabinet widths larger than 27 inches. DOE recognizes that products with a width greater than 27 inches may not be able to fit through many standards-size interior doorways.

DOE also screened out ozonated laundering and polymer bead cleaning on the basis of their practicability to install, manufacture, and service. Polymer bead cleaning is also a unique-pathway proprietary technology. DOE also screened out electrolytic disassociation of water on the basis that this technology could have impacts on product utility or availability. Chapter 3 of the TSD for this direct final rule includes a detailed description of each of these technology options.

DOE notes that the results of the screening analysis conducted for this direct final rule align with the screening analysis DOE conducted for the March 2023 NOPR. See 88 FR 13520, 13542–13453. In the March 2023 NOPR, DOE sought comment on whether any additional technology options should be screened out on the basis of any of the screening criteria. *Id.* at 88 FR 13543. In conducting the screening analysis for this direct final rule, DOE considered comments it had received in response to the March 2023 NOPR.

Fisher *et al.*[38] commented that the proposed standards are not technologically feasible because they would require manufacturers to overhaul many design features that have the potential to impact performance.[39] (Fisher *et al.,* No. 463 at pp. 2–3)

In response to Fisher *et al.*'s comment regarding technological feasibility due to potential impacts on certain aspects of clothes washer performance, DOE has concluded that the standards adopted in this direct final rule are technologically feasible as the technologies used to achieve the adopted standards are widely incorporated in commercial products already. Sections 6(b)(3)(i) and 7(b)(1) of the Process Rule. Furthermore, DOE has determined through analysis of test data that the standards adopted in this direct final rule will not lessen the utility or performance of the RCWs under consideration in this rulemaking, as discussed further in section V.B.4 of this document.

NEEA *et al.*[40] supported the inclusion in the analysis of larger wash baskets for top-loading models at higher efficiency levels, assuming common sense limitations to ensure similar installation locations. (NEEA *et al.,* No. 455 at p. 5)

Appliance Standards Awareness Project (''ASAP''), American Council for an Energy-Efficient Economy (''ACEEE''), and the New York State Energy Research and Development Authority (''NYSERDA'') commented that, contrary to concerns raised at DOE's public meeting, manufacturers

[37] Since nearly all RCWs use only cold water in the rinse portion of the cycle (*i.e.,* generally no hot water is used in the rinse portion of the cycle), spray rinse reduces water use without any corresponding reduction in energy use.

[38] ''Fisher *et al.*'' refers to a joint comment from Travis Fisher, Rachael Wilfong, and Kevin Dayaratna. Although these individual commenters are associated with The Heritage Foundation, the comment states that the views expressed in it should not be construed as representing any official position of The Heritage Foundation. (Fisher *et al.,* No. 463 at p. 1).

[39] DOE did not include Fisher *et al.*'s comments about spin-time increase and wash temperature decrease in top-loading standard-size RCWs at the proposed standard level because the adopted standard level in this direct final rule is different than what was proposed in the March 2023 NOPR.

[40] ''NEEA *et al.*'' refers to a joint comment from Northwest Energy Efficiency Alliance (''NEEA''), Commonwealth Edison Company, and Natural Resources Defense Council.

have increased top-loading RCW capacity from 3.8 ft³ to 5.3 ft³ without a meaningful increase in cabinet dimensions, which supports DOE screening out from the analysis any capacity increase that would increase cabinet widths. (ASAP, ACEEE, and NYSERDA, No. 458 at p. 4)

Samsung Electronics America, Inc. (''Samsung'') commented that the necessary technological advancements and solutions identified by DOE are readily available and accessible, which aligned with DOE's assessment of the technological feasibility of the standards proposed in the March 2023 NOPR. (Samsung, No. 461 at p. 4)

Strauch commented that direct-drive or brushless permanent magnet (''BPM'') motors will increase RCW cost and decrease reliability. (Strauch, No. 430 at p. 2)

DOE notes that the incremental cost of higher-efficiency design options is considered as part of the engineering analysis, from which DOE derives its cost efficiency ''curves.'' DOE's analysis specifically accounts for the increased cost of implementing direct drive and BPM motors to improve efficiency. (*See* section IV.C.4 of this document and chapter 5 of the direct final rule TSD) In response to Strauch's comment asserting that direct drive and BPM motors will decrease reliability, DOE does not have any data on the comparative reliability of RCWs that use various motor technologies. However, as discussed further in section IV.F.5 of this document, DOE's analysis does incorporate an assumption of increased repair costs for higher efficiency RCWs. DOE additionally notes that multiple RCW manufacturers offer warranties specifically for the direct drive motor component of the clothes washer ranging from 10-year [41] or 20-year [42] warranties to lifetime [43] warranties—indicative of manufacturers' expectation of the relatively high reliability of these components.

Whirlpool Corporation (''Whirlpool'') commented that DOE's proposal may create consumer accessibility issues for shorter-than-average consumers and consumers with disabilities or limited mobility, as they may struggle to reach the bottom of larger-capacity RCWs, which manufacturers will have to deepen to satisfy the standards proposed in the March 2023 NOPR, because the width of cabinets cannot be increased beyond standard doorway clearance. (Whirlpool, No. 462 at p. 9) Whirlpool commented that people of average and below-average height may not be able to access the bottom of deeper-basket top-loading RCWs without bringing their feet off the ground, which could create a fall hazard and possible soft-tissue compression of the chest and abdominal area. (*Id.* at p. 10) Whirlpool commented that some people could be forced to shift to a front-loading configuration, further increasing the ownership cost and eliminating any potential operating cost savings for many consumers. (*Id.*) Whirlpool asserted that larger-capacity top-loading RCWs would be ineligible for compliance with the Americans with Disabilities Act, due to strict requirements for height and depth of units. (*Id.*) Whirlpool also commented that there is a loss of utility as some consumers do not want or need to use larger load sizes as well as installation problems related to smaller doorways and basements. (Whirlpool, Public Transcript, No. 91 at pp. 82–83)

Mannino,[44] in referencing Whirlpool's comment during the public webinar that people have a hard time reaching the bottom of larger tubs,[45] added that many customers have a step stool next to their RCWs that they must stand on to get waist-high so they can bend over far enough to take their clothes out. (Mannino, Public Webinar Transcript, No. 91 at p. 84)

DOE notes that, as discussed in section V.B.4.b of this document, for this direct final rule DOE has re-evaluated its assumption from the March 2023 NOPR that capacity increase would be required to meet the standards proposed in the March 2023 NOPR for top-loading standard-size RCWs. For this direct final rule, DOE has conducted additional analysis that indicates that the amended standards can be met by all capacities currently available on the market without the need to implement the design option of increasing capacity. Therefore, manufacturers will continue to be able to offer the same range of capacities as are currently available on the market. In chapter 5 of the direct final rule TSD, DOE provides example design pathways that manufacturers could use to achieve higher efficiency without increasing capacity as a design option, such that DOE does not expect it will raise accessibility concerns.

Whirlpool further commented that DOE must work closely with the Consumer Product Safety Commission (''CPSC'') to understand their work and ensure that RCWs can safely withstand high spin speeds under spontaneous unbalanced load conditions, given that the standards proposed in the March 2023 NOPR would effectively mandate higher spin speeds. (*Id.* at p. 13) AHAM noted that although higher spin speeds are an available option to increase efficiency, UL formed a working group to address recalls that happened with vertical axis clothes washers and instantaneous out-of-balance events that happened in the field. AHAM commented that DOE must coordinate with the CPSC as it considers certain technology options because manufacturers will need to dedicate resources to ensure that increased spin speeds do not decrease product safety. (AHAM, No. 464 at p. 17)

Representatives Latta *et al.*[46] commented that increased spin speeds to meet amended standards could increase the potential for load imbalance issues. (Representatives Latta *et al.,* No. 456 at pp. 2–3)

DOE only considered spin increase as a design option insofar as it is already demonstrated in RCWs available on the market. The prevalence of high-speed spin features currently available on the market is indicative that RCWs can be designed to safely withstand such spin speeds. DOE notes that models at the Recommended TSL would also require faster spin speeds compared to the baseline, and the Recommended TSL is supported by the Joint Commenters, which includes manufacturers with commercially available products that meet or exceed these levels being safely used today by consumers. As previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement (of which Whirlpool is a member) in which the signatories reaffirmed the standards recommended in the Joint Agreement.[47] In particular, the letter states that the joint stakeholders do not anticipate the recommended standards will negatively affect features or performance.

AHAM commented that high-frequency components (*e.g.,* variable-speed motors) in higher-efficiency RCWs contribute to RCWs losing power

[41] See, for example, *www.maytag.com/services/limited-10-year-warranty.html.*

[42] See, for example, *www.samsung.com/latin_en/microsite/20-years-warranty/.*

[43] See, for example, *www.kenmore.com/warranty-information/#washers.*

[44] ''Mannino'' refers to comments made by Michael Mannino representing Appliance Service Systems during the public webinar held March 28, 2023.

[45] Whirlpool, Public Webinar Transcript, No. 91 at pp. 8283.

[46] ''Representatives Latta *et al.*'' refers to a joint comment from the following members of the U.S. House of Representatives: Robert E. Latta (OH), H. Morgan Griffith (VA), Russ Fulcher (ID), Rick W. Allen (GA), and Greg Pence (IN).

[47] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

due to so-called ''nuisance tripping'' of the electrical outlet. (AHAM, No. 464 at pp. 17–22) Specifically, AHAM explained that arc-fault circuit-interrupters (''AFCIs'') are devices required by the National Electrical Code and local building codes that trip and disable appliances when they detect certain electrical signals, including conducted emissions. (*Id.* at p. 17) AHAM commented that many AFCI manufacturers implement more stringent tripping thresholds than those recommended by the Federal Communications Commission or the National Electrical Manufacturers Association, and that the variability in AFCI tripping thresholds among AFCI manufacturers creates a major challenge for home appliance manufacturers in making products more efficient, noting that AFCI manufacturers are not required to publicize changes to the tripping thresholds or update the relevant industry standard with this information. (*Id.* at pp. 17–18) AHAM commented that DOE must not endanger manufacturers' ability to address this issue by pushing RCWs towards use of components that generate higher frequency conducted emissions, such as variable-speed motors. (*Id.* at p. 19) AHAM requested that DOE consider how updated standards will impact manufacturers' ability to meet the specifications required to prevent AFCI nuisance tripping, quantify this impact, and adjust its analysis accordingly. (*Id.*)

AHAM further commented on similar issues regarding ground-fault circuit interrupters (''GFCIs''), which are also devices required by the National Electrical Code that trip and disable appliances when they detect a ground-fault. (*Id.* at p. 20) AHAM commented that while appliance manufacturers can add filters to help avoid nuisance tripping, doing so increases energy consumption and does not solve the root cause, which AHAM states is highly variable GFCI tripping thresholds at high frequencies. (*Id.*) AHAM noted that the latest Underwriters Laboratory (''UL'') standard for GFCIs[48] does not define the electrical amperage tripping threshold for frequencies other than 60 Hertz. (*Id.* at p. 21) AHAM commented that UL has conducted a study that verified that components operating at high frequencies contribute to nuisance tripping, even when no electrical hazard exists. (*Id.* at p. 20) The UL study referenced by AHAM explored the root causes of reported interoperability incidents (*i.e.,* nuisance tripping) between certain GFCIs and home appliances, including RCWs. (*Id.* at pp. 59–68) The UL study referenced by AHAM noted that its results were used in a proposal to add a GFCI interoperability test to the UL standard for appliances that are plugged into GFCIs,[49] and that the results from the study are anticipated to facilitate the development of new performance requirements for UL 943 for frequencies other than 60 Hertz. (*Id.*)

AHAM requested that DOE use its expertise and resources to properly investigate what it characterizes as the technological incompatibility between high-frequency components and AFCIs/GFCIs and suggested that DOE adjust its analysis and quantify the impact from nuisance tripping. (*Id.* at p. 22)

In response to AHAM's concern regarding high-frequency components' impact on nuisance tripping, DOE emphasizes that it only considered design options that are already demonstrated in RCWs available on the market. DOE is aware of the potential for ''nuisance tripping'' of GFCI circuit protectors by high-frequency components such as variable-speed motors. However, DOE understands that nuisance tripping can generally be mitigated through the use of best practices for reducing leakage current, such as minimizing electrical cable lengths and ensuring that filtered and unfiltered cables are separated to whatever extent possible to reduce leakage current. Additionally, optimizing the variable-frequency controller power filter to reduce total leakage current to levels below the GFCI detection limits can further prevent GFCI tripping. To the extent that the use of additional electronic components is needed in conjunction with the use of design options with high-frequency components (such as variable-speed motors), and to the extent that such additional electronic components are provided in RCWs currently on the market that make use of such design options, DOE's teardown analysis captures any additional cost associated with such components.

DOE notes that despite any potential for nuisance tripping, a wide range of appliances on the market today, including clothes washers, implement variable-frequency drives in their designs. The inclusion of these variable-frequency drive designs in units on the market suggests that they do not have a significant impact on the consumer utility of these products. DOE notes that variable-speed motors have been used in RCWs for over a decade[50] and observes the widespread usage of variable-speed motors in RCWs currently on the market, as discussed further in chapter 5 of the direct final rule TSD. DOE is not aware of widespread issues with the currently available products that would warrant exclusion from consideration. Further, as indicated by the Joint Agreement of which AHAM was a signatory, products at the standard level being adopted in this direct final rule are widely available, have significant market share—as the adopted standard represents the ENERGY STAR level—and manufacturers have not indicated consumer dissatisfaction with the clothes washers commercially available today.

2. Remaining Technologies

Through a review of each technology, DOE concludes that all of the other identified technologies listed in Table IV.3 meet all screening criteria to be examined further as design options in DOE's direct final rule analysis. In summary, DOE did not screen out the following technology options:

TABLE IV.3—RETAINED DESIGN OPTIONS FOR RESIDENTIAL CLOTHES WASHERS

| |
|---|
| *Methods for Decreasing Water Use* * |
| Adaptive water fill controls. |
| Hardware features enabling lower water levels. |
| Spray rinse. |
| *Methods for Decreasing Machine Energy* |
| More efficient motor. |
| Direct drive motor. |
| *Methods for Decreasing Water Heating Energy* |
| Wash temperature decrease. |
| *Methods for Decreasing Drying Energy* |
| Hardware features enabling spin speed increase. |
| Spin time increase. |
| *Methods for Decreasing Standby Energy* |
| Lower standby power components. |
| *Methods for Increasing Overall Efficiency* |
| Capacity increase (without requiring a cabinet width increase). |

* Most of the methods for decreasing water use are also methods for decreasing water heating energy, since less hot water is used.

As discussed, technology options for RCWs may reduce energy use alone, water use alone, or both energy and water use together. The technology options that reduce energy use alone are those indicated as methods for decreasing machine energy, drying energy, and standby energy. Spray rinse, indicated as one of the methods for reducing water use, reduces water use alone. The technology options that reduce both energy and water use

[48] UL 943 is the standard for Ground-Fault Circuit-Interrupters.

[49] UL 101 is the standard for Leakage Current for Utilization Equipment.

[50] *See,* for example, discussion of variable-speed motors in chapter 5 of the TSD accompanying the energy conservation standards May 2012 Direct Final Rule. Available at *www.regulations.gov/document/EERE-2008-BT-STD-0019-0047.*

together are the remaining two options among the methods for decreasing water use, as well as those indicated as methods for reducing water heating energy.

DOE determined that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the direct final rule TSD.

*C. Engineering Analysis*

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of RCWs. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Metric Translations

As discussed in section II.B.2 of this document, the June 2022 TP Final Rule established a new test procedure, appendix J, which established new EER and WER efficiency metrics. 87 FR 33316. Appendix J also incorporates a number of revisions that affect the per-cycle energy and water use in comparison to results obtained under the current appendix J2 test procedure. See 10 CFR part 430, subpart B, appendix J. In the March 2023 NOPR, DOE identified efficiency levels initially in terms of the existing IMEF and IWF metrics and used a translation equation to convert the identified IMEF and IWF levels into corresponding EER and WER levels as the basis for the proposed amended standards. 88 FR 13520, 13545. The translation equation was based on testing performed by DOE on a representative sample of RCW models. *Id.* at 88 FR 13555–13559.

In this direct final rule, DOE used the same translation equations presented in the March 2023 NOPR to translate efficiency levels from the appendix J2 metrics (*i.e.,* IMEF and IWF) into the appendix J metrics (*i.e.,* EER and WER).

2. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to interpolate to define ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the ''max-tech'' level (particularly in cases where the ''max-tech'' level exceeds the maximum efficiency level currently available on the market).

For this direct final rule, DOE used an efficiency-level approach, supplemented with the design-option approach for certain ''gap fill'' efficiency levels. The efficiency-level approach is appropriate for RCWs given the availability of certification data to determine the market distribution of existing products and to identify efficiency level ''clusters'' that already exist on the market.

In conducting the efficiency analysis for the automatic clothes washer product classes, DOE first identified efficiency levels in terms of the current IMEF and IWF metrics defined in appendix J2 that are the most familiar to interested parties. DOE also initially determined the cost-efficiency relationships based on these metrics. Following that, DOE translated each efficiency level into its corresponding EER and WER values using the translation equations developed for each product class, as discussed previously in section IV.C.1 of this document.

For the semi-automatic product class, for which reliable certification data is unavailable, DOE tested a representative sample of units to appendix J and used that set of data points to determine the baseline and higher efficiency levels, as described further in section IV.C.2.c of this document.

The efficiency levels that DOE considered in the engineering analysis are attainable using technologies currently available on the market in RCWs. DOE used the results of the testing and teardown analyses to determine a representative set of technologies and design strategies that manufacturers use to achieve each higher efficiency level. This information provides interested parties with additional transparency of assumptions and results, and the ability to perform independent analyses for verification. Chapter 5 of the direct final rule TSD describes the methodology and results of the analysis used to derive the cost-efficiency relationships.

a. Baseline Efficiency Levels

For each product class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

In defining the baseline efficiency levels for this direct final rule, DOE considered comments it had received in response to the baseline efficiency levels proposed in the March 2023 NOPR.

In the March 2023 NOPR, DOE analyzed the baseline efficiency levels shown in Table IV.4 for each automatic product class. 88 FR 13520, 13546. The semi-automatic product class is discussed separately in section IV.C.2.c of this document.

TABLE IV.4—BASELINE EFFICIENCY LEVELS ANALYZED IN THE MARCH 2023 NOPR

| Product class | Description | Minimum IMEF (ft³/kWh/cycle) | Maximum IWF (gal/cycle/ft³) | Minimum EER (lb/kWh/cycle) | Minimum WER (lb/gal/cycle) |
| --- | --- | --- | --- | --- | --- |
| Top-Loading Ultra-Compact (<1.6 ft³). | Current DOE standard .......... | 1.15 | 12.0 | 3.79 | 0.29 |
| Top-Loading Standard-Size (≥1.6 ft³). | Current DOE standard .......... | 1.57 | 6.5 | 3.50 | 0.38 |
| Front-Loading Compact (<3.0 ft³). | Current DOE standard for front-loading standard-size (≥1.6 ft³) *. | 1.84 | 4.7 | 4.41 | 0.53 |
| Front-Loading Standard-Size (≥3.0 ft³). | ENERGY STAR v. 7.0 ** ...... | 2.38 | 3.7 | 5.02 | 0.64 |

* Although the current DOE standard for front-loading compact (<1.6 ft³) is 1.13 IMEF/8.3 IWF, no front-loading units are currently on the market with a capacity <1.6 ft³. The baseline efficiency level proposed in the March 2023 NOPR reflected the currently applicable standard for front-loading RCWs with capacities between 1.6 and 3.0 ft³.

** Although the current DOE standard for front-loading standard-size (≥1.6 ft³) is 1.84 IMEF/4.7 IWF, at the time of analysis, the least efficient front-loading standard-size RCW available on the market had an efficiency rating of 2.38 IMEF/3.7 IWF. DOE noted in the March 2023 NOPR that although DOE's Compliance Certification Database ("CCD") includes front-loading standard-size RCWs that are rated at the current standard level of 1.84 IMEF, it had determined through testing that these units perform significantly above their rated value at the current standard level. 88 FR 13520, 13545.

In the March 2023 NOPR, DOE discussed an alternate approach it was considering for defining the baseline levels. *Id.* at 88 FR 13561. The baseline efficiency levels defined in the March 2023 NOPR represented an IMEF-to-EER translation based on ''consistent spin'' performance [51] across all the cycle settings required for testing. DOE observed through testing, however, that some units on the market are designed such that only the cycle setting required for measuring the remaining moisture content (''RMC'') under appendix J2 (*i.e.,* the Cold/Cold cycle with maximum load size) is optimized [52] to achieve a favorable RMC value; on such units, the spin portion of the cycle is significantly faster or longer on the Cold/Cold setting with a maximum load size than for the other temperature settings or load sizes that are tested as part of the energy test. *Id.* at 88 FR 13556. As discussed in the March 2023 NOPR, comments submitted by a manufacturer suggested that, were DOE to amend standards based on appendix J, manufacturers that currently use ''Cold/Cold optimized spin'' would likely increase the spin speeds or spin durations across all temperature settings to match the spin behavior of the Cold/Cold temperature setting; *i.e.,* such units would be redesigned to exhibit ''consistent spin'' performance to provide the lowest possible (*i.e.,* best possible) RMC measurement under appendix J. *Id.* at 88 FR 13557. Under the alternate approach to defining the baseline efficiency levels discussed in the March 2023 NOPR, DOE would define the baseline efficiency levels based on a translation between appendix J2 and appendix J metrics without consideration of any changes to spin implementations as a result of adopting the new appendix J test procedure. *Id.* at 88 FR 13561. DOE referred to this in the March 2023 NOPR as the ''unadjusted'' baseline approach. *Id.* Using this approach, the baseline level presented in the March 2023 NOPR would instead be considered efficiency level (''EL'') 1.

DOE sought comment on the baseline efficiency levels analyzed in the March 2023 NOPR for each product class. *Id.* at 88 FR 13546. DOE also sought comment on whether it should consider defining an ''unadjusted'' baseline efficiency level based on a translation between appendix J2 and appendix J metrics without consideration of any changes to spin implementations as a result of adopting the appendix J test procedure. *Id.* at 88 FR 13561.

AHAM agreed with DOE's proposal to establish the baseline at the current DOE standard for top-loading standard-size RCWs and at the current standard for front-loading standard-size RCWs for the front-loading compact product class. (AHAM, No. 464 at pp. 16–17)

AHAM opposed DOE's proposal to establish the baseline for front-loading standard-size RCWs at the ENERGY STAR v. 7.0 level and instead recommended establishing the baseline at the current DOE standard. (*Id.* at p. 17) AHAM commented that even if DOE tested some products that meet higher levels of efficiency than their rated values, that may not universally be the case; and that even if it is, the DOE standard does continue to represent the baseline, as those products are designed in order to ensure they meet the current energy conservation standard. (*Id.*) AHAM further commented that DOE's approach does not match the intent of establishing the baseline, which is to identify the least-efficient product and set the baseline at that level. (*Id.*) As such, AHAM recommended that DOE establish the baseline at the current DOE standard for front-loading standard-size products. (*Id.*)

In response to AHAM's comment regarding the definition of the baseline level for front-loading standard-size RCWs, DOE is adopting AHAM's recommended approach for this direct final rule and defining the baseline level for the front-loading standard-size product class as the current DOE standard (corresponding to 1.84 IMEF/5.7 IWF).[53]

The California Investor-Owned Utilities (''CA IOUs'') [54] recommended that DOE use an ''unadjusted'' baseline efficiency level as presented in appendix 5A of the March 2023 NOPR TSD and update the market share distributions by including a ''consistent spin'' implementation technology option reflecting the existing market. (CA IOUs, No. 460 at pp. 3–4) The CA IOUs stated that they acknowledge the challenges of transitioning to the new test procedure's energy and water metrics, but maintain that assuming all

[51] In the March 2023 NOPR, DOE discussed its observation of various approaches used by manufacturers for the final spin portion of the wash cycle across all the cycle setting required for testing. 88 FR 13520, 13561. DOE used the term ''consistent spin'' to refer to units in which the characteristics of the spin cycle (*e.g.,* spin speed, spin time) are consistent across temperature selections. *Id.* at 88 FR 13556. On such units, RMC values measured on Warm/Cold, Hot/Cold, and Extra Hot/Cold cycles are substantially similar to the RMC value measured on the Cold/Cold cycle. *Id.*

[52] DOE used the term ''Cold/Cold optimized spin'' in the March 2023 NOPR to refer to units in which the spin cycle is optimized on the Cold/Cold setting with maximum load size. *Id.*

[53] In this direct final rule (''DFR''), DOE labels the EL corresponding to the current DOE standard as ''DFR Baseline'' and the EL corresponding to ENERGY STAR v. 7.0 as ''NOPR Baseline.''

[54] The ''CA IOUs'' includes Pacific Gas and Electric Company, SDG&E, and SCE.

units will adopt the ''consistent spin'' implementation method and that incorporating this assumption as the baseline for each product class does not represent real-world usage. (*Id.*) The CA IOUs recommended DOE use the least efficient tested EER in its test sample to define the baseline efficiency level and that DOE may apply consistent spin implementation and the associated cost and energy savings as a technology improvement at EL 1. (*Id.* at p. 4) The CA IOUs noted that this method would respect DOE's expectation that manufacturers adopt a consistent spin profile in response to appendix J. (*Id.*) The CA IOUs commented that this approach should also result in updates to the efficiency distribution for all product classes where DOE found units with a non-consistent spin implementation. (*Id.*) The CA IOUs stated the same market distribution calculations and adjustments should be implemented for top-loading standard-size, front-loading compact, and semi-automatic product classes since all were found to have products with non-consistent spin implementation in DOE's testing. (*Id.*) The CA IOUs further stated that these adjustments to DOE's analysis will accurately represent energy savings from this rulemaking by properly characterizing existing products and their variety of spin implementations. (*Id.* at pp. 4–5) The CA IOUs requested that, should DOE decline to adopt the proposed methodology, DOE clarify its position on the inclusion of the costs associated with the spin improvements. (*Id.* at p. 5) The CA IOUs requested that DOE ensure uniformity in its treatment of consistent spin profiles to account for both or none of the savings and costs. (*Id.*)

In response to the CA IOUs' recommendation to use the ''unadjusted'' baseline approach to define the baseline efficiency levels, DOE has further evaluated this approach and determined that DOE would not be able to reliably extrapolate its test results to the entire market to determine how market shares would need to be apportioned between an ''unadjusted'' baseline level and the baseline level defined in the March 2023 NOPR using the translation equations. More specifically, although DOE identified units in its test sample with ''Cold/Cold optimized'' spin characteristic, DOE was not able to determine a consistent pattern of implementation of this characteristic—either among manufacturers or product platforms—that could be used to extrapolate to the entire RCW market. For example, DOE's test results indicated that some individual manufacturers use different spin characteristics across their RCW model offerings (*e.g.,* using ''consistent spin'' on some models, while using ''Cold/Cold optimized spin'' on other model), and in some cases across different individual models within the same product family (*e.g.,* among front-loading standard-size models designed and built on the same underlying product platform). DOE recognizes that by not explicitly accounting for changes to spin implementation at the baseline level for some portion of the market, any incremental energy savings attributable to the change in test procedure to appendix J are not accounted for in DOE's assessment of the total energy savings resulting from the amended standards enacted by this direct final rule. Regarding DOE's accounting of any costs associated with such changes in spin implementation, DOE is not assigning any additional manufacturing cost to the baseline level with respect to this issue. The design changes incorporated into DOE's cost-efficiency curves at the amended standard level already include any necessary structural improvements that would potentially be required to convert a product from using a ''Cold/Cold optimized'' spin implementation to a ''consistent spin'' implementation (*e.g.,* more robust bearings or suspension to accommodate increased spin speeds).

b. Higher Efficiency Levels

To establish higher efficiency levels for the analysis, DOE reviewed data in DOE's CCD to evaluate the range of efficiencies for RCWs currently available on the market.[55]

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product in each product class. (42 U.S.C. 6295(p)(1)) DOE typically determines max-tech levels based on technologies that are either commercially available or have been demonstrated as working prototypes. If the max-tech design meets DOE's screening criteria, DOE considers the design in further analysis.

In defining the higher efficiency levels for this direct final rule, DOE considered comments it had received in response to the higher efficiency levels proposed in the March 2023 NOPR.

In the March 2023 NOPR, DOE tentatively determined that the max-tech efficiency level for each RCW product class corresponds to the maximum available level for each product class. 88 FR 13520, 13546. In other words, DOE did not define or analyze any efficiency levels higher than those currently available on the market. *Id.*

As noted, EPCA requires that any new or amended energy conservation standard be designed to achieve the maximum improvement in energy efficiency that is technologically feasible. (42 U.S.C. 6295(o)(2)(A)) For RCWs, a determination of technological feasibility must encompass not only an achievable reduction in energy and/or water consumption, but also the ability of the product to perform its intended function (*i.e.,* wash clothing) at reduced energy or water levels.[56] Attributes that are relevant to consumers encompass multiple aspects of RCW operation such as stain removal, solid particle removal, rinsing effectiveness, fabric gentleness, cycle time, noise, vibration, and others. Each of these attributes may be affected by energy and water efficiency levels, and achieving better performance in one attribute may require a tradeoff with one or more other attributes. DOE does not have the means to be able to determine whether a product that uses less water or energy than the maximum efficiency level available on the market would represent a viable (*i.e.,* technologically feasible) product that would satisfy consumer expectations regarding all the other aspects of RCW performance that are not measured by the DOE test procedure. As far as DOE is aware, the complexity of the interdependence among all these attributes precludes being able to use a computer model or other similar means to predict changes in these product attributes as a result of reduced energy and water levels. Rather, as far as DOE is aware, such determinations are made in an iterative fashion through extensive product testing as part of manufacturers' design processes.

DOE sought comment on the higher efficiency levels analyzed in the March 2023 NOPR for each product class. *Id.* at 88 FR 13549.

DOE did not receive any comments regarding the higher efficiency levels analyzed in the March 2023 NOPR.

At each higher efficiency level, both energy use and water use decrease through the implementation of

[55] DOE's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data.* Analysis conducted May 2023.

[56] As an extreme example, DOE could consider a hypothetical RCW that reduces its water consumption to near-zero, but such a product would not be viable for washing clothing, given current technology.

combinations of design options that individually either reduce energy use alone, reduce water use alone, or reduce both energy and water use together, as discussed previously in section IV.A.2 of this document. Chapter 5 of the direct final rule TSD provides a detailed discussion of the specific design changes that DOE believes manufacturers would typically use to meet each higher efficiency level considered in this engineering analysis, including a discussion of whether such design changes would reduce energy use only, water use only, or reduce both energy and water use together.

In this direct final rule, DOE analyzed the higher efficiency levels shown in Tables IV.5 through IV.8, consistent with the levels analyzed in the March 2023 NOPR.

TABLE IV.5—TOP-LOADING ULTRA-COMPACT (<1.6 FT³) EFFICIENCY LEVELS

| EL | Efficiency level description | IMEF (ft³/kWh/cycle) | IWF (gal/cycle/ft³) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) |
|---|---|---|---|---|---|
| Baseline | Current DOE standard | 1.15 | 12.0 | 3.79 | 0.29 |

TABLE IV.6—TOP-LOADING STANDARD-SIZE (≥1.6 FT³) EFFICIENCY LEVELS

| EL | Efficiency level description | IMEF (ft³/kWh/cycle) | IWF (gal/cycle/ft³) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) |
|---|---|---|---|---|---|
| Baseline | Current DOE standard | 1.57 | 6.5 | 3.50 | 0.38 |
| 1 | Gap fill | 1.82 | 5.4 | 3.89 | 0.47 |
| 2 | ENERGY STAR v. 8.1 | 2.06 | 4.3 | 4.27 | 0.57 |
| 3 | 2015–2017 Consortium for Energy Efficiency (“CEE”) Tier 1. | 2.38 | 3.7 | 4.78 | 0.63 |
| 4 | Maximum available (2016/2017 ENERGY STAR Most Efficient). | 2.76 | 3.2 | 5.37 | 0.67 |

TABLE IV.7—FRONT-LOADING COMPACT (<3.0 FT³) EFFICIENCY LEVELS

| EL | Efficiency level description | IMEF (ft³/kWh/cycle) | IWF (gal/cycle/ft³) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) |
|---|---|---|---|---|---|
| Baseline | Current DOE standard for front-loading standard-size (≥1.6 ft³). | 1.84 | 4.7 | 4.41 | 0.53 |
| 1 | ENERGY STAR v. 8.1 level for units ≤2.5 ft³. | 2.07 | 4.2 | 4.80 | 0.62 |
| 2 | 2023 ENERGY STAR Most Efficient for units ≤2.5 ft³. | 2.20 | 3.7 | 5.02 | 0.71 |
| 3 | Gap fill | 2.50 | 3.5 | 5.53 | 0.75 |
| 4 | Maximum available (ENERGY STAR v. 8.1 level for units >2.5 ft³). | 2.76 | 3.2 | 5.97 | 0.80 |

TABLE IV.8—FRONT-LOADING STANDARD-SIZE (≥3.0 FT³) EFFICIENCY LEVELS

| EL | Efficiency level description | IMEF (ft³/kWh/cycle) | IWF (gal/cycle/ft³) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) |
|---|---|---|---|---|---|
| DFR Baseline | Current DOE standard | 1.84 | 4.7 | 4.31 | 0.38 |
| NOPR Baseline. | ENERGY STAR v. 7.0 | 2.38 | 3.7 | 5.02 | 0.64 |
| 1 | Gap fill | 2.60 | 3.5 | 5.31 | 0.69 |
| 2 | ENERGY STAR v. 8.1 | 2.76 | 3.2 | 5.52 | 0.77 |
| 3 | 2023 ENERGY STAR Most Efficient | 2.92 | 3.2 | 5.73 | 0.77 |
| 4 | Maximum available | 3.10 | 2.9 | 5.97 | 0.85 |

c. Semi-Automatic

As discussed in section IV.A.1 of this document, this direct final rule re-establishes a separate product class for semi-automatic clothes washers and establishes performance-based standards for semi-automatic clothes washers. In considering the definition of efficiency levels for semi-automatic clothes washers for this direct final rule, DOE used the same methodology it had proposed in the March 2023 NOPR.

As discussed in the March 2023 NOPR, given the lack of specificity in appendix J2 regarding the testing of semi-automatic clothes washers, and the significant differences in testing between appendix J2 versus appendix J for semi-automatic clothes washers, DOE tentatively determined that it could not develop an accurate correlation between appendix J2 metrics (*i.e.,* IMEF and IWF) and appendix J metrics (*i.e.,* EER and WER) for semi-automatic clothes washers. *Id.* at 88 FR 13549. Therefore, DOE proposed to define efficiency levels in terms of EER and WER directly rather than first defining efficiency levels in terms of IMEF and IWF and then developing translation equations to translate those levels to EER and WER. *Id.* As discussed in the March 2023 NOPR, DOE determined efficiency levels for the semi-automatic clothes washer product class by testing a representative sample of models on the market and observing the range of EER and WER results. *Id.*

DOE sought comment on the efficiency levels analyzed in the March 2023 NOPR for semi-automatic RCWs. *Id.*

DOE did not receive any comments regarding the efficiency levels analyzed in the March 2023 NOPR for semi-automatic RCWs. In this direct final rule, DOE used the efficiency levels defined in the March 2023 NOPR for semi-automatic RCWs.

Table IV.9 shows the efficiency levels for the semi-automatic product class. See chapter 5 of the direct final rule TSD for more details.

TABLE IV.9—SEMI-AUTOMATIC EFFICIENCY LEVELS

| EL | Efficiency level description | EER *(lb/kWh/cycle)* | WER *(lb/gal/cycle)* |
|---|---|---|---|
| Baseline | Minimum available | 1.60 | 0.17 |
| 1 | Gap fill | 2.12 | 0.27 |
| 2 | Maximum available | 2.51 | 0.36 |

3. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, and the availability and timeliness of purchasing the product on the market. The cost approaches are summarized as follows:

• *Physical teardowns:* Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.

• *Catalog teardowns:* In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.

• *Price surveys:* If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the present case, DOE conducted the analysis using the physical teardown approach. For each product class, DOE tore down a representative sample of models spanning the entire range of efficiency levels, as well as multiple manufacturers within each product class. DOE aggregated the results so that the cost-efficiency relationship developed for each product class reflects DOE's assessment of a market-representative ''path'' to achieve each higher efficiency level. The resulting bill of materials provides the basis for the manufacturer production cost (''MPC'') estimates.

To account for manufacturers' profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (''SEC'') 10–K reports filed by publicly-traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes RCWs.[57] *See* chapter 12 of the TSD for this direct final rule for additional detail on the manufacturer markup.

4. Cost-Efficiency Results

In developing the baseline and incremental MPCs for each defined product class for this direct final rule, DOE considered comments it had received in response to the cost-efficiency results presented in the March 2023 NOPR.

As discussed in the March 2023 NOPR, in support of this rulemaking, DOE conducted teardowns on 47 RCW models, which covered the entire range of efficiency levels within each analyzed product class. *See* chapter 5 of the March 2023 NOPR TSD.

DOE sought comment in the March 2023 NOPR on the baseline and incremental MPCs developed for each product class. *Id.* at 88 FR 13553.

ASAP, ACEEE, and NYSERDA commented that they believe DOE is likely overestimating incremental cost increases, especially for top-loading standard-size RCWs. (ASAP, ACEEE, and NYSERDA, No. 458 at p. 2) ASAP, ACEEE, and NYSERDA stated that while DOE assumes in the engineering analysis that baseline top-loading RCWs have enameled baskets and that units meeting the standards proposed in the March 2023 NOPR would have stainless steel baskets, NEEA market research found that almost two-thirds of baseline top-loading standard-size RCW sales already include stainless steel baskets, including half of the least-expensive baseline models. (*Id.*) ASAP, ACEEE, and NYSERDA further commented that DOE has historically overestimated cost increases from energy efficiency standards, and they noted that a 2022 Spurlock & Fujita study[58] concluded that baseline RCW prices stayed flat while efficiency increased by 30 percent, demonstrating that efficiency standards for RCWs benefit all consumers and that low-income consumers were not priced out of the market. (*Id.* at pp. 2–3) ASAP, ACEEE, and NYSERDA commented that historical trends suggest that any incremental increases in first cost experienced by customers will likely be smaller than those estimated by DOE. (*Id.* at p. 3)

In response to the comment from ASAP, ACEEE, and NYSERDA regarding the prevalence of stainless steel wash baskets at the baseline level, in this direct final rule, DOE has updated its approach to calculating the baseline MPC for top-loading standard-size RCWs to reflect a market-weighted average of the use of stainless steel wash baskets versus enameled steel at the baseline level. DOE used information derived through confidential manufacturer interviews to determine the market weightings of each basket type. DOE has determined that using a market-weighted average provides a more accurate representation of the industry-average MPC at the baseline level for the top-loading standard-size product class.

In response to the comment from ASAP, ACEEE, and NYSERDA that DOE has historically overestimated cost

[57] U.S. Securities and Exchange Commission, Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Available at *www.sec.gov/edgar/search/* (last accessed June 30, 2023).

[58] C.A. Spurlock & K.S. Fujita, ''Equity implications of market structure and appliance energy efficiency regulation,'' Energy Policy, 2022, Vol. 165, 112943.

increases from amended standards, DOE notes that the MPCs developed as part of the engineering analysis reflect observations of technologies as they are implemented on the market at the time of the analysis. As discussed further in chapter 5 of the direct final rule TSD, DOE takes into account that certain component-level costs would generally be lower on a per-unit basis due to higher production volumes that would result if DOE were to establish standards at a particular higher efficiency level.[59] To the extent that the actual cost of an improved baseline product brought to market in compliance with amended standards is less than the cost predicted by DOE in a prior rulemaking analysis, DOE notes that product cost reductions may not necessarily be related to efficiency redesigns even if implemented at the same time as efficiency-related design changes. For example, throughout the home appliance industry, DOE has observed a trend of greater use of plastic components to replace components that were previously made of metal or other more expensive materials. Manufacturers may also implement product redesigns that require fewer parts, therefore resulting in shorter assembly times and lower manual labor costs. DOE further notes that manufacturers may choose to implement such non-efficiency design changes at the same time as efficiency-related design changes in order to minimize the number of product redesigns. DOE often does not have insights into future non-efficiency related design changes being considered by manufacturers. Furthermore, trends that may have occurred in the past that resulted in cost reductions (*e.g.,* increased used of plastic components) would be expected to reach a ''saturation point'' and would therefore not be expected to continue indefinitely into the future. For these reasons, it would be inappropriately speculative, and therefore unjustifiable, for DOE to assume that non-efficiency related product cost reductions realized in the past would continue to be realized in the future in conjunction with future product redesigns prompted by amended efficiency standards.

AHAM commented that the changes to load sizes in new appendix J will increase the inherent RMC in the loads, while the standards proposed in the March 2023 NOPR require RMC to be extremely low at the end of the cycle. (AHAM, No. 464 at p. 2) AHAM stated that in order to meet the standards proposed in the March 2023 NOPR using the updated test procedure, manufacturers will need to increase spin speed and high spin speed plateau times. (*Id.*) AHAM further commented that the changes to spin speed and time would drive motor, structure, and possible other design changes (such as larger counterweights in front-loading RCWs). (*Id.*) AHAM further commented that the changes to tested temperature settings in new appendix J will force cycle redesigns such as lowering the warmest warm temperature and other changes that add significant cost to maintain current levels of performance. (*Id.*)

In response to AHAM's comment regarding the impacts of the new test procedure on tested values, DOE notes that the translation equations developed to translate IMEF efficiency levels into EER efficiency levels inherently account for all the changes between the two test procedures, including the change in load size and the tested temperature settings.[60] The application of these translation equations is such that the translated EER level corresponding to a given IMEF level represents the same level of stringency as the IMEF level, even though the underlying RMC value may be different and/or the tested temperature selections may be weighted differently. As such, DOE has determined that the estimated costs associated with achieving higher efficiency levels in terms of IMEF and IWF are representative of the costs associated with achieving the corresponding EER and WER levels as determined through application of the translation equations.

Finally, for this direct final rule, DOE updated the underlying raw material prices used in its cost model to reflect current raw material prices, which resulted in slight changes to the MPC values in comparison to the values used in the March 2023 NOPR. Table IV.10 presents the baseline MPCs for each product class as determined for this direct final rule. Tables IV.11 through IV.14 provide the incremental MPCs for each higher efficiency level for each product class as determined for this direct final rule. As discussed, no automatic top-loading compact RCWs are available on the market that exceed the baseline level. Accordingly, DOE did not consider any higher efficiency levels for this product class.

TABLE IV.10—BASELINE MANUFACTURER PRODUCTION COSTS

[2022$]

| Product class | Manufacturer production cost |
|---|---|
| Top-Loading Ultra-Compact (less than 1.6 $ft^3$ capacity) | $340.99 |
| Top-Loading Standard-Size (1.6 $ft^3$ or greater capacity) | 263.56 |
| Front-Loading Compact (less than 3.0 $ft^3$ capacity) | 307.19 |
| Front-Loading Standard-Size (3.0 $ft^3$ or greater capacity) | 438.11 |
| Semi-Automatic | 177.77 |

TABLE IV.11—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR TOP-LOADING STANDARD-SIZE (≥1.6 $FT^3$) PRODUCT CLASS

[2022$]

| EL | IMEF | IWF | EER | WER | Incremental cost |
|---|---|---|---|---|---|
| Baseline | 1.57 | 6.5 | 3.50 | 0.38 | |
| 1 | 1.82 | 5.4 | 3.89 | 0.47 | $49.55 |
| 2 | 2.06 | 4.3 | 4.27 | 0.57 | 91.83 |

[59] In general, higher product volumes result in lower per-unit costs for each part.

[60] As discussed in section IV.C.1 of this document, these translation equations were developed by testing a representative sample of RCWs to both the appendix J test procedure and the appendix J2 test procedure, and correlating the results.

TABLE IV.11—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR TOP-LOADING STANDARD-SIZE (≥1.6 FT$^3$) PRODUCT CLASS—Continued

[2022$]

| EL | IMEF | IWF | EER | WER | Incremental cost |
|---|---|---|---|---|---|
| 3 | 2.38 | 3.7 | 4.78 | 0.63 | 99.90 |
| 4 | 2.76 | 3.2 | 5.37 | 0.67 | 103.41 |

TABLE IV.12—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR FRONT-LOADING COMPACT (<3.0 FT$^3$) PRODUCT CLASS

[2022$]

| EL | IMEF | IWF | EER | WER | Incremental cost |
|---|---|---|---|---|---|
| Baseline | 1.84 | 4.7 | 4.41 | 0.53 | |
| 1 | 2.07 | 4.2 | 4.80 | 0.62 | $33.27 |
| 2 | 2.20 | 3.7 | 5.02 | 0.71 | 57.03 |
| 3 | 2.50 | 3.5 | 5.53 | 0.75 | 79.67 |
| 4 | 2.76 | 3.2 | 5.97 | 0.80 | 81.29 |

TABLE IV.13—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR FRONT-LOADING STANDARD-SIZE (≥3.0 FT$^3$) PRODUCT CLASS

[2022$]

| EL | IMEF | IWF | EER | WER | Incremental cost |
|---|---|---|---|---|---|
| DFR Baseline | 1.84 | 4.7 | 4.31 | 0.38 | |
| NOPR Baseline | 2.38 | 3.7 | 5.02 | 0.64 | $0.00 |
| 1 | 2.60 | 3.5 | 5.31 | 0.69 | 24.33 |
| 2 | 2.76 | 3.2 | 5.52 | 0.77 | 42.03 |
| 3 | 2.92 | 3.2 | 5.73 | 0.77 | 48.86 |
| 4 | 3.10 | 2.9 | 5.97 | 0.85 | 58.27 |

TABLE IV.14—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR SEMI-AUTOMATIC PRODUCT CLASS

[2022$]

| EL | EER | WER | Incremental cost |
|---|---|---|---|
| Baseline | 1.60 | 0.17 | |
| 1 | 2.12 | 0.27 | $8.35 |
| 2 | 2.51 | 0.36 | 13.58 |

*D. Markups Analysis*

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

For RCWs, the main parties in the post-manufacturer distribution chain are retailers/distributors and consumers.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[61]

For the March 2023 NOPR, DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.[62]

For this direct final rule, DOE considered comments it had received regarding the markups analysis conducted for the March 2023 NOPR. The approach for determining markups in this direct final rule was the same approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, AHAM commented that it, along with AHRI and other stakeholders, disputes DOE's distinction between markups from manufacturers to end customers for the base case and those for costs added to meet proposed standards. (AHAM, No. 464 at p. 34) AHAM presented data, including quotes from retailers, which AHAM believes contradicts DOE's process and theory, arguing that it lacks empirical evidence and relies on discredited theories. (*Id.*) AHAM commented that DOE's theory is inconsistent with the data DOE presents, as the price of RCWs has decreased over time while retailer gross

[61] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[62] U.S. Census Bureau, *Annual Wholesale Trade Survey.* 2017. Available at *www.census.gov/awts* (last accessed May 2, 2023).

margins have remained constant. (*Id.*) AHAM asserted that DOE cannot disregard data that contradicts its analysis and must take these comments into account to avoid arbitrary and capricious rulemaking. (*Id.* at p. 35)

DOE's incremental markup approach assumes that an increase in operating profits, which is implied by keeping a fixed markup when the product price goes up, is unlikely to be viable over time in a reasonably competitive market like household appliance retailers. The Herfindahl-Hirschman Index (''HHI'') reported by the 2017 Economic Census indicates that the household appliance stores sector (North American Industry Classification System (''NAICS'') 443141) is a competitive marketplace.[63] DOE recognizes that actors in the distribution chains are likely to seek to maintain the same markup on appliances in response to changes in manufacturer selling prices after an amendment to energy conservation standards. However, DOE believes that retail pricing is likely to adjust over time as those actors are forced to readjust their markups to reach a medium-term equilibrium in which per-unit profit is relatively unchanged before and after standards are implemented.

DOE acknowledges that markup practices in response to amended standards are complex and varying with business conditions. However, DOE's analysis necessarily only considers changes in appliance offerings that occur in response to amended standards and isolates the effect of amended standards from other factors. Obtaining data on markup practices in the situation described above is very challenging. Hence, DOE continues to maintain that its assumption that standards do not facilitate a sustainable increase in profitability is reasonable.

Chapter 6 of the direct final rule TSD provides details on DOE's development of markups for RCWs.

*E. Energy and Water Use Analysis*

The purpose of the energy and water use analysis is to determine the annual energy and water consumption of RCWs at different efficiencies in representative U.S. single-family homes, multi-family residences, and mobile homes, and to assess the energy savings potential of increased RCW efficiency. The energy and water use analysis estimates the range of energy and water use of RCWs in the field (*i.e.,* as they are actually used by consumers). The energy and water use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy and water savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

To establish a reasonable range of energy and water consumption in the field for RCWs, DOE primarily used data from 2020 Residential Energy Conservation Survey (''RECS'').[64] RECS is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units along with data on energy-related characteristics of the housing units and occupants. The 2020 RECS collected data on 18,496 housing units and was constructed by EIA to be a national representation of the household population in the United States. DOE's assumptions for establishing an RCW sample included the following considerations:

- The household had a clothes washer.
- Clothes washer use was greater than zero.

DOE divided the sample of households into five sub-samples to characterize the product classes being analyzed: top-loading ultra-compact RCWs; automatic, top-loading standard-size RCWs; automatic, front-loading compact RCWs; automatic, front-loading standard-size RCWs; and semi-automatic RCWs. For ultra-compact, compact, and semi-automatic clothes washers, DOE developed a sub-sample consisting of households from multi-family buildings, manufactured homes, and single-family homes with less than 1,000 square feet and no garage or basement, since DOE reasoned that such products are most likely to be found in these housing types.

The energy and water use analysis requires DOE to establish a range of total annual usage or annual number of cycles in order to estimate annual energy and water consumption by a clothes washer unit. DOE unutilized data from the 2020 RECS, which provided information on the number of laundry loads washed (clothes washer cycles) per week for sample households. The average annual energy and water consumption were then calculated, reflecting an average annual weighted usage of 210 cycles per year (206 cycles for top-loading RCWs and 217 cycles for front-loading RCWs).

For each sample household, DOE estimated the field-based annual energy and water use of the clothes washer by multiplying the annual number of clothes washer cycles for each household by the per-cycle energy and water use values established by the engineering analysis (using the DOE test procedure) for each considered efficiency level. Per-cycle clothes washer energy use is calculated in the test procedure as the sum of per-cycle machine energy use associated with the clothes washer (including the energy used to heat water and remove moisture from clothing),[65] and combined low-power-mode energy use.

For this direct final rule, DOE considered comments it had received regarding the energy and water use analysis conducted for the March 2023 NOPR. The approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, Whirlpool commented that DOE appears to double-count the savings for drying energy between the RCW standard analysis and the consumer clothes dryer standard analysis. (Whirlpool, No. 462 at p. 14) Whirlpool noted that DOE's RCW analysis assumed an RMC of 37 percent and 33 percent were needed to meet the standard levels proposed in the March 2023 NOPR (for top-loading and front-loading, respectively), whereas the clothes dryer test procedure at 10 CFR part 430, subpart B, appendix D2 (''appendix D2''), assumes an initial moisture content of 57.5 percent. (*Id.*) Whirlpool commented that this effectively accounts for a significantly higher moisture content of the clothes going into the clothes dryer than would be allowed for coming out of the clothes washer under the standards for RCWs proposed in the March 2023 NOPR. (*Id.*) Whirlpool suggested that DOE choose which appliance (clothes washers or clothes dryers) should include the reduction of RMC in its analysis, and that the analysis for the other standard should not also account for it. (*Id.*) Whirlpool commented that the current approach may hurt consumers who may not get the full savings they are expecting and significantly impact the economic analysis, selection of efficiency levels, and whether the level is economically justified. (*Id.*)

AHAM commented that DOE is overestimating the expected energy savings between clothes washers and

[63] 2017 Economic Census, Selected sectors: Concentration of largest firms for the U.S. Available at *www.census.gov/data/tables/2017/econ/economic-census/naics-sector-44-45.html.*

[64] U.S. Department of Energy—Energy Information Administration, Residential Energy Consumption Survey: 2020 Public Use Data Files, 2020. Available at *www.eia.gov/consumption/residential/data/2020/* (last accessed June 28, 2023).

[65] The per-cycle energy consumption associated with a given clothes washer has three components: energy used for heating water, operating the machine, and drying the clothes.

clothes dryers by assuming an RMC at the proposed standard of 37 percent for top-loading standard-size RCWs and of 33 percent for front-loading standard-size RCWs, which is lower than the initial moisture content of 57.5 percent in the clothes dryers test procedure. (AHAM, No. 464 at p. 23) AHAM commented that DOE is therefore assuming that the drying cycle requires more energy than is needed. (*Id.*) AHAM commented that these assumptions overestimate the savings that many consumers will experience when purchasing a laundry pair and that DOE should better estimate the savings by considering the pair purchase rate and usage of older clothes washers with possibly higher RMC values after the standard goes into effect. (*Id.*)

To the greatest extent possible, DOE avoids double-counting between the RCW standards analysis and the consumer clothes dryer standards analysis, as explained by the following. Amended RCW standards result in less total moisture needing to be removed from the clothing in a clothes dryer, whereas amended consumer clothes dryer standards result in a less energy-intensive process for removing that moisture. As such, the drying energy savings associated with amended RCW standards represent savings experienced through shorter drying times (due to the clothing being ''less wet'' after the completion of the wash cycle due to faster spin speeds), whereas the drying energy savings associated with amended consumer clothes dryer standards represents savings attributable to improvements to the inherent efficiency of the drying process itself. Pertaining to this RCW standards analysis, the clothes dryer energy savings associated with reduced RMC values—essentially resulting in shorter drying cycles—would be experienced by consumers regardless of whether a consumer purchases a new clothes dryer alongside a new RCW or continues to use their existing clothes dryer.

For RCWs, the embedded assumptions and usage factors defined in the test procedure for calculating drying energy are intended to reflect the characteristics of the current installed stock of consumer clothes dryers on a nationally representative basis. Similarly, for clothes dryers, the assumed initial moisture content value defined in the clothes dryer test procedure is intended to reflect the characteristics of the current installed stock of RCWs on a nationally representative basis. DOE regularly reevaluates these assumptions and usage factors as part of its test procedure rulemakings—and adjusts each value when warranted—to ensure that each respective test procedure produces test results that are nationally representative as the markets for these products evolve over time, in part due to amended energy conservation standards.

Alliance for Water Efficiency (''AWE'') recommended that DOE evaluate energy embedded in the water that will be saved as a result of the proposed standard. (AWE, No. 444 at p. 4) AWE stated that it has developed a tool for evaluating the water savings, costs, and benefits of urban water conservation programs and for projecting future demands that provides a range of estimates for embedded water and wastewater energy. (*Id.*) AWE recommended that DOE use the estimates from AWE's conservation tracking tool for calculating the energy embedded in the water and noted that DOE could also adjust this based on the assumptions it is currently using for private wells. (*Id.*)

DOE has previously determined that EPCA does not direct DOE to consider the energy used for water treatment and delivery. In the May 2012 Direct Final Rule, DOE noted that EPCA directs DOE to consider ''the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard.'' 77 FR 32308, 32346 (quoting 42 U.S.C. 6295(o)(2)(B)(i)(III)). In the May 2012 Direct Final Rule, DOE interpreted ''directly from the imposition of the standard'' to include energy used in the generation, transmission, and distribution of fuels used by appliances. Unlike the energy used for water treatment and delivery, both DOE's current accounting of primary energy savings and the full-fuel-cycle measure are directly linked to the energy used by appliances. *Id.*

ASAP, ACEEE, and NYSERDA noted that data found in the 2016 Residential End Uses of Water (''REUW'') report suggest that DOE may be significantly underestimating the average number of RCW loads per year. (ASAP, ACEEE, and NYSERDA, No. 458 at p. 3)

AWE recommended that DOE use actual data from 2016 REUW or other actual end-use data for its assumptions about RCW loads per year. (AWE, No. 444 at p. 3) AWE stated that there are often large gaps between consumer survey responses and actual behavior when it comes to fixture and appliance uses, and therefore data from reports like 2016 REUW or other sources, such as smart metering companies, could be more reliable than the 2015 RECS. (*Id.*) AWE recommended that DOE consider using actual customer end use beyond the EIA's survey data and, in the absence of data from additional sources, DOE should use 285 loads per year based on actual data from 2016 REUW, instead of 234 load per year. (*Id.*)

DOE has reviewed the 2016 REUW report, published by the Water Research Foundation, which analyzed RCW end-use data from detailed log data from 737 households. However, DOE noticed a significant disparity between the annual clothes washer usage reported in this report compared to the latest data from the 2020 RECS. Specifically, as noted by AWE, the 2016 REUW shows an average of 285 loads per year compared to an average of 210 cycles per year determined based on the 2020 RECS. DOE acknowledges that RECS is based on household reported frequency of average clothes washer usage per week rather than on contemporaneous logs taken by households, which could be more reliable on an individual basis. However, unlike the 2016 REUW[66] or any other field metered consumer end-use data that DOE is aware of, the 2020 RECS consists of a nationally representative sample of housing units including more than 10,000 households that report RCW usage.

Although stakeholders suggested that the cycles per year determined based on RECS may be underestimated, the 2020 RECS is the most comprehensive and most current data source available on this topic, and, as such, DOE is adopting the lower usage reported in the latest RECS. This approach results in a conservative estimate for energy and water savings.

Representatives Latta *et al.* commented that DOE's energy savings analysis assumes consumers will wash full loads because they have larger RCWs, and asserted that DOE offers little evidence to suggest consumers will modify their behavior by washing larger loads to achieve the full efficiency benefits of owning large-capacity clothes washers. (Representatives Latta *et al.,* No. 456 at p. 2)

Whirlpool commented that the assumption made by DOE that larger RCWs lead to energy savings is incorrect. (Whirlpool, No. 462 at pp. 8–9) Whirlpool asserted that many consumers do laundry based on the size of their laundry basket or on a regular schedule, disregarding the RCW's available capacity; despite load sensing technology, larger RCWs may be less efficient for the same load size compared to smaller ones; some consumers may not fill the wash basket completely, compromising the benefits

[66] The 2016 REUW only covered the following States: Colorado, Arizona, Georgia, Texas, Washington, and Florida.

of larger capacity RCWs for better cleaning. (*Id.*)

ASAP, ACEEE, and NYSERDA noted that DOE's per-cycle energy and water use analysis is based on the test procedure, which assumes that load sizes are larger for larger machines. (ASAP, ACEEE, and NYSERDA, No. 458 at p. 3) ASAP, ACEEE, and NYSERDA stated that by assuming that tub capacity would increase from 4.0 to 4.7 $ft^3$ in response to the standards for top-loading standard-size RCWs proposed in the March 2023 NOPR, DOE's energy and water use analysis thereby assumes that consumers wash 15 percent more clothing annually under the proposed standard. (*Id.*) ASAP, ACEEE, and NYSERDA asserted that this assumption that tub capacity would increase and lead to more clothing washed annually seems unlikely and has the effect of reducing overall energy, water, and cost savings in the downstream analysis. (*Id.*)

The energy and water use values associated with each efficiency level in the energy use analysis are derived from testing conducted according to the new appendix J test procedure, as described by ASAP, ACEEE, and NYSERDA. Indeed, for the top-loading standard-size efficiency levels for which DOE has modeled as increase in tub size as a design option path, the associated energy and water use estimates are based on the assumed use of larger load sizes—as defined by the test procedure—while assuming the same number of annual cycles (*i.e.,* 206 cycles for top-loading RCWs) at each efficiency level. 87 FR 33316, 33330–33334 DOE acknowledges that this analytical framework reflects more clothing being washed annually in units with larger tub capacities. Under this methodology, maintaining the same volume of annual clothing washed at the efficiency levels where capacity increases could be modeled by either reducing the number of annual cycles, or assuming the same load size is used in the larger-capacity units as for the smaller-capacity units, or some combination of both. DOE notes that data from historical RECS indicates that the average use of each RCW has steadily declined from 292 cycles in 2005, 282 cycles in 2009, 235 cycles in 2015, to 210 cycles in the 2020 RECS. This decline in usage trend aligns with a significant increase in washing machine capacity, which grew from shipments-weighted 2.52 $ft^3$ to 4.25 $ft^3$ between 1991 and 2020, according to data submitted by AHAM. The data indicate that on average the volume of clothing washed by U.S. households has remained constant over the past 15 years and consumers generally are capitalizing on the larger capacity of RCWs to conduct fewer, but fuller loads.[67] Additionally, the 2020 RECS estimate of 210 cycles per year reflects the range of RCW capacities within the stock, as well as the range of load sizes consumers use for their laundry. As the RECS data does not include information about household washing machine capacities and load sizes, utilizing a single weighted average annual usage across efficiency levels leads to conservative estimates for energy and water savings when compared to using higher annual usage cycles for the baseline and lower annual usage cycles for higher efficiency levels. DOE assumes that household washing volumes remain constant, leading to fewer laundry cycles with the use of a larger RCW.

Chapter 7 of the direct final rule TSD provides details on DOE's energy use analysis for RCWs.

### *F. Life-Cycle Cost and Payback Period Analysis*

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for RCWs. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

• The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy and water use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

• The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of RCWs in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of residential housing units. As stated previously, DOE developed household samples from the 2020 RECS. For each sample household, DOE determined the energy and water consumption for the RCWs and the appropriate energy and water prices. By developing a representative sample of households, the analysis captured the variability in energy and water consumption and energy and water prices associated with the use of RCWs.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy and water consumption, energy and water prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and RCW user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[68] The model calculated the LCC for products at each efficiency level for 10,000 housing units per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than

[67] In this direct final rule, DOE has not studied whether there is any correlation between the declining annual usage of clothes washers and other potential factors, such as changes in detergent formulations, changes in types of clothing, or changes in household dynamics.

[68] Crystal Ball™ is commercially available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/technetwork/middleware/crystalball/overview/index.html* (last accessed July 6, 2023).

or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for consumers of RCWs as if each were to purchase a new product in the first year of required compliance with amended standards. Amended standards apply to RCWs manufactured 3 years after the date on which any amended standard is published. (42 U.S.C. 6295(m)(4)(A)(i)) Therefore, DOE used 2027 as the first year of compliance with any considered TSLs for RCWs, except for the Recommended TSL. For the Recommended TSL, DOE used 2028 as the first year of compliance.

Table IV.15 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the direct final rule TSD and its appendices.

TABLE IV.15—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

| Inputs | Source/method |
| --- | --- |
| Product Cost | Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to project product costs. |
| Installation Costs | Baseline installation cost determined with data from RS Means Residential Cost Data 2022. Assumed no change with efficiency level. |
| Annual Energy and Water Use | Per cycle energy and water use multiplied by the cycles per year. Average number of cycles based on field data. Variability: Based on the 2020 RECS. |
| Energy and Water Prices | Electricity: Based on EIA's Form 861 data for 2022.<br>Variability: Regional energy prices determined for 9 Census Divisions.<br>Water: Based on 2020 Raftelis Financial Consultants ("RFC")/American Water Works Association ("AWWA") Survey.<br>Variability: Regional water prices determined for 4 Census Regions. |
| Energy and Water Price Trends | Based on *AEO2023* price projections.<br>Water: Forecasted using Bureau of Labor Statistics ("BLS") historic water price index information. |
| Repair and Maintenance Costs | Repair costs vary by product class and vary between ENERGY STAR and non-ENERGY STAR RCWs. |
| Product Lifetime | Average: 13.4 years. |
| Discount Rates | Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances. |
| Compliance Date | TSL 1, TSL 3, and TSL 4: 2027.<br>TSL 2 (Recommended TSL): 2028. |

* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the direct final rule TSD.

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the RCW purchased by each sample household in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions.

In the March 2023 NOPR, DOE performed a random assignment of efficiency levels to consumers in its Monte Carlo sample. 88 FR 13520, 13564. While DOE acknowledges that economic factors may play a role when consumers decide on what type of RCW to install, assignment of RCW product efficiency for a given installation, based solely on economic measures such as life-cycle cost or simple payback period, most likely would not fully and accurately reflect actual real-world installations. There are a number of market failures discussed in the economics literature that illustrate how purchasing decisions with respect to energy efficiency are unlikely to be perfectly correlated with energy use, as described below. DOE maintains that the method of assignment, which is in part random, is a reasonable approach, because it simulates behavior in the RCW product market, where market failures result in purchasing decisions not being perfectly aligned with economic interests, and is more realistic than relying only on apparent cost-effectiveness criteria derived from the limited information in RECS. DOE further emphasizes that its approach does not assume that all purchasers of RCW products make economically irrational decisions (*i.e.,* the lack of a correlation is not the same as a negative correlation). By using this approach, DOE acknowledges the uncertainty inherent in the data and minimizes any bias in the analysis by using random assignment, as opposed to assuming certain market conditions that are unsupported given the available evidence.

The following discussion provides more detail about the various market failures that affect RCW product purchases. First, consumers are motivated by more than simple financial trade-offs. There are consumers who are willing to pay a premium for more energy-efficient products because they are environmentally conscious.[69] There are also several behavioral factors that can influence the purchasing decisions of complicated multi-attribute products, such as RCW products. For example, consumers (or decision makers in an organization) are highly influenced by choice architecture, defined as the framing of the decision, the surrounding circumstances of the purchase, the alternatives available, and how they are presented for any given choice scenario.[70] The same consumer or decision maker may make different choices depending on the characteristics of the decision context (*e.g.,* the timing of the purchase, competing demands for funds), which have nothing to do with the characteristics of the alternatives themselves or their prices. Consumers or decision makers also face a variety of other behavioral phenomena including

[69] Ward, D.O., Clark, C.D., Jensen, K.L., Yen, S.T., & Russell, C.S. (2011): ''Factors influencing willingness-to pay for the ENERGY STAR® label,'' *Energy Policy, 39* (3), 1450–1458 (available at: *www.sciencedirect.com/science/article/abs/pii/S0301421510009171*) (last accessed August 1, 2023).

[70] Thaler, R.H., Sunstein, C.R., and Balz, J.P. (2014). ''Choice Architecture'' in *The Behavioral Foundations of Public Policy,* Eldar Shafir (ed).

loss aversion, sensitivity to information salience, and other forms of bounded rationality.[71] Thaler, who won the Nobel Prize in Economics in 2017 for his contributions to behavioral economics, and Sunstein point out that these behavioral factors are strongest when the decisions are complex and infrequent, when feedback on the decision is muted and slow, and when there is a high degree of information asymmetry.[72] These characteristics describe almost all purchasing situations of appliances and equipment, including RCWs. The installation of a new or replacement RCW product is done very infrequently, as evidenced by the mean lifetime of 13.4 years. Further, if the purchaser of the RCW is not the entity paying the energy costs (*e.g.,* a building owner and tenant), there may be little to no feedback on the purchase. Additionally, there are systematic market failures that are likely to contribute further complexity to how products are chosen by consumers, as explained in the following paragraphs. The first of these market failures—the split-incentive or principal-agent problem—is likely to significantly affect RCWs. The principal-agent problem is a market failure that results when the consumer that purchases the equipment does not internalize all of the costs associated with operating the equipment. Instead, the user of the product, who has no control over the purchase decision, pays the operating costs. There is a high likelihood of split-incentive problems in the case of rental properties where the landlord makes the choice of what RCW product to install, whereas the renter is responsible for paying water and energy bills.

In addition to the split-incentive problem, there are other market failures that are likely to affect the choice of RCW product efficiency made by consumers. For example, unplanned replacements due to unexpected failure of equipment such as RCW products are strongly biased toward like-for-like replacement (*i.e.,* replacing the non-functioning product with a similar or identical product). Time is a constraining factor during unplanned replacements, and consumers may not consider the full range of available options on the market, despite their availability. The consideration of alternative product options is far more likely for planned replacements and installations in new construction.

Additionally, Davis and Metcalf[73] conducted an experiment demonstrating that, even when consumers are presented with energy consumption information, the nature of the information available to consumers (*e.g.,* from EnergyGuide labels) results in an inefficient allocation of energy efficiency across households with different usage levels. Their findings indicate that households are likely to make decisions regarding the efficiency of the air conditioning equipment of their homes that do not result in the highest net present value for their specific usage pattern (*i.e.,* their decision is based on imperfect information and, therefore, is not necessarily optimal). Also, most consumers did not properly understand the labels (specifically whether energy consumption and cost estimates were national averages or specific to their State). As such, consumers did not make the most informed decisions.

In part because of the way information is presented, and in part because of the way consumers process information, there is also a market failure consisting of a systematic bias in the perception of equipment energy usage, which can affect consumer choices. Attari *et al.*[74] show that consumers tend to underestimate the energy use of large energy-intensive appliances (such as air conditioners, dishwashers, and consumer clothes dryers), but overestimate the energy use of small appliances (such as light bulbs). Therefore, it is possible that consumers systematically underestimate the energy use associated with RCWs, resulting in less cost-effective purchases.

These market failures affect a sizeable share of the consumer population. A study by Houde[75] indicates that there is a significant subset of consumers that appear to purchase appliances without taking into account their energy efficiency and operating costs at all.

The existence of market failures in the residential sector is well supported by the economics literature and by a number of case studies. If DOE developed an efficiency distribution that assigned RCW product efficiency in the no-new-standards case solely according to energy use or economic considerations such as life-cycle cost or payback period, the resulting distribution of efficiencies within the consumer sample would not reflect any of the market failures or behavioral factors above. Thus, DOE concludes such a distribution would not be representative of the RCW product market. Further, even if a specific household is not subject to the market failures above, the purchasing decision of RCW product efficiency can be highly complex and influenced by a number of factors (*e.g.,* aesthetics) not captured by the building characteristics available in the RECS sample. These factors can lead to households or building owners choosing an RCW product efficiency that deviates from the efficiency predicted using only energy use or economic considerations such as life-cycle cost or payback period.

There is a complex set of behavioral factors, with sometimes opposing effects, affecting the RCW product market. It is impractical to model every consumer decision incorporating all of these effects at this extreme level of granularity given the limited available data. Given these myriad factors, DOE estimates the resulting distribution of such a model, if it were possible, would be very scattered with high variability. It is for this reason DOE utilizes a random distribution (after accounting for efficiency market share constraints) to approximate these effects. The methodology is not an assertion of economic irrationality, but instead, it is a methodological approximation of complex consumer behavior. The analysis is neither biased toward high or low energy savings. The methodology does not preferentially assign lower-efficiency RCW products to households in the no-new-standards case where savings from the rule would be greatest, nor does it preferentially assign lower-efficiency RCW products to households in the no-new-standards case where savings from the rule would be smallest. Some consumers were assigned the RCW products that they would have chosen if they had engaged in perfect economic considerations when purchasing the products. Others were assigned less-efficient RCW products

[71] Thaler, R.H., and Bernartzi, S. (2004). ''Save More Tomorrow: Using Behavioral Economics in Increase Employee Savings,'' *Journal of Political Economy* 112(1), S164–S187. *See also* Klemick, H., *et al.* (2015), ''Heavy-Duty Trucking and the Energy Efficiency Paradox: Evidence from Focus Groups and Interviews,'' *Transportation Research Part A: Policy & Practice,* 77, 154–166 (providing evidence that loss aversion and other market failures can affect otherwise profit-maximizing firms).

[72] Thaler, R.H., and Sunstein, C.R. (2008). Nudge: Improving Decisions on Health, Wealth, and Happiness. New Haven, CT: Yale University Press.

[73] Davis, L.W., and G.E. Metcalf (2016): ''Does better information lead to better choices? Evidence from energy-efficiency labels,'' *Journal of the Association of Environmental and Resource Economists,* 3(3), 589–625 (available at: *www.journals.uchicago.edu/doi/full/10.1086/686252*) (last accessed August 1, 2023).

[74] Attari, S.Z., M.L. DeKay, C.I. Davidson, and W. Bruine de Bruin (2010): ''Public perceptions of energy consumption and savings.'' *Proceedings of the National Academy of Sciences* 107(37), 16054–16059 (available at: *www.pnas.org/content/107/37/16054*) (last accessed August 1, 2023).

[75] Houde, S. (2018): ''How Consumers Respond to Environmental Certification and the Value of Energy Information,'' *The RAND Journal of Economics,* 49 (2), 453–477 (available at: *onlinelibrary.wiley.com/doi/full/10.1111/1756-2171.12231*) (last accessed August 1, 2023).

even where a more-efficient product would eventually result in life-cycle savings, simulating scenarios where, for example, various market failures prevent consumers from realizing those savings. Still others were assigned RCW products that were *more* efficient than one would expect simply from life-cycle costs analysis, reflecting, say, ''green'' behavior, whereby consumers ascribe independent value to minimizing harm to the environment.

For this direct final rule, DOE considered comments it had received regarding the LCC analysis conducted for the March 2023 NOPR. The LCC approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, AHAM commented that DOE's reliance on the RECS database in its analysis is introducing outlier values into its LCC analysis. (AHAM, No. 464 at p. 36) AHAM commented that the documentation of the 2015 RECS reveals uncertainties, errors, and approximations within its data, making it difficult to determine the accuracy of consumption projections for individual housing units. (*Id.* at p. 37) AHAM therefore cautioned DOE against relying on potentially inaccurate outlier values, noting that this concern is highlighted by the significant difference between the mean and median LCC savings at any standard level, where these measures should ideally be closely aligned. (*Id.*) AHAM urged DOE to use median values instead of mean values to mitigate these data issues. (*Id.*)

As described in section IV.E of this document., DOE's energy and water use analysis for this direct final rule is derived based on 2020 RECS, which provides household's clothes washer loads information ranging from 1 cycle to 30 cycles per week. The field-based annual energy and water use for each household then feed into the LCC analysis. DOE notes that there is no indication that any of households in the RECS sample represent non-valid data that should be excluded as an outlier. Excluding minimum and maximum values from the field-based usage statistics would result in a less accurate representation of the actual energy and water consumption patterns exhibited by households participating in the survey. However, as a standardized approach, DOE presents all statistical results of LCC savings in chapter 8 of its TSD (*i.e.,* box plots). This approach allows stakeholders to observe the full range of LCC savings and understand the distribution of results, enabling a more informed evaluation of the potential impacts of proposed standards. In addition, DOE's decision on amended standards is not solely determined by (mean) LCC savings. While LCC savings play a role, they may be considered alongside other critical factors, including the percentage of negatively impacted consumers, the simple payback period, and the overall impact on manufacturers.

AHAM commented that DOE should focus on conducting a purchase decision analysis instead of relying on outcomes and long-term cost analyses. (AHAM, No. 464 at p. 33) AHAM commented that the basis for regulation lies in identifying consumer and systemic market failures, where consumer failure refers to making ''incorrect'' decisions due to a lack of information. (*Id.*) AHAM suggested that modeling efforts should prioritize identifying rational decisions, as it is unreasonable to predict actual outcomes given the numerous unpredictable factors that can influence them. (*Id.*) AHAM commented on the importance of considering the actual conditions and expectations of purchasers in DOE's LCC model, separate from the broader economic impact analysis. (*Id.* at p. 34) AHAM suggested that the LCC model should assess the extent of market failure by comparing the actual rate of energy-efficient product purchases with the rate that rational consumers would choose. (*Id.*)

In response to the March 2023 NOPR, an anonymous commenter stated that the proposed rule change makes questionable assumptions about consumer behavior, particularly the expectation that consumers will buy their RCWs within the first year, which might skew the cost-benefit analysis. (Anonymous, No. 391 at p. 1)

First, DOE notes that the LCC analysis currently relies on market data on the distribution of efficiency of products to assign products with varying efficiency performance to each household when compliance with the standard becomes required. This approach is intended to simulate the range of individual outcomes likely to result from the hypothetical setting of a revised energy conservation standard at various levels of efficiency when the data needed to develop a product-specific consumer choice model are currently unavailable. DOE does not negate the consumer decision theory established in the broad behavioral economic field; rather, this is a methodological decision made by DOE after considering the existence of various systematic market failures (*e.g.,* information asymmetries, bounded rationality, principal-agent relationship, etc.) and their implication in rational versus actual purchase behavior. The outcome of the LCC is not considered in isolation, but in the context of the broader set of analyses, including the NIA. Additionally, DOE's shipment analysis takes into account consumers' sensitivity to higher purchase prices under a considered TSL. DOE assumes that when market impacts occur, some consumers would prefer to repair or purchase a used unit rather than buy a new clothes washer when amended standards take effect. This approach ensures that the national cost-benefit results are neither skewed nor biased. See chapter 9 of the direct final rule TSD for details.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or ''experience'' curves. Experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level.[76] To derive the learning rate parameter for RCWs, DOE obtained historical Producer Price Index (''PPI'') data for ''household laundry equipment'' between 1948 and 2016 and ''major household appliance: primary products'' between 2016 and 2022 from the Bureau of Labor Statistics' (''BLS'') to form a time series price index representing household laundry equipment from 1948 to 2022.[77] These two PPI series are the most current and disaggregated price index that includes RCWs, and DOE assumes that the price trend estimated from the household laundry equipment PPI is representative of that for RCWs. Inflation-adjusted price indices were calculated by dividing the PPI series by the gross

[76] Taylor, M. and Fujita, K.S. Accounting for Technological Change in Regulatory Impact Analyses: *The Learning Curve Technique.* LBNL–6195E. Lawrence Berkeley National Laboratory, Berkeley, CA. April 2013. Available at *escholarship.org/uc/item/3c8709p4#page-1.*

[77] ''Household laundry equipment'' PPI (PCU3352203352204) is available through May 2016, and ''major household appliance: primary products'' PPI (PCU335220335220P) is available from May 2016 to present. *See* more information at *www.bls.gov/ppi/* (last accessed June 13, 2023).

domestic product index from Bureau of Economic Analysis for the same years. The estimated learning rate (defined as the fractional reduction in price expected from each doubling of cumulative production) is 17.2 percent. *See* chapter 8 of the direct final rule TSD for further details on this topic.

For this direct final rule, DOE considered comments it had received regarding the methodology for calculating consumer product costs that was presented in the March 2023 NOPR. The approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, AHAM commented that DOE's application of a ''learning or experience curve'' to reduce expected extra manufacturing costs required to meet proposed standard levels lacks a solid theoretical foundation. (AHAM, No. 464 at p. 35) AHAM commented that the approach, based solely on empirical relationships, demands clear alignment with the actual products under consideration, with a necessity to adjust equations when data changes shape. (*Id.* at pp. 35–36) AHAM commented that DOE's justification that continued use of learning rates is justified by past price declines is DOE confusing past correlation with future causation and questions the basis for forward projection. (*Id.* at p. 36) AHAM further opposed the proposed continuous function form of future trends, particularly given signs of data ''flattening'' in DOE's learning curve equation and that all recent data is above the line drawn by the equation. AHAM commented that such ''learning'' should not be projected beyond labor and materials costs, given it does not logically apply to overheads, sales, marketing, general and administrative costs, or depreciation and financing costs. (*Id.* at p. 36)

DOE notes that there is considerable empirical evidence of consistent price declines for appliances in the past few decades. Several studies examined refrigerator retail prices during different periods of time and showed that prices had been steadily falling while efficiency had been increasing, for example Dale *et al.* (2009) [78] and Taylor *et al.* (2015).[79] Given the limited data availability on historical manufacturing costs broken out by different components, DOE utilized the Producer Price Index (''PPI'') published by the BLS as a proxy for manufacturing costs to represent the analyzed product as a whole. Thus, DOE applied the price learning to the entire costs and did not consider the applicability of learning on individual cost components. While products may experience varying degrees of price learning during different product stages, DOE modeled the average learning rate based on the full historical PPI series to capture the overall price evolution in relation to the cumulative shipments. DOE also conducted sensitivity analyses that are based on a particular segment of the PPI data for household laundry products manufacturing to investigate the impact of alternative product price projections in the LCC (constant price) and NIA (high price learning and constant price) of this direct final rule. For details of the sensitivity results, see appendix 8F and appendix 10C of the direct final rule TSD.

Representatives Latta *et al.* expressed concern at the consumer cost impact of the proposed standards, noting that top-loading standard-size RCWs currently on the market meeting the standard proposed in the March 2023 NOPR have a manufacturer's suggested retail price (''MSRP'') of over $1,000, a price that Representatives Latta *et al.* characterized as out of reach for many consumers and that is over $400 higher than the MSRP of entry-level models. (Representatives Latta *et al.,* No. 456 at p. 2)

DOE notes that in most cases—and in particular for top-loading standard-size RCWs—the MSRP of an existing model at a certain higher efficiency level does not reflect the consumer purchase price that would be expected if DOE were to enact an amended standard at that higher efficiency level, for two main reasons. First, current models at higher efficiency levels are produced at significantly lower shipment volumes than baseline models, which generally results in higher per-unit costs for each component part for the higher efficiency models. Second, higher efficiency models are often ''bundled'' with non-efficiency related features that add additional cost to the product and contribute to the overall higher MSRP. Because of these drawbacks to using MSRP as the basis for evaluating the economic justification of a higher standard, DOE instead uses a reverse-engineering approach—combined with a detailed analysis of markups—to estimate the impact on consumer purchase price that would be expected as a result of an amended standard. As discussed in sections IV.C.3 and IV.D of this document, DOE evaluates the cost impact to consumers by developing incremental MPC costs and multiplying the MPCs by various markups to develop the consumer purchase price. This approach allows DOE to account for any economies of scale that would result from producing more efficient RCWs at larger shipment volumes and to isolate the cost of any non-efficiency-related features that are often bundled with higher-efficiency RCWs on the market today.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from 2022 *RS Means Residential Cost Data* to estimate the baseline installation cost for RCWs.[80] DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy and Water Consumption

For each sampled household, DOE determined the energy and water consumption for an RCW at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy and Water Prices

a. Energy Prices

Because marginal electricity and gas prices more accurately capture the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity and gas prices. Therefore, DOE applied average electricity and gas prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity and gas prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2022 using data from Edison Electric Institute (''EEI'') Typical Bills and Average Rates reports for summer and winter 2022.[81]

[78] Dale, L., C. Antinori, M. McNeil, James E. McMahon, and K. S. Fujita. Retrospective evaluation of appliance price trends. Energy Policy. 2009. 37 (2) pp. 597–605. *doi.org/10.1016/j.enpol.2008.09.087.*

[79] Taylor, M., C. A. Spurlock, and H.-C. Yang. Confronting Regulatory Cost and Quality Expectations. An Exploration of Technical Change in Minimum Efficiency Performance Standards. 2015. Lawrence Berkeley National Lab. (LBNL), Berkeley, CA (United States). Report No. LBNL–1000576. Available at *www.osti.gov/biblio/1235570/* (last accessed June 30, 2023).

[80] RS Means Company Inc., RS Means Residential Cost Data (2022). Available at *https://rsmeans.com/.*

[81] Edison Electric Institute. Typical Bills and Average Rates Report. Winter 2022, Summer 2022.

Continued

Based upon comprehensive, industry-wide surveys, this semi-annual report presents typical monthly electric bills and average kilowatt-hour costs to the customer as charged by investor-owned utilities. For the residential sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2018).[82]

DOE's methodology allows electricity prices to vary by sector, region and season. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis.

DOE obtained data for calculating regional prices of natural gas from the EIA publication, *Natural Gas Navigator*.[83] This publication presents monthly volumes of natural gas deliveries and average prices by State for residential, commercial, and industrial customers. DOE used the complete annual data for 2022 to calculate an average annual price for each census division. Residential natural gas prices were adjusted by applying seasonal marginal price factors to reflect a change in a consumer's bill associated with a change in energy consumed.

DOE assigned average prices to each household in the LCC sample based on its location and its baseline electricity and gas consumption. For sampled households who were assigned a product efficiency greater than or equal to the considered level for a standard in the no-new-standards case, DOE assigned marginal prices to each household based on its location and the decremented electricity and gas consumption. In the LCC sample, households could be assigned to one of nine census divisions. *See* chapter 8 of the direct final rule TSD for details.

To estimate energy prices in future years, DOE multiplied the 2022 energy prices by the projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO2023,* which has an end year of 2050.[84] To estimate price trends after 2050, the 2046–2050 average was used for all years.

b. Water and Wastewater Prices

DOE obtained residential water and wastewater price data from the Water and Wastewater Rate Survey conducted by Raftelis Financial Consultants and the American Water Works Association.[85] The survey covers approximately 194 water utilities and 140 wastewater utilities analyzing each industry (water and wastewater) separately. For each water or wastewater utility, DOE calculated the average-price-per-unit volume by dividing the total volumetric cost by the volume delivered. DOE also calculated the marginal price by dividing the incremental cost by the increased volume charged at each consumption level.

The samples that DOE obtained of the water and wastewater utilities is too small to calculate regional prices for all U.S. Census divisions. Therefore, DOE calculated regional costs for water and wastewater service at the Census region level (Northeast, South, Midwest, and West) by weighting each State in a region by its population.

For this direct final rule analysis, DOE has updated its methodology for developing water prices for consumers who rely on a private well water system, instead of the public supply system in consideration of stakeholder comments received in response to the March 2023 NOPR DOE primarily considered well maintenance costs and pump operating costs when developing the average water price. Conversely, DOE only considered pump operating costs when developing the marginal price for well users. As a result, the estimated average and marginal water prices for well users are $1.24 and $0.39 per thousand gallons, respectively. For septic tank users, DOE considered only the septic tank maintenance cost when determining the average price and excluded the marginal cost component, as any marginal costs are likely to be negligible. DOE is unable to develop Census-region-level well water and septic tank prices due to the limitation of available data. As a result, the same values were used for each Census region.

To determine the current percentage of the U.S. population served by private wells and septic tanks, DOE used historical American Housing Survey (''AHS'') data from 1990 to 2021 to develop a projection for 2027, the effective year of potential new standards for RCWs except for the Recommended TSL.[86] The effective year of the Recommended TSL is 2028.

DOE then conducted random simulations [87] to determine the sample of households in rural areas served by private wells and septic tanks. Based on the estimated sample, well water prices and septic tank prices were assigned to sampled households accordingly. Furthermore, DOE estimated the septic tank user population and assigned corresponding septic tank prices to households relying on public water systems.

To estimate the future trend for public water and wastewater prices, DOE used data on the historic trend in the national water price index (U.S. city average) from 1988 through 2022 provided by the Labor Department's BLS.[88] DOE extrapolated the future trends based on the linear growth from 1988 to 2022. DOE used the extrapolated trend to forecast prices through 2050. To estimate the price trend after 2050, DOE used a constant value derived from the average values from 2046 through 2050.

To estimate the future trend for well water and septic tank prices, DOE used data on the historic trend in the overall national consumer price index (''CPI'') from 1988 through 2022 provided by the Labor Department's BLS.[89] DOE extrapolated the future trends based on the linear growth from 1988 to 2022. DOE used the extrapolated trend to forecast prices through 2050. To estimate the price trend after 2050, DOE used a constant value derived from the average values from 2046 through 2050.

In response to the March 2023 NOPR, AHAM commented that it previously suggested that DOE should consider the actual water costs for households on well systems, acknowledge that there are no incremental costs for consumers

Available at *www.eei.org/resourcesandmedia/products/Pages/Products.aspx.*

[82] Coughlin, K. and B. Beraki. 2018. Residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001169. Available at *ees.lbl.gov/publications/residential-electricity-prices-review.*

[83] U.S. Department of Energy–Energy Information Administration. *Natural Gas Navigator* 2022. Available at *www.eia.gov/naturalgas/data.php.*

[84] EIA. Annual Energy Outlook 2023. Available at *www.eia.gov/outlooks/aeo/* (last accessed June 20, 2023).

[85] Raftelis Financial Consultants, Inc. 2020 RFC/AWWA Water and Wastewater Rate Survey. 2021. Charlotte, NC, Kansas City, MO, and Pasadena, CA.

[86] The U.S. Census Bureau. The American Housing Survey. Years 1970–2021. Available at *www.census.gov/programs-surveys/ahs.html* (last accessed June 12, 2023).

[87] DOE utilized random simulations to more accurately assess the distribution of households in rural areas using private wells and septic tanks. These simulations were designed to randomly assign users of well water and septic tanks, based on the estimated percentage of the well water and septic tank user population in each census region, thereby incorporating uncertainties and variabilities.

[88] U.S. Department of Labor-Bureau of Labor Statistics, Consumer Price Indexes, Item: Water and sewerage maintenance, Series Id: CUSR0000SEHG01, U.S. city average, 2022. Washington, DC. Available at *www.bls.gov/cpi/home.htm#data.*

[89] U.S. Department of Labor-Bureau of Labor Statistics, Consumer Price Indexes, All Items, Series Id: CUUR0000SA0, U.S. city average, 2022. Washington, DC. Available at *www.bls.gov/cpi/home.htm#data.*

using septic systems, and treat these consumers as a separate subgroup instead of averaging them into composite water and sewer costs. AHAM noted that while DOE implemented AHAM's recommendation on sewer costs, it disregarded the other two suggestions without explanation. (AHAM, No. 464 at pp. 37–38)

As discussed, DOE agrees with AHAM that consumers using septic systems have near-zero marginal costs for wastewater and has updated the analysis accordingly. As discussed in section IV.I.3 of this document, DOE has also included an analysis of well-water users in the consumer subgroup analysis.

AHAM commented that it opposed DOE's use of ''economic value of water'' in the LCC model. According to AHAM, private well users pay the actual marginal cost of water, primarily the electricity for pumping, not an ''economic value''. AHAM noted that while there are embedded costs for drilling a well, these costs are sunk and the marginal cost is electricity. AHAM suggested that if DOE insists on the ''economic value'', DOE should define it, demonstrate how well-water use reduces water availability, and quantify the actual ''economic value'' of lost well water. (AHAM, No. 464, at p. 38) AHAM further stated that even if there is an ''economic value'', it should be considered in the NIA, not the LCC. (*Id.* at p. 39)

DOE agrees with AHAM that ''economic value of water'' is not the actual price that well users would pay. Hence, for this direct final rule, DOE has adjusted its methodology regarding water price for well users and septic tank price. To derive well water price, DOE conducted a comprehensive literature review and took into consideration the inputs provided by AHAM. As a result, DOE estimated the average water price for well users to be $1.24 per thousand gallons, with a marginal price of $0.39 per thousand gallons representing the electricity cost for pumping as suggested by AHAM. Regarding septic tank price, DOE estimated the average cost to be $1.30 per thousand gallons and excluded the marginal cost component, as it may be negligible or close to $0 per thousand gallons. For details of the well water and septic tank prices, see chapter 8 of the direct final rule TSD. In addition, in the LCC, DOE has explicitly assigned well water and septic users randomly to the rural population based on estimated population and given them well and/or septic specific prices; DOE is no longer using composite water and sewer costs applied to the entire sample. As such, well and/or septic users are now fully accounted for in the LCC sample.

AWE commented that it is unclear why DOE referred to the water and sewerage maintenance item from the CPI to determine future price trends for water and sewage. AWE stated that DOE's methodology for price trends regarding RCWs deviates from the methodology DOE proposed regarding dishwashers. AWE recommended that DOE use the RFC/AWWA Water and Wastewater Rate Survey for both dishwashers and RCWs because the RFC/AWWA survey is more accurate and representative of price trend data between 1998 and 2020. (AWE, No. 444 at pp. 2–3)

RFC/AWWA provides water and wastewater rates survey data every two years for U.S. water and wastewater utilities. For each of the RFC/AWWA surveys, utilities in the sample respond voluntarily to the survey questions, with a limited number of overlapping utilities in each survey year. For this reason, it is possible that the annual change in rates may be affected by which utilities respond to the survey. In addition, the rate data are reported in usage tiers set by each utility and not on actual household water consumption.

The BLS Water and Sewer CPI sample represents 600 to 700 quotes for water or sewer service, and the sample is consistent for four years, which reduces the possible year over year bias as compared to RFC/AWWA. Additionally, the Water and Sewer CPI was estimated based on consumer water bills that were related to household water consumption. Therefore, DOE concludes that the BLS' CPI water and sewer data better reflect the nationally representative price trends. DOE therefore used the CPI for water and sewer for its public utilities' water and wastewater price trend forecast for this direct final rule.

DOE used a similar methodology to develop future water and wastewater prices in its dishwasher standard rulemaking as it used in the March 2023 NOPR analysis. The only difference between the two standards rulemaking analyses is that for RCWs, DOE used a constant value derived from the average values from 2046 through 2050 to estimate the price trend after 2050, whereas in the dishwashers NOPR, published May 19, 2023 (88 FR 32514), DOE used the 2050 value for the price trend after 2050.[90] As described previously, for this direct final rule, DOE has used the same approach as the March 2023 NOPR for water and wastewater (including well water and septic tank) price trends after 2050.

[90] Additional details regarding the dishwasher analysis are provided in the NOPR TSD, available at *www.regulations.gov/document/EERE-2019-BT-STD-0039-0032.*

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency entail no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products.

For RCWs, DOE determined the repair cost associated with loading type and clothes washer capacity commonly found on an appliance repair website.[91] DOE estimated the average repair cost for an RCW is about $241, ranging from $123 to $294 over the product lifetime and then converted to annual cost. For maintenance cost, DOE conducted a literature review of maintenance cost available from a variety of sources, including online resources. DOE estimated the annual maintenance cost for an RCW is approximately $27, including costs of clothes washer cleaners and of running clothes washer cleaning cycles.

Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products. For this direct final rule analysis, DOE estimated that for repair costs, there is a cost difference between an ENERGY STAR and non-ENERGY STAR RCW of approximately $47 for a front-loading RCW and $34 for a top-loading RCW, based on information aggregated from manufacturer interviews. For maintenance costs, DOE assumed that there is no change with efficiency level for RCWs.[92]

For this direct final rule, DOE considered comments it had received regarding its determination of maintenance and repair costs in the March 2023 NOPR. The approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, Representatives Latta *et al.* commented that additional product complexity to

[91] Fixr, How Much Does It Cost to Repair a Washing Machine? Available at *www.fixr.com/costs/washing-machine-repair#washing-machine-repair-cost-by-type-of-repair.*

[92] Based on literature reviews, DOE found that manufacturers recommend monthly self-cleaning for RCWs, regardless of the clothes washer's loading type and efficiency level.

meet amended standard levels could drive higher repair costs. (Representatives Latta *et al.,* No. 456 at pp. 2–3)

As discussed in the March 2023 NOPR, DOE implemented higher repair costs for ENERGY STAR qualified and above ENERGY STAR qualified RCWs compared to the baseline models based on information obtained through manufacturer interviews. These same inputs have been used in the current direct final rule analysis. DOE estimated the cost difference between an ENERGY STAR and non-ENERGY STAR RCW of approximately $34 for a top-loading and $47 for a front-loading RCW. See section 8.3.5 of chapter 8 of the direct final rule TSD for details.

The National Multifamily Housing Council (''NMHC'') and National Apartment Association (''NAA'') recommended that DOE reevaluate the costs and ongoing operations and maintenance impacts of longer cycle times, multiple wash cycles, and increased stress on the equipment. (NMHC and NAA, No. 451 at pp. 3–4)

CEI [93] commented that expensive repairs, including ones within the first 3 years of purchase, are no longer uncommon, and that consumers will often not undertake repairs that cost half or more of the price of a new machine. CEI noted that these problems are likely to be exacerbated by the standards proposed in the March 2023 NOPR. (CEI, No. 454 at p. 3)

CEI asserted that repair costs would likely increase, leading consumers to refrain from repairs under the proposed rule if they cost half or more of the price of a new machine. However, CEI did not provide additional supporting data for DOE to consider to suggest that the repair price would be higher than what was used in the March 2023 NOPR and for this direct final rule analysis. As described in section IV.F.5 of this document, DOE has estimated a slight increase in retirement for RCWs before reaching 4 years of age using the latest 2020 RECS and AHS data.

As stated in section V.B.4 of this document, at TSL 2—the standards level adopted in this direct final rule—DOE's data demonstrates no negative impact on consumer utility, including cycle time. For further discussion of performance as it relates to amended standards, see section V.B.4.a of this document.

6. Product Lifetime

Product lifetime is the age at which an appliance is retired from service. To determine estimates for RCW lifetime, DOE conducted an analysis of standard-capacity RCW lifetime in the field based on a combination of shipments data and data on the ages of the clothes washer products reported in the household stock from RECS conducted in 2001, 2005, 2009, 2015, and 2020.[94]

The data allowed DOE to estimate a survival function, which provided an average appliance lifetime of approximately 14 years. From the 2015 RECS to the 2020 RECS, there was a 3.6 percent increase in the number of RCWs under 5 years of age, and an additional 0.7 percent of RCWs lasting beyond 15 years. Therefore, for this direct final rule, DOE has slightly updated its estimated average lifetime for RCWs to 13.4 years, with a distribution that includes 1.4 percent more RCWs retiring before reaching 4 years and 2.9 percent more RCWs remaining after 15 years and up to 30 years, compared to the Weibull lifetime probability distribution used in the March 2023 NOPR.

For this direct final rule, DOE considered comments it had received regarding its estimation of product lifetime in the March 2023 NOPR. The approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, NEEA *et al.* commented in support of using a 13.7-year product lifetime. (NEEA *et al.,* No. 455 at p. 5)

The AGs of TN *et al.*[95] commented that DOE's lack of consideration of the reduced lifetime and associated costs of a more complex product is not appropriate. Additionally, the AGs of TN *et al.* argued that a major component of the product's lifetime energy use is the energy consumed in manufacturing the product and that decreased water and energy use almost always come at the cost of increased complexity, with attendant increased maintenance costs and decreased lifespan. As such, the AGs of TN *et al.* state that DOE ignored lifecycle energy use and lifecycle cost and failed to consider an important aspect of the problem. (AGs of TN *et al.,* No. 438 at p. 6 (citing *Motor Vehicle Mfrs. Ass'*n, 463 U.S. at 43))

In response to the March 2023 NOPR, Representatives Latta *et al.* commented that additional product complexity to meet amended standard levels could drive shorter product lifespans. (Representatives Latta *et al.,* No. 456 at pp. 2–3)

CEI commented that DOE does not acknowledge that its rules have shortened the useful lives of clothes washers and other appliances and that DOE also ignores the resulting adverse environmental impacts, which include the greater energy and other resources that go into manufacturing additional clothes washers as well as additional landfill and other disposal requirements for discarded units.[96] (CEI, No. 454 at pp. 6–7) CEI asserted that the decline in RCW reliability and useful lifetime, especially since the 2007 standards, has been evident to those servicing machines over that time span. (*Id.* at pp. 2–3)

In the public webinar, Whirlpool commented that the average lifespan of an RCW should not only be based on historical data, as the additional stresses placed on the mechanical components (due to the combination of higher resistance and less water, which creates more tension, torque, and wear on the motor) could pose as a challenge in reaching the 13.7-year lifespan in the future. (Whirlpool, Public Webinar Transcript, No. 91 at pp. 35–36)

In the public webinar, Mannino stated that most clothes washers fail after three to four years. Mannino asked how DOE arrived at its estimate. (Mannino, Public Webinar Transcript, No. 91 at p. 32)

DOE also received comments from 23 additional individual commenters expressing concerns regarding the standards' impact on the product's lifetime.

DOE notes that it does not have data to corroborate a causal connection between the stringency of efficiency standards and the expected service lifetime of RCWs. Moreover, commenters have not provided DOE additional information or data that demonstrates that more-efficient clothes washers have shorter or longer product lifetimes than less-efficient clothes washers. As a result, DOE has not identified differences in lifetime based on differences in efficiency.

[93] ''CEI'' includes the comments of the Competitive Enterprise Institute (''CEI'') and Michael Mannino.

[94] U.S. Department of Energy—Energy Information Administration, Residential Energy Consumption Survey (''RECS''), Multiple Years (1990, 1993, 1997, 2001, 2005, 2009, 2015, and 2020). Available at *www.eia.gov/consumption/residential/*.

[95] The ''AGs of TN *et al.*'' include the attorneys general (''AGs'') of Tennessee, Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Texas, Utah, Virginia, and West Virginia.

[96] DOE did not address CEI's comments about the greater energy and other resources that go into manufacturing additional RCWs as well as additional landfill and disposal costs for discarded units because it is outside the scope of a standards rulemaking.

As stated, DOE updated the Weibull lifetime distribution used for this direct final rule based on the recent data from RECS and AHS. The updated data indicates a slightly shorter lifetime and delayed replacement of RCWs than was considered in the March 2023 NOPR based on previous RECS and other data sources.

Furthermore, as discussed in chapter 5 of the TSD for this direct final rule, the incremental MPCs developed in this analysis reflect units currently available on the market. Therefore, to the extent that units on the market incorporate more robust mechanical components (such as bearings, motors, *etc.*), DOE's analysis already accounts for the cost of these components at higher efficiency levels.

*See* chapter 8 of the direct final rule TSD for further details.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for RCWs based on the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[97] The LCC analysis estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's triennial Survey of Consumer Finances[98] (''SCF'') starting in 1995 and ending in 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent. See chapter 8 of the direct final rule TSD for further details on the development of consumer discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the energy efficiency distribution of top-loading standard-size, front-loading compact, and front-loading standard-size RCWs for 2027 and 2028, DOE used shipments-weighted energy efficiency ratio (''SWEER'') for 2020 as a starting point, based on information provided by AHAM. (AHAM, No. 54 at pp. 2–3) To project the trend in efficiency, DOE considered recent trends in DOE's RCW CCD and the potential effect of labeling programs such as ENERGY STAR on RCWs. DOE estimated an annual efficiency improvement of 0.4 and 0.1 percent for top-loading standard-size and front-loading (compact and standard-size) clothes washers, respectively. For semi-automatic clothes washers, DOE used the CCD database to develop a product efficiency distribution under the no-new-standards case.

The estimated market shares for the no-new-standards case for RCWs are shown in Tables IV.16 through IV.19. See chapter 8 of the direct final rule TSD for further information on the derivation of the efficiency distributions.

TABLE IV.16—NO-NEW-STANDARDS CASE MARKET SHARE IN 2027: TOP-LOADING AND SEMI-AUTOMATIC RESIDENTIAL CLOTHES WASHERS

| Efficiency level | Top-loading ultra-compact | | | Top-loading standard-size | | | Semi-Automatic | | |
|---|---|---|---|---|---|---|---|---|---|
| | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) |
| Baseline | 3.79 | 0.29 | 100 | 3.50 | 0.38 | 61.0 | 1.60 | 0.17 | 21.0 |
| 1 | | | | 3.89 | 0.47 | 5.9 | 2.12 | 0.27 | 71.0 |
| 2 | | | | 4.27 | 0.57 | 27.4 | 2.51 | 0.36 | 8.0 |
| 3 | | | | 4.78 | 0.63 | 4.7 | | | |
| 4 | | | | 5.37 | 0.67 | 1.0 | | | |

TABLE IV.17—NO-NEW-STANDARDS CASE MARKET SHARE IN 2027: FRONT-LOADING RESIDENTIAL CLOTHES WASHERS

| Efficiency level | Front-loading compact | | | Front-loading standard-size | | |
|---|---|---|---|---|---|---|
| | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) |
| DFR Baseline | | | | 4.31 | 0.38 | 0 |

[97] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: transaction costs; risk premiums and response to uncertainty; time preferences; interest rates at which a consumer is able to borrow or lend. The implicit discount rate is not appropriate for the LCC analysis because it reflects a range of factors that influence consumer purchase decisions, rather than the opportunity cost of the funds that are used in purchases.

[98] The Federal Reserve Board, *Survey of Consumer Finances* (1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019). Available at *www.federalreserve.gov/econres/scfindex.htm.*

TABLE IV.17—NO-NEW-STANDARDS CASE MARKET SHARE IN 2027: FRONT-LOADING RESIDENTIAL CLOTHES WASHERS—Continued

| Efficiency level | Front-loading compact | | | Front-loading standard-size | | |
|---|---|---|---|---|---|---|
| | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) |
| NOPR Baseline | 4.41 | 0.53 | 0 | 5.02 | 0.64 | 2.0 |
| 1 | 4.80 | 0.62 | 38.7 | 5.31 | 0.69 | 5.6 |
| 2 | 5.02 | 0.71 | 45.8 | 5.52 | 0.77 | 45.1 |
| 3 | 5.53 | 0.75 | 14.5 | 5.73 | 0.77 | 38.0 |
| 4 | 5.97 | 0.80 | 1.0 | 5.97 | 0.85 | 9.2 |

TABLE IV.18—NO-NEW-STANDARDS CASE MARKET SHARE IN 2028: TOP-LOADING AND SEMI-AUTOMATIC RESIDENTIAL CLOTHES WASHERS

| Efficiency level | Top-loading ultra-compact | | | Top-loading standard-size | | | Semi-automatic | | |
|---|---|---|---|---|---|---|---|---|---|
| | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) |
| Baseline | 3.79 | 0.29 | 100 | 3.50 | 0.38 | 59.5 | 1.60 | 0.17 | 21.0 |
| 1 | | | | 3.89 | 0.47 | 6.7 | 2.12 | 0.27 | 71.0 |
| 2 | | | | 4.27 | 0.57 | 27.4 | 2.51 | 0.36 | 8.0 |
| 3 | | | | 4.78 | 0.63 | 5.4 | | | |
| 4 | | | | 5.37 | 0.67 | 1.1 | | | |

TABLE IV.19—NO-NEW-STANDARDS CASE MARKET SHARE IN 2028: FRONT-LOADING RESIDENTIAL CLOTHES WASHERS

| Efficiency level | Front-loading compact | | | Front-loading standard-size | | |
|---|---|---|---|---|---|---|
| | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Share (%) |
| DFR Baseline | | | | 4.31 | 0.38 | 0.0 |
| NOPR Baseline | 4.41 | 0.53 | 0.0 | 5.02 | 0.64 | 2.0 |
| 1 | 4.80 | 0.62 | 38.8 | 5.31 | 0.69 | 5.4 |
| 2 | 5.02 | 0.71 | 45.2 | 5.52 | 0.77 | 45.0 |
| 3 | 5.53 | 0.75 | 14.9 | 5.73 | 0.77 | 38.4 |
| 4 | 5.97 | 0.80 | 1.1 | 5.97 | 0.85 | 9.2 |

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the RCW purchased by each sample household in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions.

9. Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a ''simple PBP'' because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

An anonymous commenter expressed concerns regarding the LCC and PBP associated with the proposed rule change to increase energy efficiency of RCWs. (Anonymous, No. 391 at p. 1) The anonymous commenter questioned the time it would take for the benefits to outweigh the costs, as the proposed rule suggests net positive outcomes over a period of less than the average product lifespan of 13 years, but also notes the 30-year timeframe for the cost-benefit analysis in asking how long until the benefits will be recognizable. The anonymous commented sought clarity on when the benefits will become noticeable and raises logistical concerns about the implementation of the rule change. (*Id.*)

As described in section V.B.1.a of this document (*see* Tables V.4 through V.12), the simple payback period for top-loading and front-loading standard-size RCWs is 6.2 years and 1.4 years, respectively, which is less than half of estimated lifetime, *i.e.,* 13.4 years. The 30-year timeframe used to calculate cumulative operating costs in the LCC analysis, is determined based on product lifetimes with Weibull probability distributions.

DOE notes that the estimated simple payback period can be subject to change depending on several factors, such as households' RCW usage and utility bill rates, including energy and water price rates. In general, if a household runs their RCW more frequently at higher energy and water rates, it will result in a shorter payback period and vice versa.

*G. Shipments Analysis*

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[99] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

To project RCW shipments under the no-new-standards case, DOE utilized historical shipments data from AHAM. DOE estimated RCW shipments by projecting shipments into two market segments: (1) replacement of existing RCWs; (2) new housing.

To project RCW replacement shipments, DOE developed retirement functions from RCW lifetime estimates and applied them to the existing products in the housing stock, which are tracked by vintage. To estimate shipments to new housing units, DOE used projections of new housing starts coupled with RCWs' saturation data. In other words, to project the shipments for new housing units for any given year, DOE multiplied the housing projections by the estimated saturation of RCWs for new housing units. For new housing completions and mobile home placements, DOE used recorded data through 2022,[100] and adopted the projections from *AEO2023* for 2023–2050. DOE used the data contained in the 2020 RECS to characterize ownership of RCWs in households across various housing types, including multi-family housing.

DOE aggregated the above two market segments for any given year during the analysis period [101] (2027–2056) and divided total RCW shipments into its five product classes. For this direct final rule, DOE estimated the market share between top-loading and front-loading RCWs based on shipments trends and forecast data by clothes washer loading type provided by AHAM between 2010 and 2024.[102] To project market share between top-loading and front-loading RCWs after 2024, the 2012–2024 average is used for all years. DOE estimated market share for top-loading and front-loading RCWs would remain at 73.5 percent and 26.5 percent, respectively. DOE then disaggregated the top-loading RCW market share into three product classes (*i.e.,* ultra-compact, standard-size, and semi-automatic) and front-loading into two product classes (*i.e.,* compact and standard-size). In addition, DOE assumed the annual growth rate for semi-automatic and top-loading ultra-compact clothes washers would be at 0.2 percent. Table IV.20 shows the estimated market share and shipments for each product class.

TABLE IV.20—MARKET SHARE AND SHIPMENTS BY PRODUCT CLASS IN 2027 AND 2028

| Product class | Market share in 2027 and 2028 (%) | Shipments in 2027 (million) | Shipments in 2028 (million) |
|---|---|---|---|
| Top-Loading, Ultra-Compact | 0.6 | 0.06 | 0.07 |
| Top-Loading, Standard-Size | 71.3 | 7.73 | 7.83 |
| Front-Loading, Compact | 1.6 | 0.18 | 0.18 |
| Front-Loading, Standard-Size | 24.8 | 2.69 | 2.73 |
| Semi-Automatic | 1.6 | 0.17 | 0.17 |
| Total | 100 | 10.84 | 10.98 |

To project RCW shipments under a standards case, DOE used a price elasticity parameter, which relates the incremental total installed cost to total RCW shipments, and an efficiency elasticity parameter, which relates the change in the operating cost to RCW shipments. Both types of elasticity relate changes in demand to changes in the corresponding characteristic (price or efficiency). A regression analysis estimated these terms separately from each other and found that the price elasticity of demand for several appliances is on average −0.45.[103] Thus, for example, a price increase of 10 percent would result in a shipments decrease of 4.5 percent, all other factors held constant. The same regression analysis found that the efficiency elasticity is estimated to be on average 0.2 (*i.e.,* a 10-percent efficiency improvement, equivalent to a 10-percent decrease in operating costs, would result in a shipments increase of 2 percent, all else being equal).

DOE assumed when market impact occurs (*i.e.,* when shipments drop under a standards case), the affected consumers would either repair their product or purchase a used RCW rather than a new one. In the repair scenario, the model assumes that the product's life is extended by approximately 5 years. In the used product scenario, the model assumes the remaining average lifetime for a used RCW is 7 years. Therefore, this market impact effectively influences the decision between repairing or replacing the product, as well as the decision between purchasing a used clothes washer or a new one.

For this direct final rule, DOE considered comments it had received regarding its shipments analysis for the March 2023 NOPR. The approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, The CA IOUs commented that they agree that the relative market share for top-loading RCWs from 2012 on has remained reasonably stagnant, but they also noted that the relative market share for top-loading RCWs was more fluid before 2012. (CA IOUs, No. 460 at p. 7) The CA IOUs stated that relative market share movements from front-loading to top-loading RCWs correlate with DOE compliance dates for amended energy conservation standards. (*Id.*) The CA IOUs noted that the standard levels

[99] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

[100] U.S. Census. Characteristics of New Housing. Available at *www.census.gov/construction/chars/.*

[101] The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

[102] AHAM, 2022 AHAM Data Trends & Forecasts, August 10, 2022.

[103] Fujita, S., Estimating Price Elasticity using Market-Level Appliance Data. LBNL–188289 (August 2015). Available at *eta-publications.lbl.gov/sites/default/files/lbnl-188289.pdf.*

proposed in the March 2023 NOPR are the first significant change in relative installed cost between top-loading and front-loading RCWs since 2007, and based on prior trends, the CA IOUs expect the front-loading RCW relative market share to increase. (*Id.* at p. 8) The CA IOUs recommended that DOE should amend the top-loading and front-loading market shares to reflect some expected shift from top-loading to front-loading RCWs based on the correlation of first-cost to market share relative to past energy conservation standard compliance dates. (*Id.*)

Electrolux Home Products, Inc. (''Electrolux'') commented that data from the September 2021 TSD [104] showed a projected market share loss for front-loading RCWs due to the standard at EL 3 proposed in the March 2023 NOPR. (Electrolux, No. 449 at p. 2) Electrolux further commented that these market trends between top-loading and front-loading RCWs should play a more significant role in the energy analysis due to the extensive energy and water savings that can be realized by consumers transitioning from top-loading RCWs to more efficient front-loading RCWs. (*Id.*) Electrolux requested that DOE set standards for front-loading RCWs at a better value than proposed in the March 2023 NOPR in order to reduce the expanding energy gap with top-loading RCWs. (*Id.*)

As stated in the March 2023 NOPR, DOE acknowledges the challenge of lacking historical retail pricing, sales data, and energy consumption data for top-loading and front-loading RCWs. These data are crucial for developing a regression model that accurately projects the market share between the two loading types of RCWs. In this direct final rule, DOE is not adopting the standards level proposed in the March 2023 NOPR. Instead, DOE is adopting a standards level that is one level below the efficiency level proposed in the March 2023 NOPR level for top-loading standard-size RCWs. Under the adopted standards, the incremental equipment price from the baseline model to an ENERGY STAR-rated top-loading standard-size RCW is $146, while the price difference between the adopted standard level top-loading RCW and the adopted standard level front-loading RCW is $227. Therefore, DOE does not expect that the adopted standards will drive consumers to shift from the top-loading to the front-loading RCW market because front-loading RCWs will continue to be more expensive. In line with the approach taken in the March 2023 NOPR, DOE assumed a frozen scenario for market shifting (*i.e.,* no market shifting) under the standards case in this direct final rule. 88 FR 13520, 13571.

See chapter 9 of the direct final rule TSD for details.

### *H. National Impact Analysis*

The NIA assesses the national energy savings (''NES''), national water savings (''NWS''), and the NPV from a national perspective of total consumer [105] costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[106] DOE calculates the NES, NWS, and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy and water consumption and total installed cost data from the energy and water use and LCC analyses. For the present analysis, DOE projected the energy and water savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of RCWs sold from 2027 through 2056 for all TSLs other than 2028 through 2057 for TSL 2 (the Recommended TSL detailed in the Joint Agreement).

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.21 summarizes the inputs and methods DOE used for the NIA analysis for the direct final rule. Discussion of these inputs and methods follows the table. *See* chapter 10 of the direct final rule TSD for further details.

TABLE IV.21—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

| Inputs | Method |
|---|---|
| Shipments | Annual shipments from shipments model. |
| Compliance Date of Standard | TSL 1, TSL 3, and TSL 4: 2027<br>TSL 2 (Recommended TSL): 2028. |
| Efficiency Trends | No-new-standards case: Annual shipments-weighted efficiency improvement of 0.4 percent for top-loading standard-size and 0.1 percent for both front-loading compact and standard-size clothes washers.<br>Standard cases: ''Roll up'' equipment to meet potential efficiency level. |
| Annual Energy and Water Consumption per Unit. | Annual weighted-average values are a function of energy use at each TSL. |
| Total Installed Cost per Unit | Annual weighted-average values are a function of cost at each TSL.<br>Incorporates projection of future product prices based on historical data. |
| Annual Energy Cost per Unit | Annual weighted-average values as a function of the annual energy and water consumption per unit and energy prices. |
| Repair and Maintenance Cost per Unit. | Annual values change between non-ENERGY STAR and ENERGY STAR efficiency levels. |
| Energy and Water Price Trends | *AEO2023* projections (to 2050) and constant value based on average between 2046–2050 thereafter.<br>Historical PPI extrapolated projection (to 2050) and constant value based on average between 2046–2050 thereafter. |

[104] Available at *www.regulations.gov/document/EERE-2017-BT-STD-0014-0030.*

[105] ''Consumer'' in this context refers to consumers of the product being regulated.

[106] The NIA accounts for impacts in the 50 States and U.S. territories.

TABLE IV.21—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

| Inputs | Method |
| --- | --- |
| Energy Site-to-Primary and FFC Conversion. | A time-series conversion factor based on *AEO2023*. |
| Discount Rate | 3 percent and 7 percent. |
| Present Year | 2024. |

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case, which yields a shipment-weighted average efficiency, for each of the considered product classes for the year of anticipated compliance with an amended standard. To project the trend in efficiency absent amended standards for RCWs over the entire shipments projection period, DOE considered recent trends in its CCD data and the potential effect of programs such as ENERGY STAR. As discussed in section IV.F.8 of this document, DOE estimated an annual efficiency improvement of 0.4 percent and 0.1 percent for top-loading standard-size and front-loading (compact and standard-size) RCWs, respectively.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2027 or 2028). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged. See chapter 10 of the direct final rule TSD for details.

2. National Energy and Water Savings

The national energy and water savings analysis involves a comparison of national energy and water consumption of the considered products between each potential standards case (''TSL'') and the case with no amended energy conservation standards. DOE calculated the national energy and water consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy and water consumption (also by vintage). DOE calculated annual NES and NWS based on the difference in national energy and water consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2023.* Cumulative energy and water savings are the sum of the NES and NWS for each year over the timeframe of the analysis.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notification, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [107] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B and 13A of the direct final rule TSD.

Use of higher-efficiency products is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency.

For this direct final rule, DOE considered comments it had received in response to the March 2023 NOPR regarding potential rebound effects.

In response to the March 2023 NOPR, AHAM commented that changes to water level requirements would cause perceptions of inadequate cleaning performance and lead consumers to take actions (*e.g.,* using alternative wash options with extra water or re-washing clothes) that cause real energy performance to diverge from DOE's projections. AHAM suggested that DOE include such effects in the analysis of total energy and water savings by adjusting upwards over time the average per unit energy and water consumption. (AHAM, No. 464 at pp. 2–3) AHAM stated that although there may not yet be data demonstrating a rebound effect because current standards have not yet caused such an effect, standards that are excessively stringent—such as those DOE proposed in the March 2023 NOPR—could cause a rebound effect. (*Id.* at p. 24)

Whirlpool commented that the proposed standards would cause consumers to alter their purchasing behavior due to the perceived loss of utility, poor performance, and increased up-front cost of RCWs meeting the proposed standards. (Whirlpool, No. 462 at p. 5) Specifically, Whirlpool commented that consumers may delay purchases and repair older, less efficient appliances past their normal, expected life. (*Id.*) Whirlpool commented that this shift in behavior will likely have the opposite impact on energy use that DOE anticipates, as consumers will continue to use their older and less efficient appliances instead of purchasing newer, more efficient models. (*Id.*) Whirlpool commented that DOE overestimated the total energy and water savings from the proposed standard because consumers may compensate for decreased utility and functionality by opting for more energy- and water-intensive washing options, washing loads multiple times to make up for loss in performance or wash clothes multiple times to recover lost performance. (*Id.* at p. 13)

CEI noted that consumer behavior resulting from performance-related deficiencies may well lead to increased water use for some consumers. (CEI, No. 454 at p. 5)

The AGs of TN *et al.* commented that DOE's dismissal of Whirlpool's observation that ''decreasing water

[107] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/forecasts/aeo/index.cfm* (last accessed June 24, 2023).

levels and wash temperatures would negatively impact consumer perceptions that their clothes washers are working correctly'' and DOE's defense that manufacturers had not provided quantitative data regarding ''human reactions'' is unjustified and that DOE should attempt the task of modeling consumer reactions. The AGs of TN *et al.* argued that DOE ignored the comment and that in doing so, DOE ''entirely fail[s] to consider an important aspect of the problem.'' (AGs of TN *et al.,* No. 438 at p. 6 (citing *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29, 43 (1983))

DOE also received comments from over 50 individual commenters expressing concern that amended standards could lead to more energy- and water-intensive usage of RCWs, thereby counteracting any energy or water savings resulting from amended standards.

As discussed further in section V.B.4.a of this document, in response to the March 2023 NOPR, AHAM and manufacturers presented data and information indicating that there are uncertainties regarding potential impacts on certain aspects of product performance at the standard levels proposed in the March 2023 NOPR (*i.e.,* TSL 3) that could lead consumers to opt for more energy- and water-intensive washing, and that changes to consumer usage patterns to mitigate such impacts could jeopardize the energy and water savings that would be achieved at the proposed efficiency levels.

DOE notes that in response to the March 2023 NOPR, manufacturers did not provide any specific data nor express any specific concerns regarding clothes washer performance at TSL 2 (*i.e.,* the Recommended TSL corresponding to the standards level adopted in this direct final rule). DOE's own data demonstrates no negative impact at TSL 2 on the cleaning performance, wash temperature, and mechanical action scores of RCWs, indicating there would be no loss of consumer utility at TSL 2. Furthermore, as previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement (including AHAM, and Whirlpool as a member) in which the signatories reaffirmed the standards recommended in the Joint Agreement.[108] In particular, the letter states that the stakeholders do not anticipate the recommended standards will negatively affect features or performance, and that DOE's test data shows, and industry experience agrees, that the recommended standard levels for RCWs can maintain good cleaning performance and do not preclude the ability to provide high wash temperatures. For further discussion of clothes washer performance as it relates to amended standards, see section V.B.4.a of this document.

DOE acknowledges that this conclusion is contrary to its assumptions in the final rule that it published on December 16, 2020 (''December 2020 Final Rule''). 85 FR 81359. There, DOE assumed that consumers might need to re-run their clothes washers or clothes dryers through multiple cycles ''to adequately clean or dry their clothing.'' *Id.* at 85 FR 81365. In this rulemaking, DOE has found no evidence suggesting that consumers are running their RCW multiple times at TSL 2 (*i.e.,* the Recommended TSL), which corresponds to the current ENERGY STAR efficiency level for both top-loading and front-loading standard-size RCW product classes. This is supported by data presented in section IV.E of this document and comments from Water Demand Management (''WaterDM''). (WaterDM, No. 508 at p. 3) According to the historical RECS data, average consumer usage of RCWs has steadily declined from 292 cycles per year per RCW in the 2005 RECS to 210 cycles per year per RCW in the 2020 RECS, while the average household size has remained essentially unchanged during the same period (average of 3 household members). This indicates a significant downward trend in the average number of cycles run on each RCW over the past 15 years, despite the implementation of RCW energy conservation standards. These include the first standard, Tier 1, introduced in 2004, followed by Tier 2 in 2007, and the current amended standard, Tier 1 in 2015 and Tier 2 in 2018. Additionally, data from WaterDM corroborates this trend, showing a decline in the average number of clothes washer loads per household per day from 0.81 in 1999 to 0.71 in 2023, despite the decrease in water use per load from 41 gallons to 25 gallons and increase in capacity of clothes washer during the same period. The amount of water used per pound of clothes washed has decreased during this time and yet there is no evidence that cleaning performance was negatively impacted (through the usage of multiple cycles to clean a given load of clothes). These data indicate that amended energy conservation standards have not resulted in consumers re-running loads of laundry purportedly due to reduced cleaning performance.

Given that there is no evidence of any previous RCW standard increasing RCW cycles per year, and in fact, instead cycles per year have decreased over time through multiple standards, DOE determines that a standard at TSL 2 would not be expected to lead consumers to opt for more energy- and water-intensive washing.

To better understand and quantify the uncertainties of any impacts of potential standards at TSL 3 and TSL 4 on consumer behavior, for this direct final rule, DOE has conducted a sensitivity analysis of possible increased use of the ''deep fill'' option on top-loading standard-size RCWs at CEE Tier 1 (TSL 3) and max-tech (TSL 4), which are more stringent TSLs than being adopted in this direct final rule. Specifically, DOE considered the possibility that consumers might opt for more energy- and water-intensive washing using the deep fill option available on their top-loading RCWs. DOE assumed that in this case consumers would choose to wash their loads with more water, resulting in less energy and water savings compared to the standard projections. The sensitivity analysis compares the energy and water savings, as well as the NPV, between scenarios with and without the deep fill usage option, quantifying the impact of altered consumer behavior on the analytical results. The analysis does not model a change for product classes lacking a deep fill option, like front-loading RCWs, nor does it consider aspects of consumer behavior unrelated to usage intensity, such as the delayed replacement of older clothes washers.

The overall FFC national energy savings decrease by approximately 2 percent and national water savings decrease by less than 2 percent, compared to the default case. For details on the NIA sensitivity analysis results, see appendix 10E of the direct final rule TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy and water costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed

[108] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed RCW price trends based on historical PPI data. DOE applied the same trends to project prices for each product class at each considered efficiency level. By 2056, which is the end date of the projection period, the average RCW price is projected to drop 17.2 percent relative to 2022. Non-energy efficiency related features are excluded from the manufacturer production cost, therefore, the decline in price does not include any price adders associated with non-energy efficiency related features. DOE is not aware if such data exists and notes that the projected drop in price may not reflect real market prices. DOE's projection of product prices is described in appendix 10C of the direct final rule TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for RCWs. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a high price-decline case based on PPI data for the period 1980–2022 and (2) a constant price trend at the 2022 value. Compared to the default price trend, which exhibits an annual price decline rate of 0.58 percent, the high price-decline case exhibits an annual decline rate of 1.15 percent, and the constant price case exhibits no annual decline. For the Recommended TSL under the high-price decline case, consumer NPV increases by 10 percent and 14 percent given discount rates of 3 percent and 7 percent, respectively. Under the constant price case, consumer NPV decreases by 12 percent and 16 percent given discount rates of 3 percent and 7 percent, respectively. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the direct final rule TSD.

The energy and water cost savings are calculated using the estimated energy and water savings in each year and the projected price of the appropriate form of energy and water. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference case from *AEO2023,* which has an end year of 2050. To estimate price trends after 2050, the 2046–2050 average was used for all years. To estimate water prices in future years, DOE multiplied the average national water prices by the projection of annual national-average residential water price changes in the extrapolated future water price trend, which is based on the historical water price index from 1988 to 2022. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2023* Reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the direct final rule TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this direct final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[109] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

### *I. Consumer Subgroup Analysis*

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels.

For this direct final rule, DOE analyzed the impacts of the considered standard levels on three subgroups: (1) low-income households, (2) senior-only households, and (3) well-water households. The analysis used subsets of the 2020 RECS sample composed of households that meet the criteria for the considered subgroups. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the direct final rule TSD describes the consumer subgroup analysis. The sections below discuss the individual subgroups, and additional details are found in chapter 11 of the direct final rule TSD.

#### 1. Low-Income Households

Low-income households are significantly more likely to be renters or to live in subsidized housing units, compared to households that are not low-income. In these cases, the landlord purchases the equipment and may pay the energy bill as well.

For this direct final rule analysis, DOE divided low-income households into three sub-subgroups: (1) renters who pay energy bill; (2) renters who do not pay energy bill; and (3) homeowners. The 2020 RECS includes data on whether a household pays for the energy bill, allowing DOE to categorize households in the analysis narrowly,[110] excluding any costs or benefits that are accrued by either a landlord or subsidized housing agency. This allows DOE to determine in a more accurate manner whether low-income households are disproportionately affected by an amended energy conservation standard. Table IV.22 shows the distribution of low-income household clothes washer users with respect to whether they rent or own and whether they pay the energy bill.

[109] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed June 24, 2023).

[110] The energy bill includes fuel type of electricity, natural gas, or propane consumed by a household.

TABLE IV.22—CHARACTERIZATION OF LOW-INCOME HOUSEHOLDS IN THE SAMPLE FOR CLOTHES WASHERS

| Type of household * | Percentage of low-income sample | | | | Impact of higher efficiency on energy bill | Impact of first cost increase |
|---|---|---|---|---|---|---|
| | Top-loading, standard-size (%) | Front-loading, standard-size (%) | Semi-automatic, top-loading, ultra-compact (%) | Front-loading, compact (%) | | |
| Renters (Pay for Energy Bill) ** | 40 | 43 | 50 | 57 | Full/Partial savings | None.*** |
| Renters (Do Not Pay for Energy Bill) **. | 4 | 4 | 5 | 8 | None | None.*** |
| Owners | 56 | 53 | 45 | 36 | Full/Partial savings | Full. |

* RECS 2020 lists three categories: (1) Owned or being bought by someone in your household (here classified as ''Owners'' in this table); (2) Rented (here classified as ''Renters'' in this table); (3) Occupied without payment of rent (also classified as ''Renters'' in this table). Renters include occupants in subsidized housing including public housing, subsidized housing in private properties, and other households that do not pay rent. RECS 2020 does not distinguish homes in subsidized or public housing.

** RECS 2020 lists four categories for each of the fuels used by a household: (1) Household is responsible for paying for all used in this home; (2) All used in this home is included in the rent or condo fee; (3) Some is paid by the household, some is included in the rent or condo fee; and 4) Paid for some other way. ''Do Not Pay for Energy Bill'' includes only category (2). Partial energy bill savings would occur in cases of category (3).

*** Low-income renters typically do not purchase a clothes washer. Therefore, it is unclear if the renters would be asked to pay the full or partial of the total installed cost. As a result, DOE estimated there would be no impact of first cost increase for low-income renters and occupants in public housing and other households that do not pay rent.

For this direct final rule, DOE considered comments it had received regarding its consideration of low-income households in the March 2023 NOPR. DOE notes that although several of the comments discussed below are from AHAM, as previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement (including AHAM) in which the signatories reaffirmed the standards recommended in the Joint Agreement.[111] In particular, the letter states that ''the recommended standards represent the maximum levels of efficiency that are technologically feasible and *economically justified*'' (emphasis added). The approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, AHAM stated that an updated energy conservation standard should be aligned with DOE's analytical principles and Executive Order 13985, which requires agencies to assess whether its programs and policies perpetuate systemic barriers to opportunities and benefits for people in underserved communities. AHAM comment that it is inappropriate to concentrate the negative impacts of the standard on low-income and traditionally underserved communities and that these consumers cannot pay more for more efficient RCWs and assume they will get a payback over time on their electric bill. (AHAM, No. 464 at pp. 11–12) AHAM commented the highest savings a renter would receive on their monthly bill under the standards proposed in the March 2023 NOPR for top-loading standard-size RCWs, according to DOE's analysis, would be 82 cents. (*Id.* at p. 32) AHAM further commented that the increased upfront costs attributable to the standards proposed in the March 2023 NOPR are high enough that they will likely be noticed by a landlord or a builder and, based on the comments by the associations representing those stakeholders, AHAM stated that those costs are likely to be passed onto renters, offsetting any savings. (*Id.* at p. 33)

Whirlpool commented that many low-income households are renters and that DOE has no evidence for its assumption that renters will benefit from operational savings with no cost impacts. (Whirlpool, No. 462 at p. 6) Whirlpool stated that landlords pass along their costs to consumers to the extent they are able, or elect to delay their purchase of a new clothes washer. (*Id.* at pp. 6–7) Whirlpool commented that DOE must account for the impact of increased product costs on rental costs for consumers. (*Id.* at p. 7)

CEI commented that the March 2023 NOPR discussion of consumer sub-groups misses the possibility of adverse impacts on low-income households. (CEI, No. 454 at p. 5) CEI commented that landlords will not absorb the higher purchase price of compliant RCWs, but instead will include the cost in rental rates, harming low-income renters. (*Id.*)

According to the RECS clothes washer sample, around 47 percent of low-income households that have a clothes washer are renters. In most cases, the property owner would purchase a new clothes washer. While the owner might seek to pass on some of the cost in the rent, the ability to do so is constrained to some extent by lease agreements that set rents for a specific period and larger market forces that influence rent levels in particular locations. In such circumstances, renters who pay the utility bill would see a significant net benefit from a higher-efficiency RCW over the product lifetime, and this is seen in the results of DOE's analysis (see chapter 11 of the direct final rule TSD). DOE notes that there continues to be a lack of data to corroborate the notion that landlords pass on some, or all, of increased appliance costs to tenants. However, for this direct final rule, DOE implemented a scenario assuming that landlords would pass some of the incremental RCW costs to renters in the LCC. The results indicate that this scenario would not impact DOE's decision on amended standards. For details of the sensitivity results, see appendix 11A of the direct final rule TSD.

AHAM commented that DOE has not established that there is a significant proportion of split incentive issues between tenants and landlords. (AHAM, No. 464 at p. 26) AHAM commented that continuing to assert the presence of a split incentive situation without any supporting data is arbitrary and capricious stating that no states require landlords to provide clothes washers and a significant portion of rental housing would have to have clothes washers provided by landlords, which DOE has not established. (*Id.*) AHAM stated that the maximum potential universe of low-income households where a split incentive might exist is a small fraction of all low-income households. (*Id.*) AHAM stated that a split incentive may exist in only a small fraction of low-income households, noting that using 2020 RECS, only 30

[111] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

percent of low-income households with clothes washers and who pay their utilities are renters. (*Id.* at p. 26) AHAM noted that only 13 percent of those households live in housing units with two or more units and eight percent live in buildings with five or more units. (*Id.*) AHAM further noted that when low-income households live in units where the landlord provides clothes washers, they are most likely to be in multi-family buildings, and most likely in apartment buildings with five or more units because anecdotal experience is that clothes washers are rarely provided in single family rental units. (*Id.* at p. 27) AHAM concluded that the maximum percentage of low-income households with landlord supplied clothes washers is less than 10 percent of all low-income households. (*Id.*)

CEI commented that DOE overestimated the percentage of low-income households who are renters rather than homeowners. (CEI, No. 454 at p. 5)

The CA IOUs supported DOE's decision to divide the low-income subgroup into renters and non-renters. (CA IOUs, No. 460 at p. 6) The CA IOUs noted that renters have a lower share of ENERGY STAR appliances than non-renters, partially due to the split incentive market failure where landlords are responsible for purchasing major home appliances while renters are responsible for paying utility bills. (*Id.*)

The existence of a split incentive across a substantial number of U.S. households, in which a tenant pays for the cost of electricity while the building owner furnishes appliances, has been identified through a number of studies of residential appliance and equipment use broadly, and for clothes washers in low-income settings in specific. Building from early work including Jaffe and Stavins (1994),[112] Murtishaw and Sathaye (2006)[113] discussed the presence of landlord–tenant split incentives (*i.e.,* the ''principal-agent problem'') in the context of refrigeration, water heating, space heating, and lighting in rental housing. While the study did not focus on the low-income household, they estimated that 35 percent of total residential site energy use is subject to split incentives based on these four products alone. In the specific context of clothes washers, Spurlock and Fujita (2022)[114] estimated that while clothes washers are more common for households above the poverty line, the majority of households at or below the threshold have a clothes washer in their home; 87 percent of low-income individuals who rented their homes were found to pay the electricity bill resulting from their energy use, such that they were likely subject to a scenario in which their landlord purchased the appliance, but they paid the operating costs. Spurlock and Fujita (2022), Houde and Spurlock (2016),[115] and citations therein (*e.g.,* Davis 2012)[116] also further elaborated on split incentives in rental housing and their association with generally lower efficiency among the appliances used by renters.

With regard to AHAM's assertion that the maximum percent of low-income households with landlord-provided clothes washers is less than 10 percent of all low-income households, DOE notes that AHAM's assertion only considers households with incomes under $34,000, who have clothes washers in their units, and who pay their energy bills. This differs from DOE's definition of low-income households, which is based on poverty thresholds established by the U.S. Census Bureau.[117] As described in chapter 11 of the direct final rule TSD, DOE defines low-income households by varying poverty thresholds based on household size and the number of related children under 18 years old. Consequently, using the same 2020 RECS data, DOE's analysis indicates that low-income renters who have an RCW and pay their energy bills constitute roughly 40 percent of all low-income households. Furthermore, within this group, approximately 43 percent reside in single-family houses, 20 percent in buildings with 2 to 4 units, and 25 percent in buildings with 5 or more units. As a result, DOE's analysis concludes that there is a substantial fraction of split-incentive issue among low-income households.

AHAM commented that low-income consumers typically purchase entry-level RCWs, the proposed rule[118] would disproportionately and negatively affect low-income households and lead them to incur debt, purchase a used clothes washer, repair a current one, or use the laundromat—meaning they will be forced to spend more time doing laundry than other consumers or will not actually conserve water and energy or save money. (AHAM, No. 464 at p. 11)

AHAM commented that it commissioned Bellomy Research to conduct a study focusing on the impact of higher appliance prices on low-income households.[119] (AHAM, No. 464 at p. 27) AHAM commented that the study found that 52 percent of households earning under $50,000 annually would resort to buying a used clothes washer or delay purchasing one due to cost. (*Id.*) AHAM further commented that 72 percent of households with incomes below $25,000 would not pay more upfront for a more energy-efficient clothes washer that would save them in energy bills over the next ten years. These households were 1.7 times more likely to have a top-loading clothes washer with an agitator and one-third as likely to own a front-loading clothes washer. (*Id.* at p. 28) AHAM additionally commented that, 73 percent of households earning under $25,000 would experience negative to extremely negative impacts from being forced to buy a new clothes washer. (*Id.*) AHAM commented that these findings contradict DOE's theoretical analysis and highlight the need for government initiatives that recognize and mitigate impacts on underserved communities. (*Id.* at p. 27)

Representatives Latta *et al.* commented that low-income consumers in particular are least likely to be able to afford new appliances. (Representatives Latta *et al.,* No. 456 at pp. 1–2) Representatives Latta *et al.* stated that DOE's analysis fails to consider the unintended consequences of upfront cost increases, including high interest rate financing and lost energy savings from delayed replacement of older, less-efficient appliances. (*Id.*)

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[112] A.B. Jaffe and R.N. Stavins (1994) The energy-efficiency gap What does it mean?

Energy Policy, 22 (10) 804–810, available at *doi.org/10.1016/0301-4215(94)90138-4.*

[113] Murtishaw, S., & Sathaye, J. (2006). Quantifying the Effect of the Principal-Agent Problem on US Residential Energy Use. Lawrence Berkeley National Laboratory. Available at *escholarship.org/uc/item/6f14t11t.*

[114] C.A. Spurlock and K.S. Fujita (2022), Equity implications of market structure and appliance energy efficiency regulation, Energy Policy, 165 (112943), available at *doi.org/10.1016/j.enpol.2022.112943.*

[115] S. Houde, C.A. Spurlock (2016), Minimum Energy Efficiency Standards for Appliances: Old and New Economic Rationales. Economics of Energy & Environmental Policy, 5(2), 65–84. Available at *www.jstor.org/stable/26189506.*

[116] L.W. Davis (2012), Evaluating the slow adoption of energy efficient investments: are renters less likely to have energy efficient appliances? The Design and Implementation of US Climate Policy, University of Chicago Press (2012), pp. 301–316.

[117] U.S. Census Bureau, How the Census Bureau Measures Poverty, available at *www.census.gov/topics/income-poverty/poverty/guidance/poverty-measures.html.*

[118] DOE notes that the standards adopted in this direct final rule are the same as those proposed standards in the March 2023 NOPR for three of the five product classes, but are less stringent than the standards proposed in the March 2023 NOPR for the other two product classes.

[119] The Bellomy Research study was sponsored by Whirlpool. (Whirlpool, No. 462 at p. 6)

Salman cited concerns with DOE's proposed standards for RCWs,[120] over costs, particularly the impact on low-income households. (Salman, No. 446 at p. 1)

DOE's low-income LCC subgroup analysis uses inputs specific to low-income consumers to estimate the impact of adopted standards. There is evidence that prior efficiency standards, by acting on a market substantially more complex than the simplified model of perfect competition, have aligned with improvements in efficiency (and in some cases additional product attributes) while maintaining a constant price for ''entry-level'' products. For example, Spurlock and Fujita (2022) examined appliance point of sales data and noted that the 2004 and 2007 RCW efficiency standards were associated with 30-percent increase in product efficiency contemporaneous with no change in average price within the baseline market segment (*i.e.,* ''entry-level'' RCWs).

DOE notes that, while unable to review the specific survey instrument and resulting dataset, this summary of AHAM survey findings implies that the framing does not reflect the context of a revised minimum energy conservation standard. Specifically, these are impacts AHAM is claiming would occur based on the full cost of a new RCW and are not specifically relevant to the potential increased incremental cost of purchasing a new RCW in a standards case. The incremental cost, which is substantially less than the full cost of an RCW, varies depending on the considered standard levels. Additionally, as described in section IV.G of this document, DOE implemented an extended repair scenario and a second-hand market scenario to capture the market impact resulting from consumers' sensitivity to increased clothes washer prices.

AHAM commented that DOE's approach to assessing the cost of appliances for low-income households, which uses a static balance sheet, fails to consider capital availability and non-financial costs faced by these households, such as missed payments on essential expenses like food and housing. (AHAM, No. 464 at p. 29) AHAM presented data showing that the lowest 30 percent income groups have no discretionary income to save, making it impossible for them to rebalance their balance sheets after making a purchase. AHAM commented that DOE does not provide a theory or explanation for how low-income households with negative discretionary cash flow can realistically rebalance their balance sheets, undermining the accuracy of DOE's predictions. AHAM commented on disparities between DOE's projections and interest rates and data from sources like the Bureau of Consumer Financial Protection, suggesting that DOE's estimates are not reliable. (*Id.* at p. 30) AHAM commented that regardless of income, savings as low as the projected savings in this rule are not enough to be noticed on the monthly flow of funds, will not provide an opportunity to rebalance a balance sheet, and do not constitute a benefit to consumers. (AHAM, No. 464 at p. 32)

AHAM commented that DOE should undertake a full study of the effects of standards on low-income households beyond simply restating its belief that the balance sheet approach is appropriate in the face of comments and data demonstrating the inaccuracy of this belief. (AHAM, No. 464 at p. 31) AHAM further commented that DOE's assumption that consumers pay the water and sewer bill directly is an unproven and, often, incorrect, assumption. (*Id.* at p. 32)

Strauch expressed concern that future dollar savings are not accessible for immediate purchase, making it unaffordable for individuals with limited incomes or fixed budgets. (Strauch, No. 430 at p. 2)

DOE notes that the LCC is not predicting a purchase decision. Rather, it estimates the net present value of the financial impact of a given standard level over the lifetime of the product (*e.g.,* 13 years) assuming the standard-compliant product has already been installed, and allows for comparison of this value across different hypothetical minimum efficiency levels. It is applied to future-year energy costs and non-energy operations and maintenance costs in order to calculate the net present value of the appliance to a household at the time of installation. The consumer discount rate reflects the opportunity cost of receiving energy cost savings in the future, rather than at the time of purchase and installation. The opportunity cost of receiving operating cost savings in future years, rather than in the first year of the modeled period, is dependent on the rate of return that could be earned if invested into an interest-bearing asset or the interest cost accrual avoided by paying down debt. Consumers in all income groups generally hold a variety of assets (*e.g.,* certificates of deposit, stocks, bonds) and debts (*e.g.,* mortgage, credit cards, vehicle loan), which vary in amount over time as consumers allocate their earnings, make new investments, *etc.* Thus, the consumer discount rate is estimated as a weighted average of the rates and proportions of the various types of assets and debts held by households in each income group, as reported by the Survey of Consumer Finances. Furthermore, DOE notes that the Survey of Consumer Finances shows that consumers across all income groups generally rebalance their assets and debts over time.

Whirlpool commented that DOE's analysis appears to not account for the fact that a significant portion of consumers, especially low-income consumers, finance their appliance purchases, either through personal loans, in-house financing, rent-to-own, or by putting purchases on their credit cards. Whirlpool commented that it wasn't clear if DOE included the likely financing and actual rates paid by consumers in the analysis. Whirlpool commented that many more consumers than DOE anticipates may end up saving no money (and may spend more money) as a result of the proposed rule.[121] (Whirlpool, No. 462 at p. 6)

As discussed, the LCC analysis estimates the net present value of the financial impact of a given standard level over the lifetime of the product. In the case of top-loading standard-size RCWs, the price differential between EL 3 and baseline is $160. When a consumer purchased the more efficient unit on a credit card with a 25 percent APR, it would amount to an additional financing cost of about $3 per month in the first year of leaving the balance on the card. While the compound interest could start to accumulate if the balance was left unpaid for an extended period of time, it would be an unusual case as the Survey of Consumer Finances shows that consumers across all income groups generally rebalance their assets and debts.

AHAM commented that DOE's analysis overstates the operating costs savings from reduced water use in washing machines, as many households, especially in multi-family buildings, don't directly pay for water and sewer, as costs are often covered by landlords or included in common charges. AHAM commented that condominium owners bear the cost of efficient clothes washers, but don't see direct water bill savings because water and sewer

[120] DOE notes that the standards adopted in this direct final rule are the same as those proposed March 2023 NOPR for three of the five product classes, but are less stringent than the standards proposed in the March 2023 NOPR for the other two product classes.

[121] DOE notes that the standards adopted in this direct final rule are the same as those proposed March 2023 NOPR for three of the five product classes, but are less stringent than the standards proposed in the March 2023 NOPR for the other two product classes.

chargers are included in many condominium fees, possibly leading to negative life cycle cost savings. AHAM suggested that DOE should separately analyze multi-family housing units that do not directly pay for water and sewer costs. (AHAM, No. 464 at pp. 39–40)

Whirlpool commented that many consumers in living arrangements where water is not sub-metered (*e.g.,* multi-family housing) are low-income renters, so DOE's estimated reduction in the cost of water is likely inapplicable. (Whirlpool, No. 462 at p. 6)

AHAM and Whirlpool identified two groups of consumers who may not see water bill savings as a result of an amended standard: (1) condominium owners in multi-family buildings where water and sewer costs are included in common charges and (2) low-income renters in multi-family housing where water is not sub-metered and/or costs are covered by landlords.

DOE notes that RECS does not identify whether or not a household pays its water bill. With regard to the first group, if assuming that owners in multi-family buildings who are identified in RECS as not paying their energy bill also do not pay their water bill, this group represents less than 0.5 percent of the national sample, indicating a relatively small group. With regard to the second group, in DOE's low-income subgroup analysis, DOE assumes that households that do not pay their energy bill also do not pay their water bill and therefore do not accrue any operating cost savings from considered standards. Therefore, this issue is already accounted for in the subgroup results.

2. Senior-Only Households

Annual clothes washer usage for senior-only households is significantly less than the full household sample because the household size for senior-only families is typically either one or two people. A household size equal to or larger than three members accounts for less than 1 percent of senior-only households. Therefore, as described in section V.B.1 of this document, the percentage of senior-only RCW consumers experiencing a net cost at TSL 2 (the Recommended TSL) is greater (35 percent for top-loading standard-size RCWs) than in the full LCC sample (27 percent for top-loading standard-size RCWs). The simple payback period for senior-only households at TSL 2 is 1.7 years longer than in the full LCC sample.

For this direct final rule, DOE considered comments it had received regarding its consideration of senior-only households in the March 2023 NOPR. The approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, Strauch expressed concern that senior households are unlikely to recover the added cost of energy-efficient products during their lifetime. (Strauch, No. 430 at p. 2) Strauch commented that even existing rebate programs do not sufficiently offset the increased up-front cost, particularly for senior households who may not benefit from these savings. (*Id.*)

Strauch did not provide supporting data to demonstrate that senior households are unlikely to recover from increased purchase price at the adopted standard level over the course of their lifetime. DOE is not able to perform an analysis on seniors who might not be able to recoup the savings due to their age. However, DOE has described in section V.B.1 of this document, at the Recommended TSL, the positive average LCC savings across all product classes for senior consumers—except for front-loading compact RCWs for which about more than 70 percent of senior consumers have positive cost savings—outweigh the negative average LCC savings of $1 for front-loading compact RCWs for senior consumers.

3. Well-Water Households

In response to the March 2023 NOPR, AHAM commented that DOE should analyze well water households as a separate group due to substantial cost differences compared to municipal water users, noting that well water costs are about 6 percent of the combined cost of municipal water and sewer. AHAM commented that for top-loading standard-size RCWs at EL 3, using the real cash costs for water and sewer, the mean and median LCC savings are negative, resulting in a net cost for about 60 percent of these households. AHAM commented that the actual cash costs also reveal negative LCC savings for most front-loading compact clothes washer households and about half of front-loading standard-size clothes washer households. AHAM commented that DOE should therefore adjust its proposals acknowledging the burden on this group. (AHAM, No. 464 at p. 39)

Whirlpool commented that the March 2023 NOPR does not adequately consider the cost impacts on consumers residing in rural households. Whirlpool commented that many rural households use well and septic systems for which the cost of water and sewer is very low, leading to less savings than DOE anticipates. Additionally, Whirlpool stated that the water used by RCWs using well water has no societal benefit from water reductions because they are ultimately replenished by groundwater. (Whirlpool, No. 462 at pp. 5–6) Representatives Latta *et al.* commented that DOE overestimates savings for many rural consumers who use a well and septic system, for which water operating cost savings from the proposed standard are essentially zero. (Representatives Latta *et al.,* No. 456 at p. 2)

As described in section IV.F.4 of this document, for this direct final rule, DOE has made adjustments to its method for estimating well water and septic costs. The updated average well water and septic tank prices is 8.8 percent [122] of the combined cost of municipal water and sewer costs. In addition, DOE has specifically assigned well water price and septic tank price to well users instead of using the composite water and wastewater prices. This means that the national LCC analysis accounts for the potential financial burden on households using well water systems, and it acknowledges that some well water users might experience increased costs under the amended efficiency standards. In addition, DOE presents results for the well user subgroup in chapter 11 of the TSD.

Chapter 11 in the direct final rule TSD describes the consumer subgroup analysis.

### *J. Manufacturer Impact Analysis*

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of RCWs and to estimate the potential impacts of such standards on direct employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (''R&D'') and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

[122] DOE's estimate is higher than that provided by AHAM (*i.e.,* 6 percent) because DOE factored in maintenance costs for septic systems, whereas AHAM did not.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model ("GRIM"), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases. To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different manufacturer markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the direct final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the RCW manufacturing industry based on the market and technology assessment and publicly-available information. This included a top-down analysis of RCW manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses ("SG&A"); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the RCW manufacturing industry, including company filings of form 10–K from the SEC,[123] corporate annual reports, the U.S. Census Bureau's *Annual Survey of Manufactures* ("*ASM*"),[124] and reports from Dun & Bradstreet.[125]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of RCWs in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in chapter 12 of the direct final rule TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new or amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2024 (the base year of the analysis) and continuing 30 years after the analyzed compliance year.[126] DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of RCWs, DOE used a real discount rate of 9.3 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new or amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis, results of the shipments analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the direct final rule TSD.

a. Manufacturer Production Costs

Manufacturing more efficient products is typically more expensive than manufacturing baseline products due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry. DOE conducted this analysis using the

[123] U.S. Securities and Exchange Commission, Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Available at *www.sec.gov/edgar/search/* (last accessed June 30, 2023).

[124] U.S. Census Bureau, *Annual Survey of Manufactures.* "Summary Statistics for Industry Groups and Industries in the U.S. (2022)." Available at *www.census.gov/programs-surveys/asm/data/tables.html* (last accessed June 30, 2023).

[125] The Dun & Bradstreet Hoovers login is available at *app.dnbhoovers.com* (last accessed June 30, 2023).

[126] For the no-new-standards case and all TSLs except the Recommended TSL, the analysis period ranges from 2024–2056. For the Recommended TSL, the analysis period ranges from 2024–2057.

physical teardown approach. The resulting bill of materials provides the basis for the MPC estimates. In this rulemaking, DOE relies on an efficiency-level approach, supplemented with the design-option approach for certain ''gap fill'' efficiency levels. The efficiency-level approach is appropriate for RCWs, given the availability of certification data to determine the market distribution of existing products and to identify efficiency level ''clusters'' that already exist on the market. For a complete description of the MPCs, see section IV.C of this document and chapter 5 of the direct final rule TSD.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from the base year (2024) to the end of the analysis period (30 years after the analyzed compliance date [127]). *See* section IV.G of this document and chapter 9 of the direct final rule TSD for additional details.

c. Capital and Product Conversion Costs

New or amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) capital conversion costs; and (2) product conversion costs. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with new or amended energy conservation standards.

DOE relied on information derived from manufacturer interviews, the engineering analysis, and product teardowns to evaluate the level of capital and product conversion costs manufacturers would likely incur at the various TSLs. During interviews, DOE asked manufacturers to estimate the capital conversion costs (*e.g.,* changes in production processes, equipment, and tooling) required to meet the various efficiency levels. DOE also asked manufacturers to estimate the redesign effort, engineering resources, and marketing expenses required at various efficiency levels to quantify the product conversion costs. Based on manufacturer feedback, DOE also estimated ''re-flooring'' costs associated with replacing obsolete display models in big-box stores (*e.g.,* Lowe's, Home Depot, Best Buy) due to higher standards. Some manufacturers stated that with a new product release, big-box retailers discount outdated display models, and manufacturers share any losses associated with discounting the retail price. The estimated re-flooring costs for each efficiency level were incorporated into the product conversion cost estimates, as DOE modeled the re-flooring costs as a marketing expense. DOE also estimated industry costs associated with re-rating basic models in accordance with appendix J, as detailed in the June 2022 TP Final Rule. 87 FR 33316. Manufacturer data were aggregated to better reflect the industry as a whole and to protect confidential information. DOE then scaled up the aggregate capital and product conversion cost feedback from interviews to estimate total industry conversion costs.

DOE adjusted the conversion cost estimates developed in support of the March 2023 NOPR to 2022$ for this analysis.

In general, DOE assumes all conversion-related investments occur between the year of publication of the direct final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the direct final rule TSD.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied a multiplier (the manufacturer markup) to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) a preservation of gross margin percentage scenario; and (2) a preservation of operating profit scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within a product class. As manufacturer production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. DOE assumed a gross margin percentage of 18 percent for all product classes.[128] Manufacturers tend to believe it is optimistic to assume that they would be able to maintain the same gross margin percentage as their production costs increase, particularly for minimally efficient products. Therefore, this scenario represents a high bound of industry profitability under an amended energy conservation standard.

In the preservation of operating profit scenario, as the cost of production goes up under a standards case, manufacturers are generally required to reduce their manufacturer markups to a level that maintains base-case operating profit. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the no-new-standards case in the year after the expected compliance date of the amended standards.[129] The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after the standard takes effect.

A comparison of industry financial impacts under the two scenarios is presented in section V.B.2.a of this document.

3. Discussion of MIA Comments

For this direct final rule, DOE considered comments it had received

[127] *Id.*

[128] The gross margin percentage of 18 percent is based on a manufacturer markup of 1.22.

[129] For TSL 2 (the Recommended TSL), the modeled compliance date is 2028. For the remaining TSLs, the modeled compliance date is 2027.

regarding its manufacturer impact analysis presented in the March 2023 NOPR. The approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, AHAM stated that it cannot comment on the accuracy of DOE's approach for including how manufacturers would potentially recover costs and investments due to amended standards, but AHAM stated its support for DOE's intent in the microwave ovens energy conservation standards rulemaking to include those conversion costs and investments in the actual costs of products and retail prices.[130] (AHAM, No. 464 at p. 40) AHAM urged DOE to apply the same conceptual approach used in the microwave ovens rulemaking in this RCW rulemaking and all future rulemakings. (*Id.*)

DOE models different standards-case manufacturer markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards. The analyzed manufacturer markup scenarios vary by rulemaking as they are meant to reflect the potential range of financial impacts for manufacturers of the specific covered product or equipment. As discussed in section IV.J.2.d of this document, for RCWs, DOE modeled two standards-case manufacturer markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards. For the March 2023 NOPR, DOE applied the preservation of gross margin percentage scenario to reflect an upper bound of industry profitability and a preservation of operating profit scenario to reflect a lower bound of industry profitability under amended standards. 88 FR 13520, 13576–13577 DOE used these scenarios to reflect the range of realistic profitability impacts under more-stringent standards. Manufacturing more efficient RCWs is generally more expensive than manufacturing baseline RCWs, as reflected by the MPCs estimated in the engineering analysis. Under the preservation of gross margin scenario for RCWs, incremental increases in MPCs at higher efficiency levels result in an increase in per-unit dollar profit per unit sold. In interviews, multiple manufacturers asserted that they would likely need to reduce manufacturer markups under more stringent standards to remain competitive in the marketplace. Therefore, the preservation of gross margin scenario represents the upper bound of industry profitability under amended standards. Applying the approach used in the microwave ovens rulemaking (*i.e.,* a conversion cost recovery scenario) would result in manufacturers increasing manufacturer markups under amended standards. Based on information gathered during confidential interviews in support of the March 2023 NOPR and a review of financial statements of companies engaged in manufacturing RCWs, DOE does not expect that the RCW industry would increase manufacturer markups as a direct result of amended standards absent non-energy efficiency-related features. Furthermore, in response to the March 2023 NOPR, DOE did not receive any public or confidential data indicating that industry would increase manufacturer markups in response to more stringent standards. Therefore, DOE used the two manufacturer markup scenarios from the March 2023 NOPR for this direct final rule analysis.

AHAM commented that laundry products (RCWs and consumer clothes dryers) are designed and used in pairs. (AHAM, No. 464 at p. 44) AHAM encouraged DOE to issue final rules for RCWs and consumer clothes dryers on the same date so that the compliance dates for these products are aligned. (*Id.*) AHAM stated that there will be an additional design cycle for either or both clothes washers and clothes dryers if the effective dates for the two products are out of sync. (*Id.*) AHAM commented that the existing DOE analysis does not capture this situation, which creates a significant technical and financial burden for manufacturers. (*Id.*) AHAM commented that coordinated compliance dates would greatly reduce burden on manufacturers and retailers. (*Id.*)

DOE is adopting the Recommended TSL in this direct final rule. The Joint Agreement included recommendations for other appliance standards rulemakings: RCWs; consumer clothes dryers; consumer conventional cooking products; dishwashers; refrigerators, refrigerator-freezers, and freezers; and miscellaneous refrigeration products. The signatories indicate that the Joint Agreement for the six rulemakings should be considered as a joint recommendation of standards, to be adopted in its entirety. (Joint Agreement, No. 505 at p. 3) The Joint Agreement specifies a compliance date of March 1, 2028, for both RCWs and consumer clothes dryers. (*Id.*) Therefore, DOE did not adjust its conversion cost estimates to account for the time and investments associated with an additional design cycle as DOE assumed the compliance dates for RCWs and consumer clothes dryers would align.

Representatives Latta *et al.* urged DOE to evaluate options to address the cumulative regulatory impact on domestic appliance manufacturers of the unprecedented number of recently proposed standards, which also include consumer clothes dryers, consumer conventional cooking products, refrigerators, refrigerator-freezers, and freezers—with more to come. (Representatives Latta *et al.,* No. 456 at p. 3) Representatives Latta *et al.* recommended that, given the serious concerns and ongoing uncertainty in the market, DOE should work with appliance manufacturers to incorporate their feedback before moving to finalize new efficiency standards. (*Id.*)

NMHC and NAA commented that this rulemaking comes as part of a series of similar rulemakings DOE is proposing to change performance standards for essential residential appliances. (NMHC and NAA, No. 451 at p. 4) NMHC and NAA stated that DOE took over 100 actions related to energy efficiency standards in 2022 and noted that DOE's August 2021 Report to Congress on Energy Conservation Standards Activity showed DOE had promulgated 71 energy conservation standards rulemakings since the last report in July 2019. (*Id.*) NMHC and NAA commented that they are concerned the number of changes for marginal efficiency gains will outpace the ability of the manufacturing sector and supplier partners to alleviate existing product shortages and delays, while creating new barriers to cost-effective and timely appliance procurement. (*Id.*) Accordingly, NMHC and NAA recommended DOE consider the collective impacts of these requirements. (*Id.*)

AHAM also urged DOE to consider cumulative regulatory burden in its analysis and decision-making process. (AHAM, No. 464 at p. 41) AHAM commented that the nature of EPCA's requirements that energy conservation standards be reviewed every 6 years creates a never-ending cycle in which manufacturers need to constantly update or redesign products to meet new or amended standards. (*Id.*) AHAM commented that many home appliance rulemakings will likely have compliance dates in 2027. (*Id.*) AHAM noted that the proposed levels for RCWs, refrigerators, refrigerator-freezers

[130] Technical Support Document: Energy Efficiency Program For Commercial And Industrial Equipment: Microwave Ovens. Available at *www.regulations.gov/document/EERE-2017-BT-STD-0023-0022.*

and freezers, consumer conventional cooking products, miscellaneous refrigeration products, room air conditioners, and microwave ovens will require significant redesign of products. (*Id.* at p. 42) AHAM asserted that engineers will therefore need to spend all their time redesigning products, test technicians will spend their time conducting testing to support re-design and certify products, and other will speed significant time on business planning, marketing, labeling, *etc.*—pulling resources from other development efforts. (*Id.*) AHAM commented that manufacturers will also need to re-tool factories as a result of standards for some of these rulemakings. (*Id.*) AHAM commented that since there is a short lead-in compliance period under EPCA and that compliance will likely be required in a similar timeframe, there is significant regulatory burden for the home appliance industry. (*Id.*) AHAM asserted that DOE's analysis does not adequately account for cumulative regulatory burden. (*Id.*) AHAM encouraged DOE to acknowledge the cumulative regulatory burden its proposals place on industry. (*Id.*) AHAM stated that DOE needs to acknowledge the cumulative regulatory burden its proposals place on industry and suggested DOE could reduce cumulative regulatory burden by spacing out the timing of final rules, allowing more lead-time by delaying the publication of final rules in the **Federal Register** after they have been issued, and reducing the stringency of standards such that fewer products would require redesign. (*Id.*) AHAM encouraged DOE to incorporate combined conversion costs across rulemakings into the GRIM in order to quantify cumulative regulatory burden, and to consider the potential impact of these rulemakings more broadly on the economy and on inflation. (*Id.*)

Regarding stakeholders' requests to consider cumulative regulatory burden in its analysis and decision-making process, DOE analyzes cumulative regulatory burden in accordance with section 13(g) of the Process Rule. For this direct final rule, DOE examined Federal, product-specific regulations that could affect RCW manufacturers that take effect approximately 3 years before or after the 2028 compliance date. Table V.20 in section V.B.2.e of this document presents the DOE energy conservations standards that would impact manufacturers of RCWs in the 2025 to 2031 timeframe. As shown in Table V.20, DOE considers the potential cumulative regulatory burden from other DOE energy conservation standards rulemakings for consumer clothes dryers, consumer conventional cooking products, refrigerators, refrigerator-freezers, and freezers, miscellaneous refrigeration products, room air conditioners, and microwave ovens in this direct final rule analysis.

Regarding AHAM's suggestion about spacing out the timing of final rules for home appliance rulemakings to reduce regulatory burden, DOE has statutory requirements under EPCA on the timing of rulemakings. For RCWs, consumer clothes dryers, consumer conventional cooking products, dishwashers, refrigerators, refrigerator-freezers and freezers, miscellaneous refrigeration products, and room air conditioners, amended standards apply to covered products manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(m)(4)(A)(i)) For miscellaneous refrigeration products, amended standards apply 5 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(l)(2)) However, the multi-product Joint Agreement recommends alternative compliance dates. As discussed in section II.B.3 of this document, the Joint Agreement recommendations are in accordance with the statutory requirements of 42 U.S.C. 6295(p)(4) for the issuance of a direct final rule DOE. Therefore, as compared to the EPCA-required lead time of 3-years, RCW manufacturers have more lead time to meet amended standards at the Recommend TSL.

Regarding the pace of DOE's activity on energy conservation rulemakings, DOE has statutory requirements under EPCA on the timing of appliance rulemakings. For RCWs, EPCA provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Regarding incorporating the combined conversion costs across rulemakings into the GRIM, DOE is concerned that combined results would make it more difficult to discern the direct impact of the amended standard on covered manufacturers, particularly for rulemakings where there is only partial overlap of manufacturers. If DOE were to combine the conversion costs from multiple regulations, as requested, it would be appropriate to match the combined conversion costs with the combined revenues of the regulated products. For rulemakings with only a partial overlap of manufacturers, conversion costs would be spread over a larger revenue base and result in less severe INPV impacts when evaluated on a percent change basis.

Whirlpool commented that DOE's analysis fails to consider significant costs to both manufacturers and consumers, as well as the likely diminution in market competition and product utility and performance. (Whirlpool, No. 462 at p. 4) Whirlpool stated that DOE must consider all costs that manufacturers must bear to develop and market products that meet the proposed standard and that the proposed standard will result in wholesale removal of certain products and features from the market.[131] (*Id.*) Whirlpool commented that the standards proposed in the March 2023 NOPR would reduce competition by narrowing the range of RCWs available, including functionally phasing out small- and mid-size top-loading RCWs, while making it difficult to distinguish them based on features, such as traditional agitators. (*Id.* at p. 14) Whirlpool also expressed concern that product consolidation could cause industry consolidation. (*Id.*)

Fisher *et al.* commented that by regulating based on one or two characteristics, and by prioritizing energy efficiency over other compelling factors, DOE is stifling the free market, hindering broader innovation, and discouraging the production of products that consumers actually want to buy. (Fisher *et al.,* No. 463 at p. 4) Fisher *et al.* commented that EPCA specifically calls for DOE to consider the impact of lessening competition—which is likely given the significantly higher standards for RCWs—and prevents the Secretary from implementing or amending a standard that will cause the unavailability in the United States of any covered product type (or class). Fisher *et al.* stated that given that DOE is proposing significantly higher standard for different classes of RCWs, it is possible for these regulations to impact competition, unintended, or otherwise.[132] (*Id.* at p. 3) Additionally, Fisher *et al.* added that energy efficiency regulations adversely affect lower-income consumers, which is a consumer

[131] DOE notes that the standards adopted in this direct final rule are the same as the proposed in the March 2023 NOPR for three of the five product classes, but are less stringent than the standards proposed in the March 2023 NOPR for the other two product classes.

[132] DOE notes that the standards adopted in this direct final rule are the same as the proposed in the March 2023 NOPR for three of the five product classes, but are less stringent than the standards proposed in the March 2023 NOPR for the other two product classes.

subgroup that DOE targets as part of its analysis in the March 2023 NOPR and a group already harmed by consistently high inflation. (*Id.* at p. 5) Fisher *et al.* commented that the proposed standards are not economically justified and should be thrown out stating that they have the potential to substantially impact competition and the availability of products. (*Id.*)

Regarding the impact on product utility and consumer features, DOE considers features that provide consumer utility in its analysis of energy conservation standards (*see* section V.B.4 of this document for additional details). Specifically, one of the seven statutory factors for prescribing amended standards for covered products, such as RCWs, includes evaluating the impact of potential standard levels to ensure that amended standards would not lessen the utility or performance of the considered products (*see* section III.E.1 of this document for a discussion of how DOE has addressed each of those seven factors in this rulemaking). Regarding the potential loss of features such as traditional agitators, DOE notes that the adopted standards for RCWs do not preclude the ability to offer agitators. *See* section V.B.4.c of this document for additional details.

Regarding concerns that amended standards would phase out small- and mid-size top-loading RCWs, DOE modeled incremental increases in capacity for top-loading standard-size RCWs based on the most common design strategy currently used by manufacturers at these efficiency levels as well as information gathered during manufacturer interviews about the likely design path to improve efficiency. As discussed further in section V.B.4.b of this document, DOE's engineering analysis indicates that the efficiencies required by the Recommended TSL are technically achievable across the entire capacity range of top-loading standard-size RCWs. Therefore, while the MPCs for the top-loading standard-size product class reflect increases in capacity at EL 2, EL 3, and EL 4, meeting the Recommended TSL (corresponding to EL 2 for the top-loading standard-size product class) is technologically feasible at smaller capacities. Thus, the Recommended TSL does not require manufacturers to increase the capacity of small- and mid-size models. Such units can feasibly achieve the adopted standard level through the use of other available design options. In chapter 5 of the direct final rule TSD, DOE provides example design pathways that manufacturers could use to achieve higher efficiency without increasing capacity as a design option.

Regarding the impact on competition, DOE notes that it will provide DOJ with copies of this direct final rule and TSD for review to determine the impact, if any, of any lessening of competition likely to result from a standard. DOE will consider DOJ's comments on the rule in determining whether to withdraw the direct final rule. *See* section V.B.5 of this document for additional details. DOE also notes that the majority of RCW original equipment manufacturers (''OEMs'') already offer RCWs that meet the Recommended TSL. Of the nine OEMs with top-loading standard-size products, six OEMs offer models that meet the Recommended TSL efficiencies. These six OEMs of top-loading standard-size RCWs collectively account for over 95 percent of overall top-loading standard-size RCW shipments. Of the seven OEMs with front-loading standard-size products, six OEMs offer models that meet the Recommended TSL efficiencies. These six OEMs of front-loading standard-size RCWs collectively account for over 98 percent of overall front-loading standard-size RCW shipments. Given that most companies already offer products that meet the Recommended TSL, DOE does not anticipate amended standards would significantly lessen the level of competition in the RCW market.

Representatives Latta *et al.* expressed concern about the negative impact of the standards proposed in the March 2023 NOPR on the U.S. home appliance manufacturing industry, as the TSD estimates that the standards proposed in the March 2023 NOPR for RCWs could eliminate 8,121 American jobs as manufacturers reassess their production locations. (Representatives Latta *et al.,* No. 456 at p. 3) Representatives Latta *et al.* commented that DOE should take no actions that cause harm to the domestic manufacturing industry and result in a significant loss of American jobs. (*Id.*)

Regarding the potential for a reduction in direct employment as a result of amended standards, DOE notes that the standards adopted in this direct final rule are the same as the proposed in the March 2023 NOPR for three of the five product classes, but are less stringent than the standards proposed in the March 2023 NOPR for the other two product classes. DOE provides a range of potential quantitative impacts to direct employment and a discussion of the potential qualitative impacts to direct employment in section V.B.2.b of this document. The upper bound of the direct employment analysis corresponds to an increase in the number of domestic workers that results from amended energy conservation standards if manufacturers continue to produce the same scope of covered products within the United States after compliance takes effect. To establish a conservative lower bound of direct employment impacts, DOE assumes all manufacturers would shift production to foreign countries. The estimated 8,121 domestic production worker jobs cited by Representatives Latta *et al.* reflected the conservative lower bound should all manufacturers move production facilities outside of the United States. As stated in the March 2023 NOPR, at lower TSLs, DOE believes the likelihood of changes in production location due to amended standards are low due to the relatively minor production line updates required. Compared to the levels proposed in the March 2023 NOPR, DOE is adopting lower efficiency levels for top-loading and front-loading standard-size product classes. In confidential interviews conducted in advance of the March 2023 NOPR, DOE's contractors discussed the potential impact of more stringent standards on production location decisions under non-disclosure agreements (''NDAs''). *See* appendix 12A of the direct final rule TSD for a blank copy of the interview guide. During confidential interviews, manufacturers did not express concerns about the need to relocate production facilities to remain competitive at the Recommended TSL (*i.e.,* TSL 2). Nearly all OEMs already manufacture top-loading and front-loading standard-size RCWs that meet the adopted levels in domestic manufacturing facilities. Of the nine OEMs with top-loading standard-size products, six OEMs offer models that meet TSL 2 efficiencies. These six OEMs that currently offer top-loading standard-size RCW models that meet TSL 2 efficiencies collectively account for over 95 percent of overall top-loading standard-size RCW shipments. Of the seven OEMs with front-loading standard-size products, six OEMs offer models that meet TSL 2 efficiencies.

Salman commented that amended standards could disproportionately affect small manufacturers, including training and hiring costs, and potentially endanger jobs. Salman further commented that ''low-skilled'' workers would be particularly affected by this, and that industry consolidation may result. (Salman, No. 446 at pp. 1–2) Salman recommended that DOE provide financial support that helps them transform their machinery and retrain their workforce. (*Id.* at p. 2)

DOE discusses the potential impacts of amended standards on the one small

domestic original equipment manufacturer (''OEM'') of RCWs in the NOPR published elsewhere in this issue of the **Federal Register** and chapter 12 of the direct final rule TSD. Regarding the potential for industry consolidation, as discussed in section III.E.1.e of this document, DOE will transmit a copy of this direct final rule to the Attorney General with a request that DOJ provide its determination on this issue. DOE will consider DOJ's comments on the rule in determining whether to withdraw the direct final rule. DOE will also publish and respond to the DOJ's comments in the **Federal Register** in a separate document. Additionally, DOE analyzes the potential impacts of amended standards on U.S. direct employment for the overall RCW industry in section V.B.2.b of this document.

Regarding the suggestion for DOE to provide financial support to small manufacturers, additional compliance flexibilities may be available to small manufacturers through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

### *K. Emissions Analysis*

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of $CO_2$, $NO_X$, $SO_2$, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, $CH_4$ and $N_2O$, as well as the reductions in emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of $CO_2$, $NO_X$, $SO_2$, and Hg uses emissions intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the direct final rule TSD. The analysis presented in this document uses projections from *AEO2023.* Power sector emissions of $CH_4$ and $N_2O$ from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the Environmental Protection Agency (EPA).[133]

The on-site operation of RCWs involves combustion of fossil fuels and results in emissions of $CO_2$, $NO_X$, $SO_2$, $CH_4$, and $N_2O$ where these products are used. Site emissions of these gases were estimated using Emission Factors for Greenhouse Gas Inventories and, for $NO_X$ and $SO_2$, emissions intensity factors from an EPA publication.[134]

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of $CH_4$ and $CO_2$, are estimated based on the methodology described in chapter 15 of the direct final rule TSD.

The emissions intensity factors are expressed in terms of physical units per megawatt hour (''MWh'') or Million British Thermal Units (''MMBtu'') of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

#### 1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO,* which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2023* reflects, to the extent possible, laws and regulations adopted through mid-November 2022, including the emissions control programs discussed in the following paragraphs and certain provisions of the Inflation Reduction Act.[135]

$SO_2$ emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on $SO_2$ for affected EGUs in the 48 contiguous States and the District of Columbia (''DC''). (42 U.S.C. 7651 *et seq.*) $SO_2$ emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual $SO_2$ emissions, and went into effect as of January 1, 2015.[136] The *AEO* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, for states subject to $SO_2$ emissions limits under CSAPR, any excess $SO_2$ emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in $SO_2$ emissions by another regulated EGU.

However, beginning in 2016, $SO_2$ emissions began to fall as a result of the Mercury and Air Toxics Standards (''MATS'') for power plants.[137] 77 FR 9304 (Feb. 16, 2012). The final rule establishes power plant emission standards for mercury, acid gases, and non-mercury metallic toxic pollutants. Because of the emissions reductions under the MATS, it is unlikely that excess $SO_2$ emissions allowances resulting from the lower electricity demand would be needed or used to

[133] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed June 12, 2022).

[134] U.S. Environmental Protection Agency. External Combustion Sources. In *Compilation of Air Pollutant Emission Factors.* AP–42. Fifth Edition. Volume I: Stationary Point and Area Sources. Chapter 1. Available at *www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors#Proposed/* (last accessed June 12, 2022).

[135] For further information, see the Assumptions to *AEO2023* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *www.eia.gov/outlooks/aeo/assumptions/* (last accessed June 24, 2023).

[136] CSAPR requires states to address annual emissions of $SO_2$ and $NO_X$, precursors to the formation of fine particulate matter (''$PM_{2.5}$'') pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (''NAAQS''). CSAPR also requires certain states to address the ozone season (May-September) emissions of $NO_X$, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five states in the CSAPR ozone season program; 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule), and EPA issued the CSAPR Update for the 2008 ozone NAAQS. 81 FR 74504 (Oct. 26, 2016).

[137] In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce $SO_2$ emissions.

permit offsetting increases in $SO_2$ emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation will generally reduce $SO_2$ emissions. DOE estimated $SO_2$ emissions reduction using emissions factors based on *AEO2023.*

CSAPR also established limits on $NO_X$ emissions for numerous States in the eastern half of the United States. Energy conservation standards would have little effect on $NO_X$ emissions in those States covered by CSAPR emissions limits if excess $NO_X$ emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in $NO_X$ emissions from other EGUs. In such case, $NO_X$ emissions would remain near the limit even if electricity generation goes down. Depending on the configuration of the power sector in the different regions and the need for allowances, however, $NO_X$ emissions might not remain at the limit in the case of lower electricity demand. That would mean that standards might reduce $NO_X$ emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce $NO_X$ emissions in States covered by CSAPR. Standards would be expected to reduce $NO_X$ emissions in the States not covered by CSAPR. DOE used *AEO2023* data to derive $NO_X$ emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2023,* which incorporates the MATS.

### *L. Monetizing Emissions Impacts*

As part of the development of this direct final rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of $CO_2$, $CH_4$, $N_2O$, $NO_X$, and $SO_2$ that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this direct final rule.

To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990* published in February 2021 by the IWG.

#### 1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of $CO_2$, $CH_4$, and $N_2O$ by using a measure of the SC of each pollutant (*e.g.,* SC–$CO_2$). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as required by applicable Executive orders, and DOE would reach the same conclusion presented in this direct final rule in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases or by another means,[138] did not affect the rule ultimately adopted by DOE.

DOE estimated the global social benefits of $CO_2$, $CH_4$, and $N_2O$ reductions using SC–GHG values that were based on the interim values presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990,* published in February 2021 by the IWG (''February 2021 SC–GHG TSD''). The SC–GHG is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, the SC–GHG includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHG therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHG is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect $CO_2$, $N_2O$, and $CH_4$ emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG for this rule, which was developed using the interim estimates. DOE continues to evaluate recent developments in the scientific literature, including the updated 2023 SC–GHG estimates published by EPA in December 2023 within their rulemaking on oil and natural gas sector sources.[139]

The SC–GHG estimates presented here were developed over many years, using transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, which included DOE and other executive branch agencies and offices was established to ensure that agencies were using the best available science and to promote consistency in the social cost of carbon (SC–$CO_2$) values used across agencies. The IWG published SC–$CO_2$ estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (IAMs) that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and $CO_2$ emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric $CO_2$ concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016 the IWG published estimates of the social cost of methane (SC–$CH_4$) and nitrous oxide (SC–$N_2O$) using methodologies that are consistent with the methodology underlying the SC–$CO_2$ estimates. The modeling approach that extends the IWG SC–$CO_2$ methodology to non-$CO_2$ GHGs has undergone multiple stages of peer review. The SC–$CH_4$ and SC–$N_2O$ estimates were developed by Marten *et*

[138] See section IV.L.3 of this document which describes the sensitivity analysis DOE conducted using EPA's updated 2023 SC–GHG estimates.

[139] Available at *www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsps-eg-climate-review-2060-av16-final-rule-20231130.pdf.*

*al.*[140] and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC–$CO_2$ estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–$CO_2$ estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide, and recommended specific criteria for future updates to the SC–$CO_2$ estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process.[141] Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC–$CO_2$ estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (E.O. 13783, section 5(c)). Benefit-cost analyses following E.O. 13783 used SC–GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations in the National Academies 2017 report. The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021 are used here to estimate the climate benefits for this rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates that takes into consideration the advice in the National Academies 2017 report and other recent scientific literature. The February 2021 SC–GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC–GHG. Examples of omitted effects from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the U.S. and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and, therefore, in this rule DOE centers attention on a global measure of SC–GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 SC–GHG TSD, existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the U.S. because they do not fully capture the regional interactions and spillovers discussed above, nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC–GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC–GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC–GHG. Consistent with the findings of the National Academies and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context,[142] and recommended that

[140] Marten, A. L., E. A. Kopits, C. W. Griffiths, S. C. Newbold, and A. Wolverton. Incremental $CH_4$ and $N_2O$ mitigation benefits consistent with the U.S. Government's SC–$CO_2$ estimates. *Climate Policy*. 2015. 15(2): pp. 272–298.

[141] National Academies of Sciences, Engineering, and Medicine. Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide. 2017. The National Academies Press: Washington, DC. Available at *nap.nationalacademies.org/catalog/24651/valuing-climate-damages-updating-estimation-of-the-social-cost-of.*

[142] Interagency Working Group on Social Cost of Carbon. Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866. 2010. United States Government. Available at: *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf* (last accessed April 15, 2022); Interagency Working Group on Social Cost of Carbon. Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order No. 12866. 78 FR 70586 (November 16, 2013). Available at: *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact* (last accessed April 15, 2022); Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016. Available at: *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf* (last accessed January 18, 2022); Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. Available at: *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf* (last accessed January 18, 2022).

discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3-percent and 7-percent discount rates as ''default'' values, Circular A–4 also reminds agencies that ''different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' On discounting, Circular A–4 recognizes that ''special ethical considerations arise when comparing benefits and costs across generations,'' and Circular A–4 acknowledges that analyses may appropriately ''discount future costs and consumption benefits. . .at a lower rate than for intragenerational analysis.'' In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that ''Circular A–4 is a living document'' and ''the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A–4 itself.'' Thus, DOE concludes that a 7-percent discount rate is not appropriate to apply to value the social cost of greenhouse gases in the analysis presented in this analysis.

To calculate the present and annualized values of climate benefits, DOE uses the same discount rate as the rate used to discount the value of damages from future GHG emissions, for internal consistency. That approach to discounting follows the same approach that the February 2021 SC–GHG TSD recommends ''to ensure internal consistency—*i.e.,* future damages from climate change using the SC–GHG at 2.5 percent should be discounted to the base year of the analysis using the same 2.5 percent rate.'' DOE has also consulted the National Academies' 2017 recommendations on how SC–GHG estimates can ''be combined in RIAs [regulatory impact analyses] with other cost and benefits estimates that may use different discount rates.'' The National Academies reviewed several options, including ''presenting all discount rate combinations of other costs and benefits with [SC–GHG] estimates.''

As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with the above assessment and will continue to follow developments in the literature pertaining to this issue. While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and were subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3 percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer-reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.[143] Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their ''damage functions''—*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the integrated assessment models, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–$CO_2$ estimates. However, as discussed in the February 2021 SC–GHG TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this direct final rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–$CO_2$, SC–$N_2O$, and SC–$CH_4$ values used for this direct final rule are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC–$CO_2$ values used for this direct final rule were based on the values developed for the February 2021 SC–GHG TSD, which are shown in Table IV.23 in five-year increments from 2020 to 2050. The set of annual values that DOE used, which was adapted from estimates published by EPA,[144] is

[143] Interagency Working Group on Social Cost of Greenhouse Gases. 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government. Available at *www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/.*

[144] *See* EPA, Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis, Washington, DC,

presented in appendix 14A of the direct final rule TSD. These estimates are based on methods, assumptions, and parameters identical to the estimates published by the IWG (which were based on EPA modeling), and include values for 2051 to 2070. DOE expects additional climate benefits to accrue for products still operating after 2070, but a lack of available SC–$CO_2$ estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

TABLE IV.23—ANNUAL SC–$CO_2$ VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per Metric Ton $CO_2$]

| Year | Discount rate and statistic | | | |
|---|---|---|---|---|
| | 5% | 3% | 2.5% | 3% |
| | Average | Average | Average | 95th percentile |
| 2020 | 14 | 51 | 76 | 152 |
| 2025 | 17 | 56 | 83 | 169 |
| 2030 | 19 | 62 | 89 | 187 |
| 2035 | 22 | 67 | 96 | 206 |
| 2040 | 25 | 73 | 103 | 225 |
| 2045 | 28 | 79 | 110 | 242 |
| 2050 | 32 | 85 | 116 | 260 |

DOE multiplied the $CO_2$ emissions reduction estimated for each year by the SC–$CO_2$ value for that year in each of the four cases. DOE adjusted the values to 2022$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–$CO_2$ values in each case.

For this direct final rule, DOE considered comments it had received regarding its approach for monetizing greenhouse gas emissions in the March 2023 NOPR. The approach used for this direct final rule is largely the same as the approach DOE had used for the March 2023 NOPR analysis.

In response to the March 2023 NOPR, the AGs of TN *et al.* commented that DOE's misguided use of the SC–GHG estimates is a significant problem with the proposed standards. (AGs of TN *et al.,* No. 438 at p. 1) The AGs of TN *et al.* attached as evidence their comment letter in response to DOE's proposed standards for consumer conventional cooking products, in which they expressed detailed concerns about the IWG estimates. The AGs of TN *et al.* noted that the reversal of the preliminary injunction that a coalition of States received in *Louisiana* v. *Biden,* 585 F. Supp. 3d 840 (W.D. La. 2022) does not change the criticisms in the aforementioned comment letter. (AGs of TN *et al.,* No. 438 at p. 2)

CEI reiterated its comments in response to a NOPR for residential furnaces published on July 7, 2022, which noted numerous flaws with the IWG 2021 estimates, nearly all of which serve to overstate the calculated benefits of avoided emissions. CEI commented that IWG used improperly low discount rates, relied on climate models that have consistently overstated actual warming and on baseline emission scenarios that assume an increasingly coal-centric global energy system through 2100 and beyond, while downplaying the capacity for adaptation to mitigate climate impacts. (CEI, No. 454 at pp. 6–7) CEI stated the other questionable assumptions, including the claimed climate benefits out 300 years into the future and the use of global rather than national benefits, are skewed toward inflating the end result. (*Id.* at p. 7)

Fisher *et al.* commented that researchers at the Heritage Foundation found that under very reasonable assumptions, these models can offer a plethora of different estimates of the social cost of carbon (''SCC''), ranging from extreme damages to overall benefits. Fisher *et al.* stated that this research makes it apparent that the vast potential estimates of the SCC suggest that the economic impact of climate change is highly questionable. Fisher *et al.* commented that the variability in the SCC that is used to justify this rule renders the rule as arbitrary and capricious. (Fisher *et al.,* No. 463 at p. 6)

Strauch stated that the social cost of carbon is a dubious concept, suggesting that its validity is increasingly doubted due to discrepancies between climate models and observed temperatures. (Strauch, No. 430 at p. 3)

DOE notes that the standards in this direct final rule are not based on the SC–GHG and that DOE would issue the same standards even in the absence of the climate benefits.

The IWG's SC–GHG estimates were developed over many years, using a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. A number of criticisms raised in the comment letter attached by the AGs of TN *et al.* were addressed by the IWG in its February 2021 SC–GHG TSD, and previous parts of this section summarized the IWG's conclusions on key issues, including the question of discount rates cited by CEI. The IWG's 2016 TSD and the 2017 National Academies report provide detailed discussions of the ways in which the modeling underlying the development of the SC–GHG estimates addressed quantified sources of uncertainty. In the February 2021 SC–GHG TSD, the IWG stated that the models used to produce the interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. For these same impacts, the science underlying their ''damage functions'' lags behind the most recent research. In the judgment of the IWG, these and other limitations suggest that the range of four interim SC–GHG estimates presented in the TSD likely underestimate societal damages from GHG emissions. The IWG is in the

December 2021. Available at *nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013ORN.pdf* (last accessed February 21, 2023).

process of assessing how best to incorporate the latest peer-reviewed science and the recommendations of the National Academies to develop an updated set of SC–GHG estimates.

AHAM objected to DOE using the social cost of carbon and other monetization of emissions reductions benefits in its analysis of the factors EPCA requires DOE to balance in determining the appropriate standard. AHAM stated that while it may be acceptable for DOE to continue its current practice of examining the social cost of carbon and monetization of other emissions reductions benefits as informational so long as the underlying interagency analysis is transparent and vigorous, the monetization analysis should not impact the TSL DOE selects as a new or amended standard. AHAM commented that it is inappropriate for DOE to rely upon the highly subjective and ever-changing monetization estimates in justifying an energy conservation standard. (AHAM, No. 464 at p. 46) Additionally, AHAM stated they do not necessarily object to DOE considering the benefits, they object to DOE relying upon those benefits to justify a rule given the uncertain and ever-evolving nature of those estimates. AHAM commented that EPCA requires DOE to balance the factors, such that DOE must consider EPCA's factors together and achieve a balance of impacts and benefits. (*Id.*)

The AGs of TN *et al.* stated that the rote application of the IWG estimates is inappropriate. (AGs of TN *et al.,* No. 438 at p. 2) The AGs of TN *et al.* stated that even if it is important to take into account emissions reductions when considering the need for national energy conservation, the IWG estimates are unlawful and poor methods for doing so. The AGs of TN *et al.* commented that the IWG's SC–GHG estimates are fundamentally flawed and are an unreliable metric on which to base administrative action. The AGs of TN *et al.* requested that DOE revisit its reliance on those numbers in this and other standards. (*Id.*)

As stated in section III.F.1.f of this document, DOE accounts for the environmental and public health benefits associated with the more efficient use of energy, including those connected to global climate change, as they are important to take into account when considering the need for national energy conservation. (See 42 U.S.C. 6295(o)(2)(B)(i)(IV)) In addition, Executive Order 13563, which was re-affirmed on January 21, 2021, stated that each agency must, among other things: ''select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).'' For these reasons, DOE includes the monetized value of emissions reductions in its evaluation of potential standard levels. While the benefits associated with reduction of GHG emissions inform DOE's evaluation of potential standards, the action of proposing or adopting specific standards is not ''based on'' the SC–GHG values, as DOE would reach the same conclusion regarding the economic justification of standards presented in this direct final rule without considering the social cost of greenhouse gases. At the Recommended TSL, the average LCC savings for all product classes is positive. In addition, the FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Even when measured at the more conservative discount rate of 7 percent, the NPV of consumer benefits is over 11 times higher than the maximum estimated manufacturers' loss in INPV.

Fisher *et al.* commented that even assuming the climate has the highest sensitivity to $CO_2$ emissions under the variety of possibilities envisioned by the Intergovernmental Panel on Climate Change (''IPCC''), the proposed standards do not have any tangible impacts on global temperatures, and therefore the DOE should refrain from considering environmental impacts in its assessment of the proposed standards. (Fisher *et al.,* No. 463 at p. 7)

In the context of global $CO_2$ emissions, any single policy action is likely to have a relatively small impact. As long as that impact can be quantified in a reasonable manner, however, it is consistent with sound regulatory analysis to include such impacts. As noted above, while the benefits associated with reduction of GHG emissions inform DOE's evaluation of potential standards, the action of proposing or adopting specific standards is not ''based on'' the SC–GHG values, as DOE would reach the same conclusion regarding the economic justification of standards presented in this direct final rule without considering the social cost of greenhouse gases.

b. Social Cost of Methane and Nitrous Oxide

The SC–$CH_4$ and SC–$N_2O$ values used for this direct final rule were based on the values developed for the February 2021 SC–GHG TSD. Table IV.24 shows the updated sets of SC–$CH_4$ and SC–$N_2O$ estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the direct final rule TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–$CH_4$ and SC–$N_2O$ values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–$CO_2$.

TABLE IV.24—ANNUAL SC–$CH_4$ AND SC–$N_2O$ VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050 (2020$ PER METRIC TON)

| Year | SC–$CH_4$ | | | | SC–$N_2O$ | | | |
|---|---|---|---|---|---|---|---|---|
| | Discount Rate and Statistic | | | | Discount Rate and Statistic | | | |
| | 5% | 3% | 2.5% | 3% | 5% | 3% | 2.5% | 3% |
| | Average | Average | Average | 95th percentile | Average | Average | Average | 95th percentile |
| 2020 | 670 | 1500 | 2000 | 3900 | 5800 | 18000 | 27000 | 48000 |
| 2025 | 800 | 1700 | 2200 | 4500 | 6800 | 21000 | 30000 | 54000 |
| 2030 | 940 | 2000 | 2500 | 5200 | 7800 | 23000 | 33000 | 60000 |
| 2035 | 1100 | 2200 | 2800 | 6000 | 9000 | 25000 | 36000 | 67000 |
| 2040 | 1300 | 2500 | 3100 | 6700 | 10000 | 28000 | 39000 | 74000 |
| 2045 | 1500 | 2800 | 3500 | 7500 | 12000 | 30000 | 42000 | 81000 |
| 2050 | 1700 | 3100 | 3800 | 8200 | 13000 | 33000 | 45000 | 88000 |

DOE multiplied the $CH_4$ and $N_2O$ emissions reduction estimated for each year by the SC–$CH_4$ and SC–$N_2O$ estimates for that year in each of the cases. DOE adjusted the values to 2022$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–$CH_4$ and SC–$N_2O$ estimates in each case.

c. Sensitivity Analysis Using Updated 2023 SC–GHG Estimates

In December 2023, EPA issued a new set of SC–GHG (''2023 SC–GHG'') estimates in connection with a final rulemaking under the Clean Air Act.[145] For this rulemaking, DOE used these updated 2023 SC–GHG values to conduct a sensitivity analysis of the value of GHG emissions reductions associated with alternative standards for RCWs. This sensitivity analysis provides an expanded range of potential climate benefits associated with amended standards. The final year of the 2023 SC–GHG estimates is 2080; therefore, DOE did not monetize the climate benefits of GHG emissions reductions occurring after 2080.

The overall climate benefits are larger when using the higher, updated 2023 SC–GHG estimates, compared to the climate benefits using the older IWG SC–GHG estimates. However, DOE's conclusion that the standards are economically justified remains the same regardless of which SC–GHG estimates are used.

The results of the sensitivity analysis are presented in appendix 14C of the direct final rule TSD.

2. Monetization of Other Emissions Impacts

For this direct final rule, DOE estimated the monetized value of $NO_X$ and $SO_2$ emissions reductions from electricity generation using benefit per ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[146] DOE used EPA's values for $PM_{2.5}$-related benefits associated with $NO_X$ and $SO_2$ and for ozone-related benefits associated with $NO_X$ for 2025 and 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040, the values are held constant. DOE combined the EPA regional benefit-per-ton estimates with regional information on electricity consumption and emissions from *AEO2023* to define weighted-average national values for $NO_X$ and $SO_2$ (*see* appendix 14B of the direct final rule TSD).

DOE also estimated the monetized value of $NO_X$ and $SO_2$ emissions reductions from site use of natural gas in RCWs using benefit per ton estimates from the EPA's Benefits Mapping and Analysis Program. Although none of the sectors covered by EPA refers specifically to residential and commercial buildings, the sector called ''area sources'' would be a reasonable proxy for residential and commercial buildings.[147] The EPA document provides high and low estimates for 2025 and 2030 at 3- and 7-percent discount rates.[148] DOE used the same linear interpolation and extrapolation as it did with the values for electricity generation.

DOE multiplied the site emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

*M. Utility Impact Analysis*

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with *AEO2023.* NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO2023* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the direct final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

*N. Employment Impact Analysis*

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the BLS. BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[149] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-

[145] Available at: *www.epa.gov/environmental-economics/scghg.*

[146] U.S. Environmental Protection Agency. Estimating the Benefit per Ton of Reducing Directly-Emitted $PM_{2.5}$, $PM_{2.5}$ Precursors and Ozone Precursors from 21 Sectors. Available at *www.epa.gov/benmap/estimating-benefit-ton-reducing-directly-emitted-pm25-pm25-precursors-and-ozone-precursors.*

[147] ''Area sources'' represents all emission sources for which states do not have exact (point) locations in their emissions inventories. Because exact locations would tend to be associated with larger sources, ''area sources'' would be fairly representative of small dispersed sources like homes and businesses.

[148] ''Area sources'' are a category in the 2018 document from EPA, but are not used in the 2021 document cited previously. Available at *www.epa.gov/sites/default/files/2018–02/documents/sourceapportionmentbpttsd_2018.pdf.*

[149] *See* U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (''RIMS II'').* 1997. U.S. Government Printing Office: Washington, DC. Available at *https://www.bea.gov/resources/methodologies/RIMSII-user-guide* (last accessed July 1, 2021).

intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this direct final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[150] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2027–2031), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the direct final rule TSD.

*O. Regulatory Impact Analysis*

For any regulatory action that the Administrator of the Office of Information and Regulatory Affairs (''OIRA'') within OMB determines is a significant regulatory action under section 3(f)(1) of E.O. 12866, section 6(a)(3)(C) of E.O. 12866 requires Federal agencies to provide an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable non-regulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives. 58 FR 51735, 51741. As discussed further in section VII.A of this document, OIRA has determined that this final regulatory action constitutes a ''significant regulatory action'' within the scope of section 3(f)(1) of E.O. 12866, as amended by E.O. 14094. Accordingly, DOE conducted a regulatory impact analysis (''RIA'') for this direct final rule.

As part of the RIA, DOE identifies major alternatives to standards that represent feasible policy options to reduce the energy and water consumption of the covered product. DOE evaluates each alternative in terms of its ability to achieve significant energy and water savings at a reasonable cost, and compares the effectiveness of each alternative to the effectiveness of the finalized standard. DOE recognizes that voluntary or other non-regulatory efforts by manufacturers, utilities, and other interested parties can substantially affect energy and water efficiency or reduce energy and water consumption. DOE bases its assessment on the recorded impacts of any such initiatives to date, but also considers information presented by interested parties regarding the impacts current initiatives may have in the future. Further details regarding the RIA are provided in chapter 17 of the direct final rule TSD.

NMHC and NAA commented that the proposed rulemaking accompanies a series of similar rulemakings DOE is proposing, all seeking to change the performance standards for essential residential appliances. (NMHC and NAA, No. 451 at p. 4) NMHC and NAA recommended that DOE consider the collective impacts of these requirements and recognize that, in practice, the effect of individual pricing increases is magnified when housing providers must manage cost escalations across multiple products at once. (*Id.*)

While EPCA does not specifically require DOE to consider the cumulative burden of standards on appliance purchasers when evaluating the economic justification of specific standards, DOE is sympathetic to the potential for such a burden. DOE is aware that the compliance dates of revised standards for a number of major appliances (clothes washers, consumer clothes dryers, dishwashers, and consumer conventional cooking products) are in 2027 or 2028, and those for refrigerators are in 2029 or 2030. However, consumers' replacement of older appliances with standards-compliant ones would occur gradually over time. In addition, the incremental cost increase of the adopted standards is relatively small on a percentage basis for most of these appliances.

Strauch commented that DOE's analysis does not appear to address the cumulative regulatory burden on consumers, commenting that consumer choice is diminished as many rulemakings are being pushed out in a short time frame. (Strauch, No. 430 at p. 3) Salman commented that DOE providing vouchers to low-income families to purchase new, energy efficient RCWs could lower the short-term cost barrier and facilitate wider adoption of sustainable laundry solutions. (Salman, No. 446 at p. 2)

AWE recommended that the Federal Government increase funding, rebates, direct install programs, tax credits, and other incentives to replace older, less-efficient RCWs. (AWE, No. 444 at p. 6) AWE recommended that DOE use whatever authorities and funding available to help minimize additional up-front costs for consumers and accelerate the replacement of older RCWs. (*Id.*) AWE stated that, according to data from the REU 2016 study, rebates offered by local water utilities for RCWs have resulted in significant water savings since 1999. (*Id.*)

As discussed, E.O. 12866 directs DOE to assess potentially effective and reasonably feasible alternatives to the planned regulation, and to provide an explanation why the planned regulatory action is preferable to the identified potential alternatives. As part of the RIA, DOE analyzed five non-regulatory policy alternatives to the finalized standards for RCWs, including consumer rebates, consumer tax credits, manufacturer tax credits, voluntary energy efficiency targets, and bulk government purchases. The energy saving benefits from the alternative policies, range from 0.01 percent to 9.5 percent of the benefits from the Recommended TSL. Chapter 17 of the direct final rule TSD provides DOE's analysis of the impacts of these alternatives to the planned regulation.

Notwithstanding the requirements of E.O. 12866, as discussed, DOE is required by EPCA to establish or amend standards for a covered product that are designed to achieve the maximum improvement in energy efficiency, which the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) DOE has determined that amended standards enacted by this direct final rule achieve the maximum

[150] Livingston, O. V., S. R. Bender, M. J. Scott, and R. W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User's Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

improvement in energy efficiency that is technologically feasible and economically justified.

*P. Other Comments*

As discussed previously, DOE considered relevant comments, data, and information obtained during its own rulemaking process in determining whether the recommended standards from the Joint Agreement are in accordance with 42 U.S.C. 6295(o). And while some of those comments were directed at specific aspects of DOE's analysis of the Joint Agreement under 42 U.S.C. 6295(o), others were more generally applicable to DOE's energy conservation standards rulemaking program as a whole. The ensuing discussion focuses on these general comments concerning energy conservation standards issued under EPCA.

1. Commerce Clause

The AGs of TN *et al.* commented that DOE's approach to Congress's Commerce Clause is improper because precedent dictates that Congress can only regulate intrastate activity under the Commerce Clause when that activity ''substantially affects interstate commerce.'' (AGs of TN *et al.,* No. 438 at p. 3) The AGs of TN *et al.* commented that for the proposed standards to reach the intrastate market for RCWs, DOE must show that the intrastate activity covered by 42 U.S.C. 6291(17) and 6302(5) substantially affects the interstate market for those products and the proposed standards show no constitutional basis for applying the standards to intrastate commerce in RCWs. (*Id.* at pp. 3–4) The AGs of TN *et al.* added that if such an analysis showed the intrastate market did not substantially affect the interstate market (and so was not properly the subject of Federal regulation), then DOE would be obligated to redo its cost-benefit analysis since the proposed standards would apply to a more limited set of products—those traveling interstate. Additionally, the AGs of TN *et al.* stated that even if DOE finds that intrastate commerce in clothes washers substantially affects interstate commerce, it should still exclude purely intrastate activities from any promulgated standard. (*Id.* at p. 4)

The AGs of TN *et al.* commented that the involvement of water conservation and water efficiency adds to the issue. (*Id.*) The AGs of TN *et al.* cited two cases involving State water rights and commented that because the proposed standards regulate water use, they trench on the States' authority in that area. (*Id.*) The AGs of TN *et al.* commented that since the proposed standards involve the regulation of consumer goods and water use, fields traditionally belonging to the States, it suggests that EPCA does not provide DOE such sweeping authority. (*Id.* at p. 5) The AGs of TN *et al.* commented that all intrastate activity should be excluded from the proposed standards, even if such activity substantially affects interstate commerce in RCWs. (*Id.*)

New York State Public Service Commission (''NYS PSC'') recommended that DOE reject arguments from commenters who suggest that DOE lacks the authority to implement the proposed standards for RCWs, stating that (1) the United States Constitution empowers Congress, and (2) violate the concept of the separation of powers. (NYS PSC, No. 450 at p. 4) NYS PSC stated that the U.S. Constitution empowers Congress to enact legislation to regulate interstate commerce and it is well-settled that objects that move in interstate commerce are subject to Federal regulation and within Congress's authority to provide that objects moving in interstate commerce meet certain standards. NYS PSC added that there is no support for the notion that the delegation of authority to DOE to set energy efficiency standards runs afoul of the constitutional prohibition on executive agencies exercising legislative powers under either the ''nondelegation'' doctrine or ''major questions'' doctrine; noting that there is an ''intelligible principle'' provided by Congress to guide DOE's regulations and an express command from Congress to regulate this field of economic activity. (*Id.*)

DOE also received 13 comments from individual commenters questioning DOE's authority to promulgate energy efficiency standards.

In response to the AGs of TN *et al.,* DOE believes the scope of the standard proposed in the March 2023 NOPR and the amended standard adopted in this direct final rule properly includes all RCWs distributed in commerce for personal use or consumption because intrastate activity regulated by 42 U.S.C. 6291(17) and 6302 is inseparable from and substantially affects interstate commerce. DOE has clear authority under EPCA to regulate the energy use of a variety of consumer products and certain commercial and industrial equipment, including the subject RCWs. *See* 42 U.S.C. 6295. Based on this statutory authority, DOE has a long-standing practice of issuing standards with the same scope as the standards in this direct final rule. For example, DOE has maintained a similar scope of products (except for the differentiation of a semi-automatic product class [151] and the suds-saving product class [152]) in the direct final rule that amended the current standards for RCWs, which was published on May 31, 2012 (77 FR 32308), and the prior final rule that amended standards for RCWs, which published on January 12, 2001 (66 FR 3314). DOE disagrees with the AGs of TN *et al.*'s contention that the Commerce clause, the Tenth Amendment, States' water rights, or any canons of statutory construction limit DOE's clear and long-standing authority under EPCA to adopt the standard, including its scope, in this direct final rule. A further discussion regarding the AGs of TN *et al.*'s federalism concerns can be found at section VII.E of this document.

2. Test Cloth

Both appendix J and appendix J2 require that testing on clothes washers be conducted using specialized test cloth that conforms to the specifications outlined in 10 CFR part 430, subpart B, appendix J3 (''appendix J3''). These specifications include fiber content, thread count, fabric weight, and weave type, among other requirements. Test cloth is manufactured in batches called ''lots,'' which are quantities of test cloth that have been manufactured with the same batches of cotton and polyester during one continuous process.

In response to the March 2023 NOPR, AHAM [153] commented that manufacturers of RCWs do not have an adequate supply of uniform test cloth to evaluate redesigns for the potential new standards. (AHAM, No. 503 at p. 4) AHAM further commented that Lot 25A, the latest lot of test cloth produced for the clothes washer industry, fails to meet the defined specifications for thread diameter, and the weave is inconsistent with the specification cloth used by manufacturers during product testing for the past 8 years. (*Id.*)

DOE is currently working closely with industry via the AHAM Test Cloth Task Force in its evaluation of the suitability

[151] The May 2012 Direct Final Rule for RCWs removed the semi-automatic product class because DOE was not aware of any RCWs on the market at that time. 77 FR 32308, 32317.

[152] Similarly, the suds-saving product class was removed in the May 2012 Direct Final Rule because DOE did not identify any RCWs in that product class on the market at that time. *Id.*

[153] AHAM's supplemental comment (No. 503) was received 64 days after the comment submission deadline. DOE generally will not consider late filed comments, but may exercise its discretion to do so where necessary and appropriate. In this case, DOE is considering AHAM's comment because its tardiness has not disrupted DOE's consideration of this matter and because the comment regards a subject important to this matter.

of Lot 25A as well as to develop short-term and long-term solutions to mitigate any potential concerns regarding the availably of test cloth for the clothes washer industry.

3. National Academy of Sciences Report

The National Academies of Sciences, Engineering, and Medicine (''NAS'') periodically appoint a committee to peer review the assumptions, models, and methodologies that DOE uses in setting energy conservation standards for covered products and equipment. The most recent such peer review was conducted in a series of meetings in 2020, and NAS issued the report [154] in 2021 detailing its findings and recommendations on how DOE can improve its analyses and align them with best practices for cost-benefit analysis.

AHAM stated that despite previous requests from AHAM and others, DOE has failed to review and incorporate the recommendations of the NAS report, instead indicating that it will conduct a separate rulemaking process without such a process having been initiated. (AHAM, No. 464 at pp. 24–25) AHAM further stated that DOE seems to be ignoring the recommendations in the NAS Report and even conducting analysis that is opposite to the recommendations. AHAM commented that DOE cannot continue to perpetuate the errors in its analytical approach that have been pointed out by stakeholders and the NAS report as to do so will lead to arbitrary and capricious rules. (*Id.*)

As discussed, the rulemaking process for establishing new or amended standards for covered products and equipment are specified at appendix A to subpart C of 10 CFR part 430, and DOE periodically examines and revises these provisions in separate rulemaking proceedings. The recommendations in the NAS report, which pertain to the processes by which DOE analyzes energy conservation standards, will be considered by DOE in a separate rulemaking process.

## V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for RCWs. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for RCWs, and the standards levels that DOE is adopting in this direct final rule. Additional details regarding DOE's analyses are contained in the direct final rule TSD supporting this document.

### *A. Trial Standard Levels*

In general, DOE typically evaluates potential new or amended standards for products and equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the product classes, to the extent that there are such interactions, and price elasticity of consumer purchasing decisions that may change when different standard levels are set.

In the analysis conducted for this direct final rule, DOE analyzed the benefits and burdens of four TSLs for RCWs. DOE developed TSLs that combine efficiency levels for each analyzed product class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the direct final rule TSD.

Tables V.1 through V.3 present the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for RCWs. TSL 4 represents the maximum technologically feasible (''max-tech'') energy and water efficiency for all product classes. TSL 3 represents the ENERGY STAR Most-Efficient level for front-loading RCWs and CCE Tier 1 for top-loading RCWs. TSL 2—which corresponds to the Recommended TSL in the Joint Agreement—represents the ENERGY STAR Most Efficient level for front-loading compact RCWs, and ENERGY STAR v. 8.1 for top-loading and front-loading standard-size RCWs. TSL 1 represents EL 1 across all product classes.

TABLE V.1—TRIAL STANDARD LEVELS FOR TOP-LOADING RESIDENTIAL CLOTHES WASHERS

| TSL | Top-loading, ultra-compact | | | Top-loading, standard-size | | |
|---|---|---|---|---|---|---|
| | Efficiency level | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Efficiency level | EER (lb/kWh/cycle) | WER (lb/gal/cycle) |
| 1 | Baseline | 3.79 | 0.29 | 1 | 3.89 | 0.47 |
| 2 | Baseline | 3.79 | 0.29 | 2 | 4.27 | 0.57 |
| 3 | Baseline | 3.79 | 0.29 | 3 | 4.78 | 0.63 |
| 4 | Baseline | 3.79 | 0.29 | 4 | 5.37 | 0.67 |

TABLE V.2—TRIAL STANDARD LEVELS FOR FRONT-LOADING RESIDENTIAL CLOTHES WASHERS

| TSL | Front-loading, compact | | | Front-loading, standard-size | | |
|---|---|---|---|---|---|---|
| | Efficiency level | EER (lb/kWh/cycle) | WER (lb/gal/cycle) | Efficiency level | EER (lb/kWh/cycle) | WER (lb/gal/cycle) |
| 1 | 1 | 4.80 | 0.62 | 1 | 5.31 | 0.69 |
| 2 | 2 | 5.02 | 0.71 | 2 | 5.52 | 0.77 |
| 3 | 2 | 5.02 | 0.71 | 3 | 5.73 | 0.77 |
| 4 | 4 | 5.97 | 0.80 | 4 | 5.97 | 0.85 |

[154] National Academies of Sciences, Engineering, and Medicine. 2021. *Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards.* Washington, DC: The National Academies Press. Available at *doi.org/10.17226/25992* (last accessed August 2, 2023).

TABLE V.3—TRIAL STANDARD LEVELS FOR SEMI-AUTOMATIC RESIDENTIAL CLOTHES WASHERS

| TSL | Semi-automatic | | |
|---|---|---|---|
| | Efficiency level | EER (lb/kWh/cycle) | WER (lb/gal/cycle) |
| 1 | 1 | 2.12 | 0.27 |
| 2 | 1 | 2.12 | 0.27 |
| 3 | 1 | 2.12 | 0.27 |
| 4 | 2 | 2.51 | 0.36 |

While representative ELs were included in the TSLs, DOE considered all efficiency levels as part of its analysis.[155]

*B. Economic Justification and Energy Savings*

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on RCW consumers by looking at the effects that potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the direct final rule TSD provides detailed information on the LCC and PBP analyses.

Tables V.4 through V.12 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, the impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (*see* section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR TOP-LOADING ULTRA-COMPACT RESIDENTIAL CLOTHES WASHERS

| TSL | Efficiency level | Average costs 2022$ | | | | Simple payback years | Average lifetime years |
|---|---|---|---|---|---|---|---|
| | | Installed cost | First year's operating cost | Lifetime operating cost | LCC | | |
| 1, 3, 4 | Baseline | $840 | $84 | $913 | $1,753 | | 13.4 |
| 2** | Baseline | 836 | 84 | 919 | 1,755 | | 13.4 |

**Note:** The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.
** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.5—AVERAGE LCC AND PBP RESULTS FOR TOP-LOADING STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

| TSL | Efficiency level | Average costs 2022$ | | | | Simple payback years | Average lifetime years |
|---|---|---|---|---|---|---|---|
| | | Installed cost | First year's operating cost | Lifetime operating cost | LCC | | |
| | Baseline | $690 | $174 | $1,917 | $2,607 | | 13.4 |
| 1 | 1 | 770 | 156 | 1,715 | 2,485 | 4.4 | 13.4 |
| 2** | 2 | 833 | 151 | 1,661 | 2,494 | 6.2 | 13.4 |
| 3 | 3 | 851 | 146 | 1,598 | 2,448 | 5.7 | 13.4 |
| 4 | 4 | 856 | 143 | 1,569 | 2,425 | 5.4 | 13.4 |

**Note:** The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.
** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

[155] Efficiency levels that were analyzed for this direct final rule are discussed in section IV.C.2 of this document. Results by efficiency level are presented in TSD chapters 8, 10, and 12.

TABLE V.6—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR TOP-LOADING STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

| TSL | Efficiency level | Life-cycle cost savings | |
|---|---|---|---|
| | | Average LCC savings * 2022$ | Percent of consumers that experience net cost |
| 1 | 1 | $122 | 16 |
| 2 ** | 2 | 111 | 27 |
| 3 | 3 | 116 | 28 |
| 4 | 4 | 133 | 26 |

* The savings represent the average LCC for affected consumers.
** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.7—AVERAGE LCC AND PBP RESULTS FOR FRONT-LOADING COMPACT RESIDENTIAL CLOTHES WASHERS

| TSL | Efficiency level | Average costs 2022$ | | | | Simple payback years | Average lifetime years |
|---|---|---|---|---|---|---|---|
| | | Installed cost | First year's operating cost | Lifetime operating cost | LCC | | |
| | Baseline | $774 | $93 | $1,024 | $1,798 | | 13.4 |
| 1 | 1 | 827 | 88 | 959 | 1,786 | 9.6 | 13.4 |
| 2 ** | 2 | 861 | 84 | 918 | 1,779 | 9.3 | 13.4 |
| 3 | 2 | 865 | 84 | 913 | 1,778 | 9.5 | 13.4 |
| 4 | 4 | 904 | 77 | 838 | 1,742 | 8.0 | 13.4 |

**Note:** The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.
** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.8—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR FRONT-LOADING COMPACT RESIDENTIAL CLOTHES WASHERS

| TSL | Efficiency level | Life-cycle cost savings | |
|---|---|---|---|
| | | Average LCC savings * 2022$ | Percent of consumers that experience net cost |
| 1 | 1 | $0 | 0 |
| 2** | 2 | 9 | 21 |
| 3 | 2 | 8 | 22 |
| 4 | 4 | 38 | 35 |

* The savings represent the average LCC for affected consumers.
** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.9—AVERAGE LCC AND PBP RESULTS FOR FRONT-LOADING STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

| TSL | Efficiency level | Average costs 2022$ | | | | Simple payback years | Average lifetime years |
|---|---|---|---|---|---|---|---|
| | | Installed cost | First year's operating cost | Lifetime operating cost | LCC | | |
| | DFR Baseline | $1,027 | $172 | $1,922 | $2,948 | | 13.4 |
| | NOPR Baseline | 1,027 | 137 | 1,510 | 2,536 | | 13.4 |
| 1 | 1 | 1,066 | 131 | 1,445 | 2,511 | 0.9 | 13.4 |
| 2 ** | 2 | 1,088 | 125 | 1,389 | 2,477 | 1.4 | 13.4 |
| 3 | 3 | 1,105 | 123 | 1,359 | 2,464 | 1.6 | 13.4 |
| 4 | 4 | 1,120 | 118 | 1,303 | 2,423 | 1.7 | 13.4 |

**Note:** The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.
** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.10—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR FRONT-LOADING STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

| TSL | Efficiency level | Life-cycle cost savings | |
|---|---|---|---|
| | | Average LCC savings* 2022$ | Percent of consumers that experience net cost |
| 1 | 1 | $26 | 1 |
| 2** | 2 | 46 | 2 |
| 3 | 3 | 15 | 20 |
| 4 | 4 | 49 | 16 |

* The savings represent the average LCC for affected consumers.
** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.11—AVERAGE LCC AND PBP RESULTS FOR SEMI-AUTOMATIC RESIDENTIAL CLOTHES WASHERS

| TSL | Efficiency level | Average costs 2022$ | | | | Simple payback years | Average lifetime years |
|---|---|---|---|---|---|---|---|
| | | Installed cost | First year's operating cost | Lifetime operating cost | LCC | | |
| | Baseline | $525 | $134 | $1,456 | $1,981 | | 13.4 |
| 1, 3 | 1 | 538 | 107 | 1,156 | 1,694 | 0.5 | 13.4 |
| 2** | 1 | 536 | 107 | 1,164 | 1,700 | 0.5 | 13.4 |
| 4 | 2 | 547 | 95 | 1,023 | 1,569 | 0.6 | 13.4 |

NOTE: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.
** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.12—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR SEMI-AUTOMATIC RESIDENTIAL CLOTHES WASHERS

| TSL | Efficiency level | Life-cycle cost savings | |
|---|---|---|---|
| | | Average LCC savings* 2022$ | Percent of consumers that experience net cost |
| 1, 3 | 1 | $280 | 0% |
| 2** | 1 | 284 | 0 |
| 4 | 2 | 188 | 0 |

* The savings represent the average LCC for affected consumers.
** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households and senior-only households. Tables V.13 through V.16 compares the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for each RCW product class. In most cases, the average LCC savings for low-income households at the considered efficiency levels are higher and payback periods are lower relative to the results for all households across all product classes. However, LCC savings for senior-only households are significantly different when compared to the average for all households across all product classes, *i.e.,* lower LCC savings and longer payback periods. Chapter 11 of the direct final rule TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.13—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; TOP-LOADING STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

| | Low-income households | Senior-only households | Well-users households | All households |
|---|---|---|---|---|
| **Average LCC Savings (2022$)** | | | | |
| TSL 1 | $149 | $73 | $22 | $122 |
| TSL 2** | 162 | 48 | (31) | 111 |
| TSL 3 | 156 | 59 | 6 | 116 |
| TSL 4 | 176 | 72 | 38 | 133 |

TABLE V.13—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; TOP-LOADING STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS—Continued

| | Low-income households | Senior-only households | Well-users households | All households |
|---|---|---|---|---|
| **Payback Period (years)** | | | | |
| TSL 1 | 2.5 | 6.0 | 8.3 | 4.4 |
| TSL 2 ** | 3.5 | 8.4 | 13.5 | 6.2 |
| TSL 3 | 3.2 | 7.7 | 10.9 | 5.7 |
| TSL 4 | 3.0 | 7.3 | 9.1 | 5.4 |
| **Consumers with Net Benefit (%)** | | | | |
| TSL 1 | 47 | 39 | 27 | 45 |
| TSL 2 ** | 45 | 30 | 16 | 39 |
| TSL 3 | 71 | 57 | 44 | 67 |
| TSL 4 | 77 | 64 | 56 | 73 |
| **Consumers with Net Cost (%)** | | | | |
| TSL 1 | 10 | 22 | 33 | 16 |
| TSL 2 ** | 16 | 35 | 50 | 27 |
| TSL 3 | 17 | 37 | 50 | 28 |
| TSL 4 | 16 | 35 | 43 | 26 |

** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.14—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; FRONT-LOADING COMPACT RESIDENTIAL CLOTHES WASHERS

| | Low-income households | Senior-only households | Well-users households | All households |
|---|---|---|---|---|
| **Average LCC Savings (2022$)** | | | | |
| TSL 1 | $0 | $0 | $0 | $0 |
| TSL 2 ** | 39 | (1) | (13) | 9 |
| TSL 3 | 38 | (2) | (13) | 8 |
| TSL 4 | 75 | 21 | 24 | 38 |
| **Payback Period (years)** | | | | |
| TSL 1 | 2.7 | 12.2 | 16.3 | 9.6 |
| TSL 2 ** | 2.6 | 11.8 | 16.6 | 9.3 |
| TSL 3 | 2.6 | 12.0 | 16.6 | 9.5 |
| TSL 4 | 2.2 | 10.0 | 11.1 | 8.0 |
| **Consumers with Net Benefit (%)** | | | | |
| TSL 1 | 0 | 0 | 0 | 0 |
| TSL 2 ** | 27 | 14 | 8 | 17 |
| TSL 3 | 27 | 14 | 8 | 17 |
| TSL 4 | 75 | 56 | 55 | 64 |
| **Consumers with Net Cost (%)** | | | | |
| TSL 1 | 0 | 0 | 0 | 0 |
| TSL 2 ** | 7 | 25 | 31 | 21 |
| TSL 3 | 7 | 25 | 31 | 22 |
| TSL 4 | 13 | 43 | 44 | 35 |

** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.15—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; FRONT-LOADING STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

| | Low-income households | Senior-only households | Well-users households | All households |
|---|---|---|---|---|
| **Average LCC Savings (2022$)** | | | | |
| TSL 1 | $38 | $5 | ($1) | 26 |
| TSL 2 ** | 60 | 21 | (0.4) | 46 |
| TSL 3 | 19 | 8 | 11 | 15 |

TABLE V.15—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; FRONT-LOADING STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS—Continued

| | Low-income households | Senior-only households | Well-users households | All households |
|---|---|---|---|---|
| TSL 4 | 55 | 31 | 18 | 49 |
| **Payback Period (years)** | | | | |
| TSL 1 | 0.5 | 1.2 | 2.2 | 0.9 |
| TSL 2 ** | 0.7 | 1.9 | 3.3 | 1.4 |
| TSL 3 | 0.8 | 2.1 | 3.5 | 1.6 |
| TSL 4 | 0.8 | 2.3 | 3.8 | 1.7 |
| **Consumers with Net Benefit (%)** | | | | |
| TSL 1 | 1 | 1 | 1 | 1 |
| TSL 2 ** | 5 | 4 | 2 | 5 |
| TSL 3 | 34 | 27 | 33 | 31 |
| TSL 4 | 72 | 68 | 58 | 75 |
| **Consumers with Net Cost (%)** | | | | |
| TSL 1 | 1 | 1 | 1 | 1 |
| TSL 2 ** | 1 | 3 | 5 | 2 |
| TSL 3 | 13 | 24 | 18 | 20 |
| TSL 4 | 12 | 23 | 33 | 16 |

** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

TABLE V.16—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; SEMI-AUTOMATIC RESIDENTIAL CLOTHES WASHERS

| | Low-income households | Senior-only households | Well-users households | All households |
|---|---|---|---|---|
| **Average LCC Savings (2022$)** | | | | |
| TSL 1, 3 | $307 | $211 | $166 | $280 |
| TSL 2 ** | 310 | 214 | 167 | 284 |
| TSL 4 | 204 | 141 | 116 | 188 |
| **Payback Period (years)** | | | | |
| TSL 1, 3 | 0.2 | 0.7 | 0.8 | 0.5 |
| TSL 2 ** | 0.2 | 0.6 | 0.8 | 0.5 |
| TSL 4 | 0.2 | 0.7 | 0.9 | 0.6 |
| **Consumers with Net Benefit (%)** | | | | |
| TSL 1, 3 | 19 | 21 | 21 | 21 |
| TSL 2 ** | 19 | 21 | 21 | 21 |
| TSL 4 | 83 | 92 | 90 | 92 |
| **Consumers with Net Cost (%)** | | | | |
| TSL 1, 3 | 0 | 0 | 0 | 0 |
| TSL 2 ** | 0 | 0 | 0 | 0 |
| TSL 4 | 0 | 0 | 2 | 0 |

** All the TSLs except TSL 2 (the Recommended TSL) have a compliance year of 2027. TSL 2 has a compliance year of 2028.

c. Rebuttable Presumption Payback

As discussed in section III.E.2 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedures for RCWs. In contrast, the PBPs presented in section V.B.1 of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.17 presents the rebuttable-presumption payback periods for the considered TSLs for RCWs. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this rule are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to

definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.17—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

| Product class | Trial standard level | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| | years | | | |
| Top-Loading Ultra-Compact * | n.a. | n.a. | n.a. | n.a. |
| Top-Loading Standard-Size | 3.7 | 5.1 | 4.6 | 4.2 |
| Front-Loading Compact | 6.5 | 6.7 | 6.8 | 5.8 |
| Front-Loading Standard-Size | 0.9 | 1.3 | 1.5 | 1.6 |
| Semi-Automatic | 0.3 | 0.3 | 0.3 | 0.4 |

* The entry ''n.a.'' means not applicable because the evaluated standard is the baseline.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of RCWs. The next section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the direct final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. The following tables summarize the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of RCWs, as well as the conversion costs that DOE estimates manufacturers of RCWs would incur at each TSL.

The impact of potential amended energy conservation standards were analyzed under two scenarios: (1) the preservation of gross margin percentage; and (2) the preservation of operating profit, as discussed in section IV.J.2.d of this document. The preservation of gross margin percentage applies a ''gross margin percentage'' of 18 percent for all product classes and all efficiency levels.[156] This scenario assumes that a manufacturer's per-unit dollar profit would increase as MPCs increase in the standards cases and represents the upper-bound to industry profitability under potential amended energy conservation standards.

The preservation of operating profit scenario reflects manufacturers' concerns about their inability to maintain margins as MPCs increase to reach more-stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant products, operating profit does not change in absolute dollars and decreases as a percentage of revenue. The preservation of operating profit scenario results in the lower (or more severe) bound to impacts of potential amended standards on industry.

Each of the modeled scenarios results in a unique set of cash flows and corresponding INPV for each TSL. INPV is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (30 years from the analyzed compliance year).[157] The ''change in INPV'' results refer to the difference in industry value between the no-new-standards case and standards case at each TSL. To provide perspective on the short-run cash flow impact, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the no-new-standards case.

Conversion costs are one-time investments for manufacturers to bring their manufacturing facilities and product designs into compliance with potential amended standards. As described in section IV.J.2.c of this document, conversion cost investments occur between the year of publication of the direct final rule and the year by which manufacturers must comply with the amended standard. The conversion costs can have a significant impact on the industry's short-term cash flow and generally result in lower free cash flow in the period between the publication of the direct final rule and the compliance date of potential amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

TABLE V.18—MANUFACTURER IMPACT ANALYSIS RESULTS FOR RESIDENTIAL CLOTHES WASHERS

| | Unit | No-new-standards case | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|---|---|
| INPV | 2022$ millions | 1,707.9 | 1,639.0 to 1,710.7 | 1,429.6 to 1,560.9 | 1,053.8 to 1,234.5 | 535.8 to 738.2. |
| Change in INPV * | % | | (4.0) to 0.2 | (16.3) to (8.6) | (38.3) to (27.7) | (68.6) to (56.8). |
| Free Cash Flow (2026) ** | 2022$ millions | *** 136.6 | 113.2 | 29.9 | (166.7) | (428.8). |
| Change in Free Cash Flow (2026) ** | % | | (17.1) | (97.8) | (222.0) | (413.9). |
| Product Conversion Costs | 2022$ millions | | 27.3 | 91.9 | 197.5 | 253.2. |
| Capital Conversion Costs | 2022$ millions | | 31.8 | 228.1 | 527.1 | 1,068.0. |
| Total Conversion Costs | 2022$ millions | | 59.0 | 320.0 | 724.6 | 1,321.2. |

* Parentheses denote negative (-) values.
** TSL 2 (the Recommended TSL) represents the change in free cash flow in 2027, a year before the 2028 compliance date.

[156] The gross margin percentage of 18 percent is based on a manufacturer markup of 1.22.

[157] The analysis period ranges from 2024 to 2056 for the no-new-standards case and all TSLs, except for TSL 2 (the Recommended TSL). The analysis period for TSL 2 ranges from 2024 to 2057 due to the 2028 compliance year.

*** In 2027, the no-new-standards free cash flow is $136.4 million.

The majority of the INPV impacts are associated with standard-size product classes because top-loading standard-size and front-loading standard-size RCWs comprise approximately 96 percent of the total RCW domestic shipments. More specifically, the majority of the INPV impacts are associated with top-loading RCWs due to the high volume of shipments, the high percentage of shipments at minimum efficiency, and the likely design paths required to meet more stringent standards. Top-loading RCWs account for approximately 74 percent of current standard-size RCW shipments in 2027. DOE's shipments analysis estimates approximately 66 percent of top-loading shipments are currently at the baseline efficiency level. Additionally, the engineering analysis, informed by conversations with manufacturers, indicates that the likely design path to meet the efficiencies required at TSL 3 and TSL 4 would require notable capital investments. In particular, many manufacturers would likely increase tub capacity of top-loading standard-size units with capacities of less than 4.7 $ft^3$ to meet these higher efficiencies. In contrast, DOE's shipments analysis assumes no front-loading RCW shipments are at the DFR Baseline efficiency level and DOE's engineering analysis suggests that increases in tub capacity would not be required for front-loading RCW models to reach max-tech. Thus, as DOE considers increasingly stringent TSLs, the top-loading standard-size product class tends to drive industry investments and negative INPV impacts. *See* chapter 5 of the direct final rule TSD for a detailed discussion of design paths to reach higher efficiencies.

At TSL 1, the standard represents the least stringent efficiencies (EL 1) for all product classes. The change in INPV is expected to range from −4.0 to 0.2 percent. At this level, free cash flow is estimated to decrease by 17.1 percent compared to the no-new-standards case value of $136.6 million in the year 2026, the year before the 2027 standards year. DOE's shipments analysis estimates approximately 54 percent of current shipments meet this level.[158]

At TSL 1, DOE expects most manufacturers would incur limited conversion costs to reach the efficiencies required. The conversion costs primarily stem from changes required for top-loading standard-size RCWs. DOE's shipments analysis estimates approximately 34 percent of current top-loading standard-size RCWs meet this level (EL 1). In contrast, nearly all the front-loading standard-size RCWs currently meet the efficiencies required at this level. Industry capital conversion costs include tooling updates and costs associated with transitioning models with porcelain wash baskets to stainless steel wash baskets. Product conversion costs may be necessary for product development and testing. DOE expects industry to incur some re-flooring costs. DOE estimates capital conversion costs of $31.8 million and product conversion costs of $27.3 million. Conversion costs total $59.0 million.

At TSL 1, the shipment-weighted average MPC for all RCWs is expected to increase by 6.4 percent relative to the no-new-standards case shipment-weighted average MPC for all RCWs in 2027. In the preservation of gross margin percentage scenario, the slight increase in cashflow slightly outweighs the $59.0 million in conversion costs, causing a minor positive change in INPV at TSL 1 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed 2027 compliance year. This reduction in the manufacturer markup and the $59.0 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit scenario.

At TSL 2 (*i.e.,* the Recommended TSL), the standard represents the ENERGY STAR v. 8.1 efficiency levels for the front-loading and top-loading standard-size product classes, the ENERGY STAR Most Efficient level for the front-loading compact product class, and a gap fill level for the semi-automatic product class. The change in INPV is expected to range from −16.3 to −8.6 percent. At this level, free cash flow is estimated to decrease by 97.8 percent compared to the no-new-standards case value of $136.4 million in the year 2027, the year before the Recommended TSL standards year. DOE's shipments analysis estimates approximately 49 percent of current shipments meet this level. For the top-loading standard-size RCWs, front-loading compact RCWs, and front-loading standard-size RCWs, TSL 2 corresponds to EL 2. For the remaining product classes, the efficiencies required at TSL 2 are the same as TSL 1. For top-loading standard-size RCWs, approximately 31 percent of current shipments meet the efficiencies required by TSL 2. However, most manufacturers with top-loading standard-size models offer products at or above the efficiencies required. Of the nine OEMs with top-loading standard-size products, six OEMs offer models that meet the efficiencies required. To meet TSL 2, DOE expects manufacturers would incorporate wash plate designs, direct drive motors, and hardware features enabling spin speed increases into top-loading standard-size RCWs. Beyond these design options, some manufacturers may choose to increase the tub capacities of certain top-loading standard-size RCWs (*i.e.,* models with capacities of less than 4.4 $ft^3$) to meet the TSL 2 efficiencies.[159] Increasing RCW capacity could require a new cabinet, tub, and drum designs, which would necessitate costly investments in manufacturing equipment and tooling. For front-loading standard-size RCWs, approximately 92 percent of shipments meet the efficiencies required by TSL 2. Of the seven OEMs with front-loading standard-size products, six OEMs offer models that meet the efficiencies required. Product conversion costs may be necessary for designing, prototyping, and testing new or updated platforms. Additionally, DOE expects industry to incur more re-flooring costs compared to the prior TSL as more display units would need to be replaced. DOE estimates capital conversion costs of $228.1 million and product conversion costs of $91.9 million. Conversion costs total $320.0 million.

At TSL 2, the shipment-weighted average MPC for all RCWs is expected to increase by 12.1 percent relative to the no-new-standards case shipment-weighted average MPC for all RCWs in 2028. In the preservation of gross margin percentage scenario, the increase in cashflow is outweighed by the $320.0 million in conversion costs, causing a negative change in INPV at TSL 2 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2029, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $320.0 million in conversion costs incurred by manufacturers cause a moderate negative change in INPV at TSL 2 under

[158] Current shipments refer to annual product shipments in 2024 from the shipments analysis.

[159] *See* section V.B.4.b of this document for further discussion of DOE's determination of alternate pathways that could be used to achieve higher efficiency levels that would not require an increase in capacity.

the preservation of operating profit scenario.

At TSL 3, the standard represents the ENERGY STAR Most Efficient level for the front-loading product classes, the CEE Tier 1 level for the top-loading standard-size product class, and a gap fill level for the semi-automatic product class. The change in INPV is expected to range from −38.3 to −27.7 percent. At this level, free cash flow is estimated to decrease by 222.0 percent compared to the no-new-standards case value of $136.6 million in the year 2026, the year before the 2027 standards year. DOE's shipments analysis estimates approximately 18 percent of current shipments meet this level.

For the front-loading and top-loading standard-size product classes, TSL 3 corresponds to EL 3. For the remaining product classes, TSL 3 corresponds to the same efficiency level as TSL 2. At this level, the increase in conversion costs is mainly driven by the top-loading standard-size product class. Currently, approximately 3 percent of top-loading standard-size shipments meet TSL 3 efficiencies. Of the nine OEMs with top-loading standard-size products, only two offer models that meet the efficiencies required at TSL 3. The remaining seven OEMs would need to redesign all their existing top-loading standard-size platforms to meet this level.

To meet TSL 3, top-loading RCW designs would likely need to incorporate hardware features to enable faster spin speeds. These hardware updates may include reinforced wash baskets, more robust suspension and balancing system, and more advanced sensors. An increasing portion of top-loading standard-size RCWs (*i.e.,* those models with capacities less than 4.7 $ft^3$) may choose to increase tub capacity.[160] Increasing RCW capacity could require new cabinet, tub, and drum designs. The changes would necessitate investments in new equipment and tooling. DOE expects industry to incur more re-flooring costs compared to prior TSLs as more display units would need to be replaced. DOE estimates capital conversion costs of $527.1 million and product conversion costs of $197.5 million. Conversion costs total $724.6 million.

At TSL 3, the large conversion costs result in a free cash flow dropping below zero in the years before the standards year. The negative free cash flow calculation indicates manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

At TSL 3, the shipment-weighted average MPC for all RCWs is expected to increase by 14.4 percent relative to the no-new-standards case shipment-weighted average MPC for all RCWs in 2027. In the preservation of gross margin percentage scenario, the increase in cashflow is outweighed by the $724.6 million in conversion costs, causing a large change in INPV at TSL 3 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $724.6 million in conversion costs incurred by manufacturers cause a significant negative change in INPV at TSL 3 under the preservation of operating profit scenario.

At TSL 4, the standard represents the max-tech energy and water efficiencies for all product classes. The change in INPV is expected to range from −68.6 to −56.8 percent. At this level, free cash flow is estimated to decrease by 413.9 percent compared to the no-new-standards case value of $136.6 million in the year 2026, the year before the 2027 standards year. DOE's shipments analysis estimates approximately 4 percent of current shipments meet this level.

As previously discussed, the max-tech efficiencies required for standard-size RCWs drive the increase in conversion costs from the prior TSLs. Currently, less than 1 percent of top-loading standard-size RCW shipments and approximately 9 percent of front-loading standard-size RCW shipments meet max-tech levels. Out of the nine top-loading standard-size OEMs, only one offers models that meet the efficiencies required by TSL 4. Out of the seven front-loading standard-size OEMs, only two offer models that meet the efficiencies required by TSL 4. Max-tech would require most manufacturers to significantly redesign their RCW platforms. DOE expects most standard-size RCW manufacturers would need to further increase spin speeds as compared to prior TSLs. An increasing portion of top-loading standard-size RCWs (*i.e.,* models with capacities of less than 5.0 $ft^3$) may choose to increase tub capacity to achieve the RMC values required at this level.[161] In interviews, two manufacturers stated that max-tech levels would require a total renovation of existing production facilities. Some manufacturers further stated that their product portfolio would be limited due to the lack of differentiation possible under a max-tech standard, which would potentially limit their ability to serve certain consumer segments and hurt profitability. DOE expects industry would incur approximately the same re-flooring costs as TSL 3 since few models exist at the higher levels. At TSL 4, reaching max-tech efficiency levels is a billion-dollar investment for industry. DOE estimates capital conversion costs of $1,068.0 million and product conversion costs of $253.2 million. Conversion costs total $1,321.2 million.

At TSL 4, the large conversion costs result in a free cash flow dropping below zero in the years before the standards year. The negative free cash flow calculation indicates manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

At TSL 4, the shipment-weighted average MPC for all RCWs is expected to increase by 15.9 percent relative to the no-new-standards case shipment-weighted average MPC for all RCWs in 2027. In the preservation of gross margin percentage scenario, the increase in cashflow is outweighed by the $1,321.2 million in conversion costs, causing a significant negative change in INPV at TSL 4 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $1,321.2 million in conversion costs incurred by manufacturers cause a significant negative change in INPV at TSL 4 under the preservation of operating profit scenario.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the RCWs industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. For the direct final rule, DOE used the most up-to-date information available. DOE calculated these values using statistical data from the 2021 *ASM,*[162] BLS

[160] *See* section V.B.4.b of this document for further discussion of DOE's determination of alternate pathways that could be used to achieve higher efficiency levels that would not require an increase in capacity.

[161] *See* section V.B.4.b of this document for further discussion of DOE's determination of alternate pathways that could be used to achieve higher efficiency levels that would not require an increase in capacity.

[162] U.S. Census Bureau, *Annual Survey of Manufactures.* ''Summary Statistics for Industry Groups and Industries in the U.S (2021).'' Available at *www.census.gov/programs-surveys/asm/data/tables.html* (last accessed June 30, 2023).

employee compensation data,[163] results of the engineering analysis, and manufacturer interviews conducted in support of the March 2023 NOPR.

Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the total MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to total production employment levels by dividing production labor expenditures by the average fully burdened wage multiplied by the average number of hours worked per year per production worker. To do this, DOE relied on the *ASM* inputs: Production Workers Annual Wages, Production Workers Annual Hours, Production Workers for Pay Period, and Number of Employees. DOE also relied on BLS employee compensation data to determine the fully burdened wage ratio. The fully burdened wage ratio factors in paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits.

The number of production employees is then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered product. This value is derived from manufacturer interviews, product database analysis, and publicly available information. DOE estimates that 92 percent of RCWs are produced domestically.

The domestic production employees estimate covers production line workers, including line supervisors, who are directly involved in fabricating and assembling products within the OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this direct final rule.

Non-production workers account for the remainder of the direct employment figure. The non-production employees estimate covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, and management.[164] Using the amount of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant between the no-new-standards case and standards cases.

Using the GRIM, DOE estimates that in the absence of new energy conservation standards, there would be 9,070 domestic production and non-production workers for RCWs in 2027. Table V.19 shows the range of the impacts of energy conservation standards on U.S. manufacturing employment in the RCW industry. The following discussion provides a qualitative evaluation of the range of potential impacts presented in Table V.19.

TABLE V.19—DOMESTIC DIRECT EMPLOYMENT IMPACTS FOR RESIDENTIAL CLOTHES WASHER MANUFACTURERS IN THE ANALYZED COMPLIANCE YEAR

| | No-new-standards case | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|---|
| Direct Employment (Production Workers + Non-Production Workers) in 2027 ** | *** 9,070 | 10,400 | 11,821 | 11,785 | 11,857 |
| Potential Changes in Direct Employment Workers * | | (8,097)–1,330 | (8,097)–2,638 | (8,097)–2,715 | (8,097)–2,787 |

* DOE presents a range of potential direct employment impacts. Numbers in parentheses indicate negative numbers.
** TSL 2 (the Recommended TSL) represents the direct employment in 2028.
*** In 2028, the no-new-standards case direct employment estimate is 9,183.

The direct employment impacts shown in Table V.19 represent the potential domestic employment changes that could result following the compliance date for the RCWs covered in this rulemaking. The upper bound estimate corresponds to an increase in the number of domestic workers that results from amended energy conservation standards if manufacturers continue to produce the same scope of covered products within the United States after compliance takes effect. To establish a conservative lower bound, DOE assumes all manufacturers would shift production to foreign countries. At lower TSLs, DOE believes the likelihood of changes in production location due to amended standards are low due to the relatively minor production line updates required. However, as amended standards increase in stringency and both the complexity and cost of production facility updates increases, manufacturers are more likely to revisit their production location decisions. At max-tech, manufacturers representing a large portion of the market noted concerns about the level of investment, about the potential need to relocate production lines in order to remain competitive, and about the conversion period of 3 years being insufficient to make the necessary manufacturing line updates. At the Recommended TSL (*i.e.,* TSL 2), DOE expects that the likelihood of changes in production location as a direct result of amended standards are relatively low. Nearly all OEMs already produce top-loading standard-size and front-loading standard-size RCWs that meet the TSL 2 efficiencies in U.S. manufacturing facilities. Of the nine OEMs with top-loading standard-size products, six OEMs offer models that meet TSL 2 efficiencies. These six OEMs that currently offer top-loading standard-size RCW models that meet TSL 2 efficiencies collectively account for over 95 percent of overall top-loading standard-size RCW shipments.

[163] U.S. Bureau of Labor Statistics. ''*Employer Costs for Employee Compensation—March 2023.*'' June 16, 2023. Available at *www.bls.gov/news.release/archives/ecec_06162023.pdf* (last accessed June 30, 2023).

[164] The comprehensive description of production and non-production workers is available at ''Definitions and Instructions for the Annual Survey of Manufacturers, MA–10000'' (pp. 13–14), *www2.census.gov/programs-surveys/asm/technical-documentation/questionnaire/2021/instructions/MA_10000_Instructions.pdf* (last accessed June 30, 2023).

Of the seven OEMs with front-loading standard-size products, six OEMs offer models that meet TSL 2 efficiencies.

Additional detail on the analysis of direct employment can be found in chapter 12 of the direct final rule TSD. Additionally, the employment impacts discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the direct final rule TSD.

c. Impacts on Manufacturing Capacity

As discussed in section V.B.2.a of this document, meeting the efficiencies required for each TSL would require varying levels of resources and investment. A standard level requiring notably faster spin speeds, namely TSL 3 and TSL 4, would necessitate product redesign to account for the increased spin speeds as well as the noise, vibration, and fabric care concerns related to the spin speeds required to meet these higher TSLs. These updates may include designing and manufacturing reinforced wash baskets, instituting a more robust suspension and balancing system, increasing the number of sensors, and incorporating more advanced sensors. For top-loading standard-size RCWs, manufacturers could potentially choose to increase tub capacity of smaller models to meet the efficiencies required at higher TSLs. Many manufacturers would need to invest in new tooling and equipment to either produce entirely new wash basket lines or ramp up production of their existing larger-capacity wash baskets. Based on a review of current CCD model listings and manufacturer feedback during confidential interviews, DOE's engineering analysis reflects a design path in which TSL 2 is achieved with a capacity increase from 4.0 $ft^3$ to 4.4 $ft^3$, TSL 3 is achieved with a capacity increase to 4.7 $ft^3$, and TSL 4 is achieved with a capacity increase to 5.0 $ft^3$ for the top-loading standard-size product class. In interviews, some manufacturers expressed concerns—particularly at max-tech—that the 3-year period between the announcement of a final rule and the compliance date of the amended energy conservation standard might be insufficient to update production facilities and design, test, and manufacture the necessary number of products to meet demand. For the remaining TSLs, including TSL 2 (the Recommended TSL), most manufacturers could likely maintain manufacturing capacity levels and continue to meet market demand under amended energy conservation standards. Furthermore, at the Recommended TSL, manufacturers will have a 4-year period between the announcement of the direct final rule and the compliance date of the amended energy conservation standards. Thus, DOE does not expect manufacturers will face long-term capacity constraints due to the standard levels detailed in this direct final rule.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop industry cash-flow estimates may not capture the differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs substantially from the industry average could be affected disproportionately. DOE investigated small businesses as a manufacturer subgroup that could be disproportionally impacted by energy conservation standards and could merit additional analysis. DOE did not identify any other adversely impacted manufacturer subgroups for this rulemaking based on the results of the industry characterization.

DOE analyzes the impacts on small businesses in a separate analysis for the standards proposed in the NOPR published elsewhere in this issue of the **Federal Register** and in chapter 12 of the direct final rule TSD. In summary, the Small Business Administration (''SBA'') defines a ''small business'' as having 1,500 employees or less for NAICS 335220, ''Major Household Appliance Manufacturing.'' [165] Based on this classification, DOE identified one domestic OEM that qualifies as a small business. For a discussion of the impacts on the small business manufacturer subgroup, *see* chapter 12 of the direct final rule TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE examines Federal, product-specific regulations that could affect RCW manufacturers that take effect approximately 3 years before or after the 2028 compliance date. This information is presented in Table V.20.

TABLE V.20—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING RESIDENTIAL CLOTHES WASHER ORIGINAL EQUIPMENT MANUFACTURERS

| Federal energy conservation standard | Number of OEMs * | Number of OEMs affected by this rule ** | Approx. standards compliance year | Industry conversion costs (Millions) | Industry conversion costs/equipment revenue *** (%) |
|---|---|---|---|---|---|
| Portable Air Conditioners 85 FR 1378 (January 10, 2020) | 9 | 2 | 2025 | $320.9 (2015$) | 6.7 |
| Consumer Clothes Dryers† 87 FR 51734 (August 23, 2022) | 15 | 13 | 2027 | $149.7 (2020$) | 1.8 |

[165] U.S. Small Business Administration. ''Table of Small Business Size Standards.'' (Effective March 17, 2023) Available at *www.sba.gov/document/support-table-size-standards* (last accessed June 30, 2023).

TABLE V.20—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING RESIDENTIAL CLOTHES WASHER ORIGINAL EQUIPMENT MANUFACTURERS—Continued

| Federal energy conservation standard | Number of OEMs * | Number of OEMs affected by this rule ** | Approx. standards compliance year | Industry conversion costs (Millions) | Industry conversion costs/equipment revenue *** (%) |
|---|---|---|---|---|---|
| Miscellaneous Refrigeration Products† 88 FR 19382 (March 31, 2023) | 38 | 6 | 2029 | $126.9 (2021$) | 3.1 |
| Automatic Commercial Ice Makers† 88 FR 30508 (May 11, 2023) | 23 | 1 | 2027 | $15.9 (2022$) | 0.6 |
| Dishwashers† 88 FR 32514 (May 19, 2023) | 21 | 12 | 2027 | $125.6 (2021$) | 2.1 |
| Refrigerated Bottled or Canned Beverage Vending Machines† 88 FR 33968 (May 25, 2023) | 5 | 1 | 2028 | $1.5 (2022$) | 0.2 |
| Room Air Conditioners 88 FR 34298 (May 26, 2023) | 8 | 4 | 2026 | $24.8 (2021$) | 0.4 |
| Microwave Ovens 88 FR 39912 (June 20, 2023) | 18 | 10 | 2026 | $46.1 (2021$) | 0.7 |
| Commercial Water Heating Equipment 88 FR 69686 (October 6, 2023) | 15 | 1 | 2026 | $42.7 (2022$) | 5.3 |
| Consumer Water Heaters† 88 FR 49059 (July 28, 2023) | 22 | 3 | 2030 | $228.1 (2022$) | 1.3 |
| Consumer Boilers† 88 FR 55128 (August 14, 2023) | 24 | 1 | 2030 | $98.0 (2022$) | 3.6% |
| Dehumidifiers† 88 FR 76510 (November 6, 2023) | 20 | 4 | 2028 | $6.9 (2022$) | 0.4 |
| Consumer Furnaces 88 FR 87502 (December 18, 2023) | 15 | 1 | 2029 | $162.0 (2022$) | 1.8 |
| Commercial Refrigerators, Refrigerator-Freezers, and Freezers† 88 FR 70196 (October 10, 2023) | 83 | 3 | 2028 | $226.4 (2022$) | 1.6 |
| Refrigerators, Refrigerator-Freezers, and Freezers 89 FR 30262 (January 17, 2024) | 63 | 11 | 2029 and 2030‡ | $830.3 (2022$) | 1.3 |
| Consumer Conventional Cooking Products 89 FR 11434 (February 14, 2024) | 35 | 8 | 2028 | $66.7 (2022$) | 0.3 |

* This column presents the total number of OEMs identified in the energy conservation standard rule that is contributing to cumulative regulatory burden.

** This column presents the number of OEMs producing RCWs that are also listed as OEMs in the identified energy conservation standard that is contributing to cumulative regulatory burden.

*** This column presents industry conversion costs as a percentage of equipment revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.

† These rulemakings are at the NOPR stage, and all values are subject to change until finalized through publication of a final rule.
‡ For the refrigerators, refrigerator-freezers, and freezers energy conservation standards direct final rule, the compliance year (2029 or 2030) varies by product class.

As shown in Table V.20, the rulemakings with the largest overlap of RCW OEMs include consumer clothes dryers, consumer conventional cooking products, dishwashers, refrigerators, refrigerator-freezers, and freezers, and miscellaneous refrigeration products, which are all part of the multi-product Joint Agreement submitted by interested parties.[166] As detailed in the Joint Agreement, the signatories indicated that their recommendations should be considered a ''complete package.'' The signatories further stated that ''each part of this agreement is contingent upon the other parts being implemented.'' (Joint Agreement, No. 505 at p. 3)

The multi-product Joint Agreement states the ''jointly recommended compliance dates will achieve the overall energy and economic benefits of this agreement while allowing necessary lead-times for manufacturers to redesign products and retool manufacturing plants to meet the recommended standards across product categories.'' (Joint Agreement, No. 505 at p. 2) The staggered compliance dates help mitigate manufacturers' concerns about their ability to allocate sufficient resources to comply with multiple concurrent amended standards and about the need to align compliance dates for products that are typically designed or sold as matched pairs (such as RCWs and consumer clothes dryers). *See* section IV.J.3 of this document for stakeholder comments about cumulative regulatory burden. *See* Table V.21 for a comparison of the estimated compliance dates based on EPCA-specified timelines and the compliance dates detailed in the Joint Agreement.

TABLE V.21—EXPECTED COMPLIANCE DATES FOR MULTI-PRODUCT JOINT AGREEMENT

| Rulemaking | Estimated compliance year based on EPCA requirements | Compliance year in the joint agreement |
|---|---|---|
| Consumer Clothes Dryers | 2027 | 2028. |
| RCWs | 2027 | 2028. |
| Consumer Conventional Cooking Products | 2027 | 2028. |
| Dishwashers | 2027 | 2027.* |
| Refrigerators, Refrigerator-Freezers, and Freezers | 2027 | 2029 or 2030 depending on the product class. |
| Miscellaneous Refrigeration Products | 2029 | 2029. |

* Estimated compliance year. The Joint Agreement states, ''3 years after the publication of a final rule in the **Federal Register**.'' (Joint Agreement, No. 505 at p. 2)

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy and Water Savings

To estimate the energy and water savings attributable to potential amended standards for RCWs, DOE compared their energy and water consumption under the no-new-standards case to their anticipated energy and water consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056).[167] Tables V.22 and V.23 present DOE's projections of the national energy and water savings for each TSL considered for RCWs. The savings were calculated using the approach described in section IV.H of this document.

TABLE V.22—CUMULATIVE NATIONAL ENERGY SAVINGS FOR RESIDENTIAL CLOTHES WASHERS; 30 YEARS OF SHIPMENTS
[2027–2056]*

| | Trial standard level | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| | quads | | | |
| Primary energy | 0.56 | 0.64 | 1.29 | 2.03 |
| FFC energy | 0.58 | 0.67 | 1.34 | 2.12 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

[166] The microwave ovens energy conservation standards final rule (88 FR 39912), which has 10 overlapping OEMs, was published prior to the joint submission of the multi-product Joint Agreement.

[167] The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

TABLE V.23—CUMULATIVE NATIONAL WATER SAVINGS FOR RESIDENTIAL CLOTHES WASHERS; 30 YEARS OF SHIPMENTS
[2027–2056] *

| | Trial standard level | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| | trillion gallons | | | |
| Water Savings | 1.16 | 1.89 | 2.33 | 2.73 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

OMB Circular A–4 [168] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[169] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to RCWs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES and NWS sensitivity analysis results based on a 9-year analytical period are presented in Tables V.24 and V.25. The impacts are counted over the lifetime of RCWs purchased during the period 2027–2035.[170]

TABLE V.24—CUMULATIVE NATIONAL ENERGY SAVINGS FOR RESIDENTIAL CLOTHES WASHERS; 9 YEARS OF SHIPMENTS
[2027–2035] *

| | Trial standard level | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| | quads | | | |
| Primary energy | 0.23 | 0.27 | 0.46 | 0.66 |
| FFC energy | 0.24 | 0.28 | 0.48 | 0.69 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2036.

TABLE V.25—CUMULATIVE NATIONAL WATER SAVINGS FOR RESIDENTIAL CLOTHES WASHERS; 9 YEARS OF SHIPMENTS
[2027–2035] *

| | Trial standard level | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| | trillion gallons | | | |
| Water Savings | 0.47 | 0.71 | 0.84 | 0.95 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2036.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for RCWs. In accordance with OMB's guidelines on regulatory analysis,[171] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.26 shows the consumer NPV results with impacts counted over the lifetime of products purchased during the period 2027–2056.[172]

[168] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* Available at *www.whitehouse.gov/omb/information-for-agencies/circulars/* (last accessed June 24, 2023). DOE used the prior version of Circular A–4 (2003) as a result of the effective date of the new version.

[169] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. (42 U.S.C. 6295(m)) While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

[170] The analysis period for TSL 2 (the Recommended TSL) is 2028–2036.

[171] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Available at: *obamawhitehouse.archives.gov/omb/circulars_a004_a-4* (last accessed July 1, 2021).

[172] The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

TABLE V.26—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR RESIDENTIAL CLOTHES WASHERS; 30 YEARS OF SHIPMENTS

[2027–2056]*

| Discount rate | Trial standard level | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| | billion 2022$ | | | |
| 3 percent | 8.48 | 8.71 | 14.68 | 21.12 |
| 7 percent | 3.78 | 3.28 | 5.96 | 8.76 |

*The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.27. The impacts are counted over the lifetime of products purchased during the period 2027–2035.[171] As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.27—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR RESIDENTIAL CLOTHES WASHERS; 9 YEARS OF SHIPMENTS

[2027–2035]*

| Discount rate | Trial standard level | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| | billion 2022$ | | | |
| 3 percent | 4.03 | 4.37 | 6.57 | 8.79 |
| 7 percent | 2.24 | 2.11 | 3.45 | 4.75 |

*The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

The previous results reflect the use of a default trend to estimate the change in price for RCWs over the analysis period (*see* section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a higher rate of price decline than the reference case and one scenario with no price decline. The results of these alternative cases are presented in appendix 10C of the direct final rule TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the no-price-decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE estimates that amended energy conservation standards for RCWs will reduce energy and water expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2027–2031),[173] where these uncertainties are reduced.

The results suggest that the adopted standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the direct final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As stated, EPCA, as codified, contains the provision that the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

As discussed in the following sections, DOE has concluded that the standards adopted in this direct final rule will not lessen the utility or performance of the RCWs under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the adopted standards.

a. Performance Characteristics

EPCA authorizes DOE to design test procedures that measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) Representative average use of a clothes washer reflects, in part, a consumer using the clothes washer to achieve an acceptable level of cleaning performance. DOE recognizes that in general, a consumer-acceptable level of cleaning performance can be easier to achieve through the use of higher amounts of energy and water use during the clothes washer cycle. Conversely, maintaining acceptable cleaning performance can be more difficult as energy and water levels are reduced. As such, improving one aspect of clothes washer performance, such as reducing energy and/or water use as a result of energy conservation standards, may require manufacturers to make a

[173] The analysis period for TSL 2 (the Recommended TSL) is 2028–2032.

trade-off with one or more other aspects of performance, such as cleaning performance, depending on which performance characteristics are prioritized by the manufacturer. Currently, DOE's test procedures address the energy and water efficiency of clothes washers, but do not prescribe a method for testing clothes washer cleaning performance or other consumer-relevant attributes of performance.

DOE has identified through its market research certain high-efficiency RCWs that achieve equal or better cleaning performance than lower-efficiency RCWs in third-party performance reviews. For example, in the March 2023 NOPR, DOE referenced performance ratings published by Consumer Reports,[174] which DOE recognizes is one popular resource for consumers seeking independent reviews of consumer products. 88 FR 13520, 13599. According to information provided on its website, the test method used by Consumer Reports appears to be similar in nature to AHAM's cleaning performance test procedure, but inconsistent with the test conditions prescribed by DOE's appendix J test procedure;[175] nevertheless, its test results provide an objective measure of the performance capabilities for products currently on the market. *Id.*

In the March 2023 NOPR, DOE sought comment on whether the Consumer Reports test produces cleaning performance results that are representative of an average use cycle as measured by the DOE test procedure. *Id.* DOE also sought comment on how relative cleaning performance results would vary if tested under test conditions consistent with the DOE appendix J test procedure. *Id.* DOE received no comments in response to these specific requests for comment.

In addition to considering the Consumer Reports ratings, in support of the March 2023 NOPR, DOE conducted performance testing on a representative sample of top-loading standard-size and front-loading standard-size units, which collectively represent around 98 percent of RCW shipments. *Id.* at 88 FR 13599. DOE provided the detailed results of its testing in a performance characteristics test report made available in the docket for this rulemaking. In particular, DOE evaluated wash temperatures, stain removal, mechanical action (*i.e.,* ''wear and tear''), and cycle duration across the range of efficiency levels considered in the analysis. Specifically, DOE evaluated wash temperatures and cycle time based on test data performed according to DOE's new appendix J test procedure; additionally, DOE evaluated cleaning performance and fabric care based on additional testing performed according to the soil/stain removal and mechanical action tests specified in AHAM's HLW–2–2020 test method: Performance Evaluation Procedures for Household Clothes Washers (''AHAM HLW–2–2020''). *Id.* The AHAM HLW–2–2020 test method does not prescribe specific test conditions for performing the test (*e.g.,* inlet water temperatures conditions, load size, test cycle, or wash/rinse temperature selection). *Id.* For each RCW in its test sample, DOE tested the Hot Wash/Cold Rinse (''Hot'') temperature selection[176] in the Normal cycle[177] using the large load size[178] specified in appendix J, as well as using the inlet water temperatures and ambient conditions specified in appendix J. *Id.* at 88 FR 13600. DOE specifically analyzed the Hot cycle with the large load size because (1) DOE's understanding at the time of the March 2023 NOPR was that the Hot temperature selection would be the temperature selection most likely targeted for reduced wash temperature as a design option for achieving a higher energy efficiency rating; (2) the large load size is more challenging to clean than the small load size; and (3) all units in the test sample offer a Hot temperature selection (allowing for consistent comparison across units). *Id.* DOE stated in the March 2023 NOPR that it expects that the Hot temperature selection with the large load size is the cycle combination most likely to experience the types of performance compromises described by AHAM and manufacturers. *Id.* In sum, DOE selected the most conservative assumptions for its performance testing investigation to allow DOE to better understand the potential impacts on performance at various efficiency levels for RCWs. *Id.*

In the March 2023 NOPR, DOE requested comment on its use of the Hot temperature selection with the large load size to evaluate potential impacts on clothes washer performance as a result of amended standards. *Id.*

AHAM commented that the warm wash (''Warm'') temperature selection would be the selection most likely targeted for reduced wash temperature as a design option for achieving higher efficiency—rather than Hot, as DOE asserted in the March 2023 NOPR—because the Warm setting is more heavily weighted in the test procedure due to its larger usage factor. (AHAM, No. 464 at pp. 4–5)

In response to AHAM's comment, DOE acknowledges that each degree of temperature reduction on the Warm temperature setting would provide a greater improvement to measured efficiency than each degree of temperature reduction on the Hot temperature setting, given the higher usage factor of the Warm temperature setting in the DOE test procedures. Despite this, DOE notes that the Hot temperature setting—which on the large majority of clothes washers provides the highest temperature available in the Normal cycle—would be the temperature setting that provides the highest level of cleaning performance for soils and stains that require heated water for adequate removal.[179] As such, testing the Hot setting[180] provides a measure of the maximum soil and stain removal performance that can be achieved in the Normal cycle for soils and stains that require heated water for adequate removal. Measuring the maximum soil and stain removal performance of a clothes washer provides an indication of how the maximum performance of a clothes washer may be impacted at different efficiency levels. For these reasons, DOE has determined that an analysis of cleaning performance using the Hot temperature setting[181] is appropriate for determining whether the highest level of performance that can be achieved by the clothes washer on the Normal cycle would be negatively impacted at higher standard levels.

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[174] Consumer Reports ratings of clothes washers. Available at: *www.consumerreports.org/appliances/washing-machines/* (last accessed September 23, 2022).

[175] Consumer Reports describes its washing performance test as reflecting the degree of color change to swatches of fabric that were included in an 8-pound test load of mixed cotton items using the unit's ''most aggressive'' normal cycle.

[176] Figure 2.12.1.2 of appendix J provides a flow chart defining the Hot Wash/Cold Rinse temperature selection. Generally, the Hot Wash/Cold Rinse temperature selection corresponds to the hottest available wash temperature less than 140 °F, with certain exceptions as provided in Figure 2.12.1.2.

[177] Section 1 of appendix J defines the Normal cycle as the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing.

[178] Table 5.1 of appendix J defines the small and large load sizes to be tested according to the clothes washer's measured capacity.

[179] On models that provide an ''Extra Hot'' temperature setting in the Normal cycle, the Extra Hot setting would be expected to provide the highest cleaning performance of such soils and stains.

[180] Or, alternatively, the Extra Hot setting on clothes washers that provide an Extra Hot setting in the Normal cycle.

[181] Or, alternatively, the Extra Hot setting on clothes washers that provide an Extra Hot setting in the Normal cycle.

Additionally, as discussed in detail in the March 2023 NOPR, DOE also performed the Soil/Stain Removal test and Mechanical Action test specified in industry standard AHAM HLW–2–2020. 88 FR 13520, 13600. The Soil/Stain Removal test evaluates the performance of household clothes washers in removing representative soils and stains from fabric. *Id.* The Mechanical Action test measures the amount of ''wear and tear'' applied by the clothes washer to the textiles. *Id.*

DOE requested comment on its use of the Soil/Stain Removal test and Mechanical Action test specified in AHAM HLW–2–2020 as the basis for evaluating performance-related concerns expressed by AHAM and manufacturers. *Id.*

The performance characteristics test report that accompanied the March 2023 NOPR provides detailed test results in table and graphical format. *Id.* The discussion throughout the remainder of this section summarizes the key preliminary conclusions from the test results as presented in the March 2023 NOPR. *Id.*

To evaluate whether more-stringent standards may reduce water temperatures below the 85 °F threshold and thus potentially decrease cleaning performance for fatty soils, DOE analyzed the wash temperature of the hottest temperature selection available in the Normal cycle for each RCW in the test sample. *Id.* For front-loading standard-size RCWs, DOE's test data showed no identifiable correlation between efficiency and the hottest available wash temperature in the Normal cycle. *Id.* At the proposed standard level (*i.e.,* NOPR TSL 4, corresponding to EL 3), considering units both slightly higher and slightly lower than EL 3, the hottest available wash temperature in the Normal cycle ranged from around 70 °F to around 140 °F. *Id.* This closely matched the range of the hottest wash temperatures available on units at lower efficiency levels, which ranged from around 80 °F to around 155 °F. *Id.* Notably, at EL 3, multiple models from multiple manufacturers provided wash temperatures higher than the 85 °F threshold and would therefore be able to dissolve and clean fatty soils. *Id.*

For top-loading standard-size RCWs, DOE's test data showed that for units at EL 2 and below, the hottest available wash temperature in the Normal cycle ranged from around 70 °F to around 110 °F. *Id.* At EL 3 (considering units both slightly higher and slightly lower than EL 3), the hottest available wash temperature in the Normal cycle ranged from around 80 °F to around 100 °F. *Id.* Several models from multiple manufacturers demonstrated temperatures higher than the 85 °F threshold and would therefore be able to dissolve and clean fatty soils. *Id.*

Based on this data, DOE tentatively concluded that the proposed standard level (*i.e.,* NOPR TSL 4), would not require a substantive reduction in hot water temperature on the hottest temperature selection in the Normal cycle, and would not preclude the ability to provide wash temperatures above the 85 °F threshold. *Id.*

In the March 2023 NOPR, DOE requested comment on its wash temperature data presented in the performance characteristics test report and on its tentative conclusions derived from this data. *Id.* DOE requested any additional data that DOE should consider about wash temperatures at the proposed standard level. *Id.*

To evaluate whether more-stringent standards would result in a decrease in stain removal performance, DOE conducted the Soil/Stain Removal test specified in AHAM HLW–2–2020 using the Hot temperature selection with the largest load size, as described. *Id.* In particular, one of the stains evaluated in the AHAM HLW–2–2020 Soil/Stain Removal test is sebum—an oily, waxy substance produced by skin glands.[182] *Id.* For front-loading standard-size RCWs, DOE's test data showed no observable correlation between efficiency and the total cleaning score as measured by the AHAM test method.[183] *Id.* At EL 3 (considering units both slightly higher and slightly lower than EL 3), total cleaning scores ranged from around 86 to around 99 (higher is better). *Id.* At lower efficiency levels, total cleaning scores ranged from around 90 to around 96. *Id.*

For top-loading standard-size RCWs, DOE's test data showed that for units at EL 2 and below, total cleaning scores ranged from around 90 to around 98. *Id.* DOE discussed in the March 2023 NOPR that the clustering of data at or above a score of 90 (as measured on the Hot temperature selection with the large load size) likely represents a market-representative threshold of stain removal performance as measured with this cycle configuration. *Id.* DOE's total cleaning scores at EL 3 for stain removal also included a score of 90, which indicated that manufacturers can produce RCWs at EL 3, while maintaining a level of stain removal that is market-representative. *Id.* at 88 FR 13601. DOE also looked at the implementation of prioritizing hardware design options over reduced wash temperatures. *Id.* When hardware design options are implemented, DOE's analysis suggested that the proposed standard level would not preclude the ability to provide total cleaning scores for top-loading units equally as high as the highest scores currently achieved by units at lower efficiency levels. *Id.*

In the March 2023 NOPR, DOE requested comment on its stain removal data presented in the performance characteristics test report and on its conclusions derived from this data. *Id.* In particular, DOE requested comment on whether the clustering of data at or above a score of 90 (as measured on the Hot temperature selection with the large load size) corresponds to a market-representative threshold of stain removal performance as measured with this cycle configuration. *Id.* DOE additionally requested comment on its analysis indicating that implementing additional hardware design options, rather than reducing wash temperatures, on EL 2 units could enable total cleaning scores at EL 3 that are equally as high as the highest scores currently achieved by units at lower efficiency levels. *Id.*

To evaluate whether more-stringent standards would result in an increase in wear and tear on clothing, DOE conducted the Mechanical Action test specified in AHAM HLW–2–2020 concurrently with the Soil/Stain Removal test as described. *Id.* at 88 FR 13601.

For top-loading standard-size RCWs, DOE's test data showed that units at EL 3 have lower (*i.e.,* better) mechanical action scores than baseline-rated units, indicating that the higher-efficiency units provide less wear and tear than the baseline units in the test sample. *Id.* Specifically, at EL 3, mechanical action scores ranged from around 150 to around 175, closely matching the range at EL 2, which ranged from around 150 to around 170. *Id.* At lower efficiency levels, mechanical action scores ranged from around 190 to around 230. *Id.* The data suggested that the better mechanical action scores at the higher efficiency levels may correlate with the use of wash plates (*i.e.,* impellers) at those levels, compared to the use of

[182] The standardized soil/stain strips used in the AHAM HLW–2–2020 test consist of square test fabric swatches carrying five different types of stains: red wine, chocolate and milk, blood, carbon black/mineral oil, and pigment/sebum.

[183] The Total Cleaning Score represents cleaning performance—as measured by the amount of stain removed from the standardized soil/stain strips—as a percentage of the cleaning performance achieved by a reference ''maximum'' wash cycle performed on a reference clothes washer. The Total Cleaning Score may be less than or greater than 100%. A higher Total Cleaning Score represents better cleaning performance.

traditional agitators at the lower efficiency levels. *Id.*

For front-loading standard-size RCWs, DOE's test data showed that for units at or below EL 2, mechanical action scores range from around 135 to around 180. *Id.* At EL 3 (considering units both slightly higher and slightly lower than EL 3), mechanical action scores ranged from around 160 to around 210. *Id.* Although some units at EL 3 had higher (*i.e.,* worse) mechanical action scores than the lower-efficiency units, the low end of the range was less than (*i.e.,* better than) some of the baseline-rated units. *Id.* DOE stated in the March 2023 NOPR that it was not aware of any industry-accepted threshold for acceptable mechanical action performance, and there was no significant clustering of DOE's data to suggest any particular market-representative threshold. *Id.*

Based on this data from the March 2023 NOPR, DOE tentatively concluded that the proposed standard level (*i.e.,* NOPR TSL 4) would not preclude the ability to provide mechanical action scores comparable to the scores for units at lower efficiency levels. *Id.*

DOE requested comment on its mechanical action data presented in the performance characteristics test report and on its conclusions derived from this data. *Id.* In particular, DOE requested comment on whether there is a market-representative threshold of mechanical action performance as measured on the Hot temperature selection using the large load size. *Id.* DOE also requested comment on whether better mechanical action scores at higher top-loading efficiency levels are attributable to the use of wash plates rather than traditional agitators in those higher-efficiency units. *Id.*

To evaluate whether more-stringent standards would result in an increase in cycle time, DOE measured the average cycle time as defined in appendix J for each unit in the test sample. *Id.* For both top-loading standard-size and front-loading standard-size RCWs, DOE's test data showed no observable correlation between efficiency and average cycle time. *Id.* For top-loading standard-size RCWs, the average cycle time for the entire product class was around 50 minutes, as measured according to the appendix J test procedure. *Id.* At EL 3 (considering units both slightly higher and slightly lower than EL 3), cycle time ranged from around 35 minutes to around 65 minutes. *Id.* This closely matched the range of units at lower efficiency levels, which ranged from around 35 minutes to around 70 minutes. *Id.* For front-loading standard-size RCWs, the average cycle time for the entire product class was around 45 minutes, as measured according to the appendix J test procedure. *Id.* At EL 3 (considering units both slightly higher and slightly lower than EL 3), cycle time ranged from around 40 minutes to around 55 minutes. *Id.* This closely matched the range of units at lower efficiency levels, which ranged from around 35 minutes to around 65 minutes. *Id.*

Based on this data, DOE tentatively concluded that the proposed standard level (*i.e.,* NOPR TSL 4), would not result in an increase in average cycle time as measured by appendix J. *Id.*

In the March 2023 NOPR, DOE requested comment on its cycle time data presented in the performance characteristics test report and on its conclusions derived from this data. *Id.*

In summary, DOE tentatively concluded in the March 2023 NOPR that the proposed standard level (*i.e.,* NOPR TSL 4) can be achieved with key performance attributes (*e.g.,* wash temperatures, stain removal, mechanical action, and cycle duration) that are largely comparable to the performance of lower-efficiency units available on the market today. *Id.* Based on DOE's testing of models that currently meet the proposed standards, DOE stated in the March 2023 NOPR that it would not expect performance to be compromised at the proposed standard level. *Id.*

In the March 2023 NOPR, DOE sought comment on its testing and assessment of performance attributes (*i.e.,* wash temperatures, stain removal, mechanical action, and cycle duration), particularly at the proposed standard level (*i.e.,* NOPR TSL 4). *Id.* DOE sought additional data that stakeholders would like DOE to consider on performance attributes at NOPR TSL 4 efficiencies as well as the current minimum energy conservation standards. *Id.*

ASAP, ACEEE, and NYSERDA supported DOE's performance testing methodology and agreed with DOE that clothes washer performance (including wash temperature, stain removal, mechanical action, and cycle time) would not be negatively impacted by the standards proposed in the March 2023 NOPR. (ASAP, ACEEE, and NYSERDA, No. 458 at pp. 3–4) ASAP, ACEE, and NYSERDA noted that manufacturers have previously commented that reducing water temperatures below 85 °F could make it difficult to remove fatty soils from both, but that DOE's analysis demonstrates that by prioritizing hardware improvements in meeting the proposed standards for top-loading units could provide cleaning performance equivalent to the highest performance achieved by units at lower efficiency levels. (*Id.* at p. 4) ASAP, ACEEE, and NYSERDA commented that, in agreement with DOE testing results, Consumer Reports ratings indicate that efficient top-loading models, using impellers rather than agitators, generally perform better than less-efficient units. (*Id.*) ASAP, ACEEE, and NYSERDA further commented that top-loading models meeting the proposed standard have lower (*i.e.,* better) mechanical action scores than baseline units, indicating that the higher-efficiency machines cause less wear and tear on clothing than inefficient baseline unit. (*Id.*)

NEEA *et al.* commented that NEEA research, Consumer Reports testing, and consumer ratings on national retailers' websites confirm that top-loading RCWs that meet NOPR TSL 5 have excellent cleaning performance and receive high ratings from consumers, demonstrating no correlation between efficiency and cleaning performance. (NEEA *et al.,* No. 455 at pp. 3–4)

The CA IOUs supported DOE's conclusion that RCWs meeting NOPR TSL 4 will maintain their cleaning performance. (CA IOUs, No. 460 at p. 8) The CA IOUs commented that DOE's testing and analysis provide sufficient justification that along with sustained cleaning performance, the standard levels proposed in the March 2023 NOPR will not increase clothing wear and tear, or require longer average cycle times. (*Id.* at p. 10)

Samsung supported DOE's efforts and detailed testing and analysis to consider the impact of the standard levels proposed in the March 2023 NOPR on performance. (Samsung, No. 461 at p. 3) Samsung commented that DOE's testing, data, and results support the proposed levels at NOPR TSL 4, providing a systematic and comprehensive evaluation of potential impacts on key performance metrics. (*Id.*) Samsung commented that DOE's performance test data show that there is no loss in cleaning performance or increase in wear and tear when comparing top-loading machines with agitators and wash plates. (*Id.* at p. 4)

CEI commented that neither the March 2023 NOPR nor the accompanying TSD mention mold, but that mold accumulation in RCWs—rare in pre-2007-standards models—is now a common problem, particularly in front-loading models. (*Id.* at p. 4) CEI listed unpleasant odors, compromised clothes washer performance, and stains on washed items as outcomes of mold and commented that the situation requires many consumers to periodically run the clothes washer empty with a cleaning

agent designed to eliminate mold. (*Id.*) CEI added that such cleaning agents have become strong sellers, which is evidence of how widespread the mold issue has become and that this process of washing the clothes washer adds to energy and water use. (*Id.*) CEI commented that rather than acknowledge this issue, the standard levels proposed in the March 2023 NOPR increase the energy and water restrictions that caused the mold problem in the first place. (*Id.*)

During the public webinar, Mannino commented that cleaning performance and mold concerns started in the 2000s. (Mannino, Public Webinar Transcript, No. 91 at p. 85) Mannino expressed concern that after three to five years of use clothes no longer smell or look clean after a clothes washer cycle and that these problems may not appear when testing brand new models. (*Id.* at pp. 62–63)

With regard to concerns about mold accumulation and odors, commenters have not presented any evidentiary basis for asserting that such concerns are a result of energy conservation standards applicable to RCWs. DOE understands that front-loading clothes washers are inherently more prone to retaining moisture—which in turn may contribute to the growth of mold or other odor-causing buildup—in components such as the rubber gasket that seals the front door opening, which by necessity has a complex geometry with folds and crevices that can retain moisture when the clothes washer is not in use. DOE notes that the ''first generation'' of front-loading clothes washers was widely introduced to the U.S. market in the early 2000s, prior to the establishment of any performance-based energy conservation standards for front-loading clothes washers. DOE is aware that at least four major RCW manufacturers have settled class-action litigation suits regarding concerns over mold and odors in these first-generation product lines sold on the market during the 2000s.[184] DOE is also aware that in response to such concerns, manufacturers implemented a variety of design strategies in their ''second generation'' front-loading designs to prevent the growth of mold or other odor-causing buildup. In particular, DOE has observed through market research and reverse-engineering teardowns the use of the following such design strategies in front-loading models currently on the market: drain holes in the bottom of the rubber door gasket; air vents connecting interior spaces within the clothes washer to the outside air; internal fans that circulate air through the wash drum after cycle completion; the use of antimicrobial materials for certain internal components exposed to moisture; and door hinge designs that keep the door slightly ajar when not in use. DOE is not aware of any data, nor have any interested parties provided such data, to indicate that mold or odor concerns—to the extent that such concerns may persist despite the aforementioned product design innovations—would be any more prevalent at higher efficiency levels than at the current standard levels.

CEI stated that EPCA does not prioritize efficiency above all else and that EPCA prohibits setting an efficiency standard that would sacrifice any desired product characteristic. (CEI, No. 454 at pp. 2–3) CEI commented that a reduction in the quality of RCWs has already occurred due to previous efficiency standards applied by DOE in 1994, 2004, 2007, 2015, and 2018, noting that the standards in 2007 and beyond have been particularly problematic and that several respects of RCW quality have declined since then. (*Id.* at p. 3) CEI commented that problems stem from the fact that compliant models must use considerably less water per cycle, and that the traditional agitator in many models has been replaced by what CEI characterizes as more-efficient, but less-effective alternatives. (*Id.*) CEI commented that these problems would be exacerbated by the proposed rule, which would require further reductions in energy and water use. (*Id.*) CEI commented that DOE had not acknowledged adverse impacts of its earlier standards and continues to ignore real-world evidence that consumer utility has suffered. (*Id.*)

During the public webinar, Mannino commented that consumers in some cases load larger capacity top-loading RCWs completely to the top with clothing, which causes the clothing to not come out clean. (Mannino, Public Webinar Transcript, No. 91 at p. 84)

Strauch expressed concern about negative impacts to RCW performance with higher efficiency levels. (Strauch, No. 430 at p. 1) Strauch specifically expressed concern about lower wash temperatures, higher spin speeds, and increased spin duration as a result of the standards proposed in the March 2023 NOPR. (*Id.*) Strauch further expressed concern about decreased utility and performance at the proposed standard level and stated that the proposal should therefore be reconsidered. (*Id.* at p. 3) Additionally, DOE received comments from around 120 individual commenters expressing concerns regarding cleaning performance. Of these, 11 individuals emphasized what they described as the burden of cleaning very dirty loads. DOE also received comments from around 50 individuals expressing specific concerns about extended cycle time.

Representatives Latta *et al.* commented that the standards proposed in the March 2023 NOPR[185] would likely lead to longer and faster spin speeds, with resulting negative consequences for consumers including longer cycle times, increased noise, and increased wrinkling and tangling. (Representatives Latta *et al.,* No. 456 at p. 2)

Representatives Latta *et al.* further expressed concern that the impact of the standards proposed in the March 2023 NOPR on product performance were not adequately reviewed and addressed by DOE as required under EPCA. (*Id.* at p. 2) Representatives Latta *et al.* commented that to meet the standards proposed in the March 2023 NOPR, manufacturers would likely produce units that reduce water use and water temperatures, which could result in reduced cleaning and rinsing performance. (*Id.*) Representatives Latta *et al.* stated faster spin speeds would also drive greater potential for load imbalance issues, and increased product complexity could drive higher costs and shorter product lifespans. (*Id.* at pp. 2–3)

GE Appliances (''GEA'') commented that the standards proposed in the March 2023 NOPR will lead to increased cycle times. (GEA, No. 457 at p. 3) GEA commented that DOE's analysis shows the RMC requirements resulting from the standards proposed in the March 2023 NOPR will require higher spin speed (which takes greater time for the clothes washer to reach) and longer spin times. (*Id.*) GEA pointed out that DOE previously recognized the importance of cycle time to consumer

[184] (1) *In re: LG Front Load Washing Machine Class Action Litigation,* Case No. 2:08–cv–00051–MCA–LDW, U.S. District Court for the District of New Jersey, applicable to certain models purchased between 2002 and 2006; (2) *In re: Whirlpool Corp. Front-Loading Washers Settlement,* Case No. 1:08–WP–65000, U.S. District Court for the Northern District of Ohio, applicable to certain models purchased between 2001 and 2010; (3) *Grasso, et al.* v. *Electrolux Home Products Inc.,* Case No. 8:16–cv–00911, U.S. District Court for the Middle District of Florida, applicable to certain models purchased between 2004 and 2011; and (4) *Cobb* v. *BSH Home Appliances Corporation,* Case No. 8:10–cv–00711, U.S. District Court for the Central District of California, applicable to certain models purchased between 2004 and 2011.

[185] DOE notes that the standards adopted in this direct final rule are the same as the proposed in the March 2023 NOPR for three of the five product classes, but are less stringent than the standards proposed in the March 2023 NOPR for the other two product classes.

satisfaction and used cycle time impact as a factor in evaluating standards impact and should do so in this rulemaking as well. (*Id.*)

GEA further commented that the increased spin speeds required by the standards proposed in the March 2023 NOPR will lead to a higher incidence of canceled cycles because all modern top-loading RCWs use software monitoring of machine performance to assure safety during the spin cycle by detecting out-of-balance loads. (*Id.*) GEA commented that the standards proposed in the March 2023 NOPR will require exceptionally high spin speeds for top-loading RCWs—likely at least 900 RPM—and when an out-of-balance condition occurs, the machine will first attempt to rebalance the load though the ability to do so can be limited. (*Id.*) GEA commented that if an out-of-balance condition continues to exist, the wash cycle will be canceled before it is complete, leading either to a higher RMC than intended or truly wet clothes that a consumer is likely to rewash. (*Id.*)

AHAM commented that there is a correlation between several cleaning scores and tested IMEF in DOE's test data, contrary to DOE's statements. (AHAM, No. 464 at p. 3) AHAM commented that DOE did not evaluate whether there is a correlation between water use/efficiency and cleaning performance. (*Id.*) AHAM noted that the two top-loading RCWs in DOE's test sample that meet the standards proposed in the March 2023 NOPR have the lowest cleaning scores in the test sample. (*Id.* at p. 4) AHAM further commented that DOE should not rely primarily on modeled data to conclude that higher ELs will not negatively impact cleaning performance, particularly in light of AHAM's data, which demonstrate the opposite. (*Id.*) AHAM acknowledged that it is possible to address performance challenges using expensive technology options present in the most fully featured products currently on the market, but that DOE did not account for those costs in its analysis. (*Id.* at p. 10) AHAM commented that low-income consumers should not have to sacrifice performance to meet their price requirements. (*Id.*)

AHAM provided data indicating that there is a decrease in cleaning performance by about 5 points for both the Warm and Hot temperature settings when the wash temperature is decreased by around 30 °F to what AHAM characterizes as the temperatures that would be required under the proposed standards. (*Id.* at p. 5)

AHAM commented that it believes decreased water levels are likely to be the largest contributor to decreased performance, in part because the standards proposed in the March 2023 NOPR would make equal load distribution more difficult, leading to more frequent out-of-balance loads. (*Id.* at p. 5) AHAM noted that an increase in out-of-balance loads would increase water usage on some percentage of loads in top-loading RCWs designed to meet the standards proposed in the March 2023 NOPR, which would undercut DOE's projected savings. (*Id.*) AHAM also commented that load turnover will be significantly decreased as a result of the lower water levels and provided data from manufacturers that indicated an 86–87-percent difference in load turnover between a unit meeting current standards and a prototype meeting DOE's minimum WER for top-loading standard-size RCWs. (*Id.* at pp. 5–6) AHAM stated that it will be harder to remove soils from the full load without sufficient turnover of the load. (*Id.* at p. 7)

AHAM further provided manufacturer testing data that showed the impact of low load turnover and of the standards proposed in the March 2023 NOPR on the ability of an RCW to remove larger particles (such as mud, sand, hair, and vomit). (*Id.* at p. 7) AHAM indicated that the test unit modified to meet the proposed standards required a 10-minute increase in cycle time to achieve cleaning performance scores comparable to (but still under) that of a unit meeting the current standards. (*Id.*) AHAM commented, with supporting photographs, that a modified unit meeting the proposed standards was unable to remove muddy towel sediment despite the increase in cycle time, creating a potential health issue when consumers attempt to wash out soils like vomit. (*Id.* at pp. 8–9)

AHAM commented that there is significant consumer push-back on reduced water quantity and motion, and their perceived effect on wash performance. (*Id.* at p. 10) AHAM asserted that consumers who perceive that their clothes washers do not use enough water complain to manufacturers, rely more on higher water cycles, or engage in ''hacks'' such as manually adding more water to wet the clothes prior to the start of the cycle and that these practices are counter to DOE's energy and water efficiency goals. (*Id.* at pp. 10–11) AHAM commented that not enough time has elapsed to demonstrate that the water level per cycle is a distinct feature of value to consumers, but that low water levels are a product characteristic that significant portions of consumers dislike. (*Id.* at p. 11)

Whirlpool commented that the standards proposed in the March 2023 NOPR would lessen the utility and performance of clothes washers, particularly for small- and mid-sized RCWs. (Whirlpool, No. 462 at p. 7) Whirlpool commented that the proposal would result in fewer product features and model types, reducing the utility of numerous clothes washers, degrading their overall performance, fundamentally altering consumer choices, and changing how consumers will do their laundry. (*Id.*)

Whirlpool commented that DOE's performance evaluation in the March 2023 NOPR lacks comprehensive analysis on noise and vibration, wrinkling, tangling, rinse performance, particulate removal and residues, water level, and load motion. (*Id.* at p. 11) Whirlpool further commented that the March 2023 NOPR also fails to provide justification for the limited performance evaluation, ignoring several performance metrics that Whirlpool claims matter most to consumers. (*Id.*)

Whirlpool commented that DOE's data does not support the conclusion that performance will be satisfactory or reach consumer-acceptable limits for the evaluated performance metrics at the standard level proposed in the March 2023 NOPR. (*Id.* at p. 11) Whirlpool further commented that DOE's analysis does not address the capacity of high-performing models that exist at higher efficiency levels. (*Id.* at pp. 11–12) Whirlpool commented that DOE's analysis only examines the performance of currently available models and does not include expense. (*Id.* at p. 12) Whirlpool commented that there is a consumer-relevant difference in retail price between the premium models that DOE evaluated and the cost DOE estimated for the purchase of an RCW meeting the standard level proposed in the March 2023 NOPR. (*Id.*)

Whirlpool commented that providing a consumer-acceptable level of load motion is one of the biggest challenges to redesigning a top-loading RCW to meet the standards proposed in the March 2023 NOPR. (*Id.* at p. 12) Whirlpool commented that based on its own consumer testing, Whirlpool supported AHAM's data that the rollover rate falls below the minimum consumer acceptance threshold to meet the standards proposed in the March 2023 NOPR. (*Id.*) Whirlpool commented that a test cycle designed to meet the proposed standards failed to meet the consumer-acceptance threshold for load motion by over 82 percent and only offers 13 percent of the load motion compared to a model certified at the

current standard (which exceeds the threshold by 200 percent). (*Id.*)

Whirlpool commented that faster spin speeds would create consumer-perceptible challenges with wrinkling and tangling from fabric becoming compressed. (*Id.* at pp. 12–13) Whirlpool further commented that consumers may believe their clothes never got wet as they may observe dry spots on their clothes at the end of the cycle due to enhanced moisture extraction, with lower water levels reinforcing that perception. (*Id.*)

DOE greatly appreciates the test data and information submitted by AHAM and individual manufacturers for DOE's review. This additional data and information provided has helped inform DOE's evaluation of potential amended standards for RCWs. Specifically, the additional data and information provided by AHAM indicates that there are uncertainties regarding potential impacts on certain aspects of product performance at the standard levels proposed in the March 2023 NOPR and that changes to consumer usage patterns to mitigate such impacts could jeopardize the energy and water savings that would be achieved at the proposed efficiency levels.

As discussed in section V.C of this document, DOE is finalizing the amended standard level at TSL 2, the Recommended TSL. For both top-loading and front-loading standard-size RCWs, TSL 2 corresponds to EL 2, which is equivalent to the current ENERGY STAR qualification criteria for each product class. DOE notes that this amended standard level for both top-loading and front-loading standard-size RCWs is less stringent than the level proposed in the March 2023 NOPR (*i.e.,* TSL 3), which corresponded to EL 3 for both product classes.

As discussed in the March 2023 NOPR, DOE tentatively concluded that the proposed standard level for top-loading standard-size RCWs could be achieved with key performance attributes (*e.g.,* wash temperatures, stain removal, mechanical action, and cycle duration) that are largely comparable to the performance of lower-efficiency units available on the market today. 88 FR 13520, 13601. Specifically, with regard to wash temperatures, DOE tentatively concluded that the proposed standard level would not require a substantive reduction in hot water temperatures and, in particular, would not preclude the ability to provide wash temperatures above the important 85 °F threshold mentioned by manufacturers. *Id.* at 88 FR 13600. With regard to stain removal, DOE tentatively concluded that a market-representative level of performance can be maintained at EL 3, and that maintaining the highest level of performance currently achieved at lower efficiency levels would be technically achievable at EL 3. *Id.* at 88 FR 13601. With regard to mechanical action, DOE tentatively concluded that the proposed standard level would not require preclude the ability to provide mechanical action scores comparable to the scores for units at lower efficiency levels. *Id.* With regard to cycle time, DOE tentatively concluded that the proposed standard level would not result in an increase in average cycle time. *Id.*

However, manufacturers presented additional data suggesting that other attributes of clothes washer performance not specifically evaluated by DOE may be negatively impacted at TSLs 3 and 4 for particularly heavily soiled clothing loads, given current design technologies and approaches. DOE understands that consumers expect that a clothes washer provides a consumer-acceptable level of cleaning performance across a range of potential clothing loads. DOE further understands that consumers that experience any such negative impacts on product performance could potentially alter their usage patterns, for example by using more energy-intensive settings more frequently (*e.g.,* Extra-Hot temperature setting); using more water-intensive cycle options (*e.g.,* Deep Fill option; extra rinse cycles); using non-regulated cycles (*e.g.,* Heavy Duty cycle); or re-washing clothing that has not been cleaned sufficiently. Such changes to consumer usage patterns may counteract the energy and water savings that DOE has estimated would be achieved at TSLs 3 and 4. As discussed previously in section IV.H.2 of this document, DOE conducted a sensitivity analysis on the potential impact to energy and water savings that would result from changes to consumer usage patterns at TSL 3 and TSL 4.

Conversely, at TSL 2 (*i.e.,* the Recommended TSL corresponding to the standards level adopted in this direct final rule), DOE's data demonstrates no negative impact on the performance or cycle time of both top-loading and front-loading RCWs. Specifically, for top-loading standard-size RCWs, DOE's test data show wash temperatures in the Normal cycle as high as 110 °F at EL 2, matching the highest wash temperatures observed in units at lower efficiency levels. DOE test data for top-loading standard-size RCWs also indicate cleaning scores as high as 98 at EL 2, representing the highest scores among DOE's entire test sample, and higher than the scores observed at lower efficiency levels. Regarding mechanical action, DOE's test data show that for top-loading standard-size RCWs at EL 2, the mechanical action scores range from around 150 to around 170—significantly lower (*i.e.,* better) than the range at lower efficiency levels. DOE's test data further show that for top-loading standard-size RCWs, the range of cycle times at EL 2 is no higher than for units at lower efficiency levels. Specifically, among units in DOE's test sample that meet or exceed EL 2, cycle time ranges from around 35 minutes to around 65 minutes. This closely matches the range of units at lower efficiency levels, which range from around 35 minutes to around 70 minutes.

For front-loading standard-size RCWs, DOE's test data showed no identifiable correlation between efficiency and the hottest available wash temperature in the Normal cycle. Among units that meet or exceed EL 2, the hottest available wash temperatures in the Normal cycle range from around 70 °F to around 140 °F. This closely matches the range of the hottest wash temperatures available on units at lower efficiency levels, which ranged from around 80 °F to around 155 °F. DOE's test data also shows no observable correlation between efficiency and cleaning score. Among units that meet or exceed EL 2, cleaning scores range from around 86 to around 99. At lower efficiency levels, total cleaning scores ranged from around 90 to around 96. Regarding mechanical action, DOE's test data shows that at EL 2, mechanical action scores range from around 160 to around 195 (lower is better), compared to a range of around 135 to around 180 for units at lower efficiency levels. DOE's test data further show that for front-loading standard-size RCWs, the range of cycle times at EL 2 is no higher than for units at lower efficiency levels. Specifically, among units in DOE's test sample that meet or exceed EL 2, cycle time ranges from around 40 minutes to around 55 minutes. This closely matches the range of units at lower efficiency levels, which range from around 35 minutes to around 65 minutes.

DOE notes that in response to the March 2023 NOPR, manufacturers did not provide any specific data nor express any specific concerns regarding clothes washer performance at TSL 2 (corresponding to EL 2). Based on the information available, including DOE test results as summarized in the preceding paragraphs, DOE concludes that no lessening of product utility or performance would occur at TSL 2. As previously discussed, on February 14, 2024, DOE received a second joint

statement from the same group of stakeholders that submitted the Joint Agreement in which the signatories reaffirmed the standards recommended in the Joint Agreement.[186] In particular, the letter states that DOE's test data show, and industry experience agrees, that the recommended standard levels for RCWs can maintain good cleaning performance and do not preclude the ability to provide high wash temperatures.

The test data presented in the March 2023 NOPR contradict certain conclusions and presumptions made by DOE in previous rulemakings with regards to cycle times. In particular, in a NOPR published on August 13, 2020 (''August 2020 NOPR''), which preceded the December 2020 Final Rule, DOE stated its presumption that the shortest possible cycle times currently available on the market represent the models for which manufacturers have prioritized cycle time while maintaining adequate performance across the other performance aspects; and that based on this presumption, the current energy conservation standards may be precluding manufacturers from bringing models to the market with substantially shorter cycle times. 85 FR 49297, 49305; reiterated at 85 FR 81359, 81361. DOE further asserted that offering products with shorter cycle times would require more per-cycle energy and/or water use than would be permitted under the current standards in order to maintain the same level of performance in other areas (*e.g.,* cleaning, noise, *etc.*). *Id.*

DOE has determined, contrary to the August 2020 NOPR's assumptions, that current energy conservation standards have not prevented the sale of RCWs with shorter cycle times. DOE's test data presented in the March 2023 NOPR indicates no discernable correlation between efficiency level and cycle time for either top-loading standard-size or front-loading standard-size RCWs (*i.e.,* the RCW product classes subject to the December 2020 Final Rule). Indeed, for top-loading standard-size RCWs, the most efficient model in DOE's test sample has the same cycle time of 48 minutes as the least efficient minimally-compliant model in DOE's test sample. The models with the lowest cycle times of 35 and 36 minutes achieve higher efficiency levels EL 1 and EL 3, respectively. Similarly, for front-loading standard-size RCWs, the most efficient model in DOE's test sample has a cycle time of 41 minutes, substantially similar to the baseline unit with a cycle time of 36 minutes. The model with the lowest cycle time of 33 minutes achieves higher efficiency level EL 1. Based on this data, DOE reaches a different conclusion than was reached in the December 2020 Final Rule. In particular, noting that DOE's data shows no discernable correlation between efficiency and cycle time, this data does not support DOE's prior assertion that the current energy conservation standards may be precluding manufacturers from bringing models to the market with substantially shorter cycle times, or DOE's prior presumption that offering products with shorter cycle times would require more per-cycle energy and/or water use than would be permitted under the current standards.

Furthermore, in the second joint statement submitted February 14, 2024, by the signatories of the Joint Agreement, the signatories acknowledge that DOE's investigative testing shows that cycle times at the recommended levels for RCWs are the same as RCWs on the market today.

Finally, for the reasons discussed above, DOE has also determined that the standards adopted in this rule will not require increased cycle times.

As discussed, the adopted standards level for standard-size RCWs corresponds to the ENERGY STAR level for each product class. The ENERGY STAR certified product list indicates a wide range of models currently available on the market at this level. Currently, approximately 31 percent of all top-loading standard-size shipments meet this level. Of the nine OEMs offering top-loading standard-size RCWs, six OEMs offer 166 basic models that meet the final standard level. These six OEMs that currently offer top-loading standard-size RCW models that meet the final standard level collectively account for over 95 percent of overall top-loading standard-size RCW shipments. Currently, approximately 92 percent of all front-loading standard-size shipments meet this level. Of the seven OEMs with front-loading standard-size products, six OEMs offer 169 basic models (representing approximately 89 percent of all front-loading standard-size basic models).

Samsung recommended that DOE formalize its performance test plan or a similar approach to qualify the test cycle, similar to the approach used in the recently finalized dishwasher test procedure. (Samsung, No. 461 at p. 3) Samsung commented that ensuring products perform their basic functions during energy tests is of utmost importance, and if manufacturers compromise performance to achieve higher efficiency, it may diminish consumer trust in the U.S. Federal Trade Commission (''FTC'') EnergyGuide label and DOE minimum efficiency standards. (*Id.*) Samsung stated that the modes of operation tested, typically the default mode, must demonstrate a minimum level of acceptable functionality, because if the tested default mode fails to meet expectations, the consumer may resort to using more energy-consuming modes, defeating the purpose of energy efficiency standards. (*Id.*)

EPCA authorizes DOE to design test procedures that measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) As discussed, DOE's test procedures address the energy and water efficiency of RCWs, but do not prescribe a method for testing clothes washer cleaning performance or other consumer-relevant attributes of performance.

DOE's test procedure for clothes washers requires testing using the Normal cycle,[187] and consequently compliance with the applicable standards is determined based on the measured energy and water use of the Normal cycle. As the clothes washer market continuously evolves to higher levels of efficiency—either as a result of mandatory minimum standards or in response to voluntary programs such as ENERGY STAR—it becomes increasingly more important that DOE ensures that its test procedure continues to reflect representative use. As such, the Normal cycle that is used to test the clothes washer for energy and water performance must be one that provides a consumer-acceptable level of cleaning performance, even as efficiency increases.

DOE has previously considered in the June 2022 TP Final Rule whether to propose amendments to the test procedure to define what constitutes ''washing up to a full load of normally soiled cotton clothing'' (*i.e.,* the cleaning performance) to ensure that DOE's clothes washer test procedure accurately and fully tests clothes washers during a representative average use cycle. 87 FR 33316, 33352. After evaluating the existing ENERGY STAR

[186] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

[187] As discussed, the Normal cycle is defined as the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally soiled cotton clothing. Section 1 of appendix J.

test procedure for determining clothes washer cleaning performance and the industry test method AHAM HLW–2–2020, DOE determined in the June 2022 TP Final Rule that it was unable to assess whether the additional burden that would be introduced by these cleaning performance test methods would be outweighed by the benefits of incorporating either test. *Id.* Although test procedure development is outside the scope of this rulemaking, DOE continues to evaluate the merits of establishing a cleaning performance test method for clothes washers. DOE would consider any proposals regarding cleaning performance test methods under a separate test procedure rulemaking.

b. Continued Availability of Small-Capacity Clothes Washers

In the March 2023 NOPR, DOE discussed how its engineering analysis accompanying the March 2023 NOPR indicated that increases in capacity would likely be required to achieve higher efficiency levels beyond EL 1 for the top-loading standard-size product class.[188] 88 FR 13520, 13540. In chapter 5 of the TSD accompanying the March 2023 NOPR, DOE discussed its findings that at EL 2, top-loading standard-size RCWs currently on the market have capacities of approximately 4.4 $ft^3$ (an increase compared to a typical capacity of 4.0 $ft^3$ at EL 1); units at EL 3 have capacities of approximately 4.7 $ft^3$; and units at EL 4 have capacities of approximately 5.0 $ft^3$. (*See* section 5.5.3.2 of the NOPR TSD)

Whirlpool commented that DOE's proposal will effectively phase out small- and mid-sized capacity ''standard-size'' RCWs. (Whirlpool, No. 462 at p. 7) Whirlpool commented that the standards proposed in the March 2023 NOPR fail to account for the inherent benefit that large-capacity RCWs receive in the calculation of efficiency metrics. (*Id.*) Whirlpool further commented that it is unaware of any top-loading RCWs currently available on the market that are at 4.7 $ft^3$ and meet the proposed EL 3 standards, contradictory to DOE's assumption. (*Id.* At p. 8) Whirlpool commented that lower-income consumers and consumers with limited space cannot afford to accommodate physically larger RCWs and that smaller-capacity units also tend to be more affordable. (*Id.*) Whirlpool stated that it has previously offered RCWs with capacities exceeding 6.0 $ft^3$, but many consumers had difficulty installing these in their homes due to the increase in physical dimensions and trouble accessing the bottom of the clothes washer basket. (*Id.*) Whirlpool added that the elimination of small- and mid-size capacity RCWs would be extremely harmful to U.S. manufacturers, as an overwhelming majority of sales are for RCWs smaller than 4.7 $ft^3$. (*Id.*) Whirlpool further commented that for small RCWs to extract the same amount of water, faster spin speeds are required because of the smaller basket size, but are limited by safety considerations. (*Id.* At p. 13)

Whirlpool further commented that larger-capacity RCWs can more easily meet the standards proposed in the March 2023 NOPR with better RMC and therefore fewer additional technology options added to the product, lesser performance degradation, and lower incremental product costs than small- or mid-sized RCWs. (*Id.* At p. 12) Whirlpool commented that a small- to mid-size RCW would need to increase spin speed to dramatically reduce moisture extraction during the spin phase and would need to implement other technology options (lower water temperatures, lower water levels, and more efficient controls) compared to a larger-capacity RCW. (*Id.*)

Representatives Latta *et al.* expressed concern that the standards proposed in the March 2023 NOPR are biased in favor of larger-capacity RCWs and eliminates a consumer's choice to buy smaller RCWs that better meet their needs and space requirements. (Representatives Latta *et al.,* No. 456 at p. 2) Representatives Latta *et al.* commented that the TSD indicates RCW capacities would need to be increased to meet the new standards—with top-loading RCW capacity increasing to 4.7 $ft^3$ or more—which creates potential accessibility challenges due to the increased height of the machine. (*Id.*)

AHAM commented that products with smaller capacities provide a utility to consumers because they can be used in tighter spaces, can be moved from place to place, or can be used together with a standard-size RCW. (AHAM, No. 464 at p. 14) AHAM stated its agreement with DOE's statement in the RFI published on August 2, 2019, that these products, because of their smaller size, cannot achieve the same levels of efficiency as larger products. (*Id.*) AHAM commented that increases in capacity for top-loading RCWs are required to achieve higher efficiency levels beyond EL 1, demonstrating that a capacity bias still exists in the new EER and WER metrics. (*Id.* At pp. 12–13) AHAM commented that DOE must ensure that it accounts for that bias in order to ensure that small- and average-sized capacities are not eliminated from the market or overly burdened. (*Id.*) AHAM noted that front-loading RCWs have technological limitations such as drum diameter and volume and top-loading RCWs have the unique installation and usage conditions that limit the attainable efficiency of smaller units. (*Id.* At pp. 14–15) AHAM commented that capacity itself is an option DOE projects will be used to increase efficiency and that the larger the capacity, the easier it is to incorporate various other technology options as well. (*Id.*) AHAM commented that under EPCA, capacity provides consumer utility and is an appropriate basis for establishing product class and that the standards proposed in the March 2023 NOPR will decrease the ability of manufacturers to provide smaller capacities, despite DOE's claim that it has addressed the capacity bias inherent in the test procedure. (*Id.* (citing 42 U.S.C. 6295(q))) AHAM commented that DOE must do more to ensure utility associated with various capacities is not lost as a result of its standards, particularly because once DOE finalizes standards, there is no opportunity to fix the problem due to EPCA's anti-backsliding provision. (*Id.* (citing 42 U.S.C. 6295(o)(1))).

EPCA prohibits DOE from prescribing an amended or new standard that is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4))

DOE notes that its observations and tentative determinations in the March 2023 NOPR regarding top-loading RCW capacity were based on DOE's observations of models currently on the market, which are subject to the current IMEF and IWF metrics as measured under the current appendix J2 test procedure. Under the current metrics, the lack of lower-capacity units at higher efficiency levels suggests that increasing capacity is required to achieve higher efficiency levels beyond EL 1. Accordingly, the ''path'' that DOE modeled for achieving higher efficiency levels incorporated increases in capacity at EL 2, EL 3, and EL 4, reflecting the existing market.

However, DOE notes that the new EER and WER metrics defined in appendix J, by measuring efficiency on a per-pound

[188] DOE notes that it did not model the use of capacity increase as a design option for any other product classes in the March 2023 NOPR, having tentatively determined that capacity increase is not necessary to achieve higher efficiencies for those product classes. 88 FR 13520, 13543.

of clothing basis rather than a per-cubic foot of capacity basis, significantly reduce the inherent large-capacity bias provided by the current IMEF and IWF metrics.[189] As such, under the new EER and WER metrics, smaller-capacity units will no longer be inherently disadvantaged in comparison to larger-capacity units and will be able to achieve higher levels of efficiency than are achievable under the current IMEF and IWF metrics. As a result, DOE expects that the new EER and WER metrics will significantly reduce the correlation between RCW capacity and efficiency (*i.e.,* DOE expects that manufacturers will no longer need to increase capacity as a necessary means for achieving higher efficiency levels).

Furthermore, as previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement (including AHAM, of which Whirlpool is a member) in which the signatories reaffirmed the standards recommended in the Joint Agreement.[190] In particular, the letter states that the stakeholders do not anticipate the recommended standards will negatively affect features, which DOE assumes would also include capacity.

For this direct final rule, DOE updated its engineering analysis to show multiple ''paths'' that manufacturers could take to reach higher efficiency levels, based on the use of the new EER and WER metrics. Specifically, for top-loading standard-size RCWs, DOE modeled multiple approaches that manufacturers could use to achieve higher efficiency levels under the new metrics, without increasing capacity. In particular, the updated analysis shows viable pathways to achieve the amended standards enacted by this direct final rule for top-loading standard-size units of any capacity. Through this analysis, DOE has determined that an increase in capacity is not required as a means for achieving the amended standards enacted by this direct final rule. Accordingly, DOE has also determined that the amended standards would not preclude the availability of smaller-capacity RCWs on the market.

Chapter 5 of the direct final rule TSD provides tables of the representative breakdown among machine energy use, heating energy use, drying energy use, and low-power-mode energy use for each of these approaches to achieving the higher efficiencies of top-loading standard-size product classes.

c. Design Characteristics

This section discusses comments received from manufacturers regarding certain design characteristics: consumer control over water levels, porcelain wash baskets, and agitators. DOE notes that as previously discussed, on February 14, 2024, DOE received a second joint statement from the same group of stakeholders that submitted the Joint Agreement (including AHAM, of which GEA and Whirlpool are members) in which the signatories reaffirmed the standards recommended in the Joint Agreement.[191] In particular, the letter states that the stakeholders do not anticipate the recommended standards will negatively affect features or performance, which DOE assumes would include those design characteristics considered here.

Consumer Control Over Water Levels

DOE discussed in chapter 5 of the NOPR TSD that most typically, current baseline top-loading standard-size RCWs provide both manual and automatic (adaptive) water fill controls; or user-adjustable automatic controls, which enable the user to customize the amount of water used during the wash cycle. Some units may provide only manual controls or only automatic water fill control. (*See* section 5.5.3.2 of the NOPR TSD)

In response to the March 2023 NOPR, GEA commented that its consumer research has shown that consumers rate the ability to control the water level in their clothes washers in the top quartile of attributes they value, and that the standards proposed in the March 2023 NOPR will result in the elimination of manual consumer control over water levels in top-loading RCWs. (GEA, No. 457 at p. 2) GEA explained they completed consumer preference research and the manual consumer control feature is in the top quartile for attributes consumers value in washing machines across all potential features, including durability, warranty coverage, product life, and wash performance. (*Id.*) Additionally, GEA stated that the standards proposed in the March 2023 NOPR will reduce the amount of water used per-load in a top-loading RCW and will result in a visible difference to consumers. (*Id.* at p. 3)

DOE also received comments from around 40 individual commenters expressing concerns that the standards proposed in the March 2023 NOPR would reduce RCW water levels.

DOE notes that the amended standards enacted by this direct final rule for top-loading standard-size RCWs do not preclude the ability to offer consumer control over water levels, as demonstrated by the current availability of top-loading standard-size RCWs at the adopted standard level that offer a variety of cycle options that allow the consumer to modulate water levels, including but not limited to Deep Fill,[192] Deep Wash,[193] Water Plus,[194] Extra Rinse,[195] Prewash,[196] and Pre Soak.[197]

Porcelain Baskets

DOE discussed in chapter 5 of the NOPR TSD that the baseline top-loading standard-size RCW design uses an enameled steel (*i.e.,* porcelain) wash basket, and that manufacturers would need to switch to a stainless steel wash basket at EL 1 to accommodate the faster spin speeds required to achieve EL 1 efficiency. (*See* section 5.5.3.2 of the NOPR TSD)

In response to the March 2023 NOPR, Whirlpool commented that the proposed standards will remove porcelain baskets from the market. (Whirlpool, No. 462 at p. 11)

Strauch commented in opposition of the loss of porcelain drums at the proposed standard level. (Strauch, No. 430 at p. 2)

DOE evaluated the use of a stainless steel wash basket (as one of the hardware changes enabling spin speed increase) within its screening analysis—the purpose of which is to determine which design options to retain as the basis for considering higher efficiency levels. This change in wash basket

[189] In the June 2022 TP Final Rule, DOE noted that under the current metrics in appendix J2, energy use (*i.e.,* the denominator of the IMEF equation) scales with weighted-average load size, whereas capacity (*i.e.,* the numerator of the IMEF equation) scales with maximum load size. 87 FR 33316, 33349. This provides an inherent numerical advantage to large-capacity clothes washers that is disproportionate to the efficiency advantage that can be achieved through ''economies of scale'' associated with washing larger loads. *Id.* This relationship applies similarly to water efficiency through the IWF equation. *Id.*

[190] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

[191] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

[192] See for example, Maytag MVW7232HC at *www.maytag.com/washers-and-dryers/washers/top-load-washers/p.smart-top-load-washer-with-extra-power-button-5.3-cu.-ft.mvw7232hc.html*?.

[193] See for example, LG WT7400CV at *www.lg.com/us/washers-dryers/lg-wt7400cv-top-load-washer.*

[194] *Id.*

[195] See for example, Kenmore 21652 at *www.kenmore.com/products/kenmore-2621652n-21652-top-load-27-washer-white/.*

[196] *Id.*

[197] See for example Samsung WA50R5200AW at *www.samsung.com/us/home-appliances/washers/top-load/wa5200-5-0-cu--ft--top-load-washer-with-active-waterjet-wa50r5200aw-us/.*

material meets all five screening criteria as described in section IV.B of this document. Specifically, stainless steel wash baskets are technologically feasible; practicable to manufacture, install, and service on the scale necessary to serve the relevant market at the time of the compliance date of the standard; do not have a significant adverse impact on the product's utility; do not have a significant adverse impact on the product's safety; and are not a proprietary technology. Furthermore, DOE is not aware of any distinct consumer utility provided by the use of porcelain wash baskets, nor have any commenters identified any such consumer utility. For these reasons, DOE considers the use of stainless steel wash baskets to be a viable approach for improving energy and/or water efficiency and to therefore be considered as a ''design option'' in the subsequent engineering analysis.

To the extent that manufacturers currently produce porcelain wash baskets, DOE accounts for the product redesign and capital investments associated with transitioning models with porcelain wash baskets to stainless steel wash baskets in the MIA. DOE also accounts for the potential stranded assets that may result from amending standards, including the early retirement of equipment and tooling associated with producing porcelain wash baskets. See chapter 12 of the direct final rule TSD for additional information on conversion costs and stranded assets.

Agitators

The inner drum of a baseline top-loading standard-size RCW typically contains a vertically oriented agitator in the center of the drum, which undergoes a twisting motion. The motion of the agitator, which is powered by an electric motor, circulates the clothes around the center of the wash basket. Some agitators have a corkscrew-like design that also circulates the clothing vertically from the bottom to the top of the basket. Higher-efficiency top-loading RCWs typically use a disk-shaped ''wash plate,'' rather than a vertical agitator, to move the clothes within the basket. The rotation of the wash plate underneath the clothing circulates the clothes throughout the wash drum.

In the March 2023 NOPR, DOE proposed to adopt an amended standard for top-loading, standard-size RCWs that corresponded to the CEE Tier 1 level. As discussed in the March 2023 NOPR, DOE's market analysis indicated that top loading models currently on the market at the CEE Tier 1 level use wash plates (*i.e.,* do not have agitators). 88 FR 13520, 13602. DOE stated in the March 2023 NOPR that it was aware of top-loading RCWs without an agitator that achieve equal or better cleaning performance than top-loading RCWs with a traditional-style agitator in Consumer Reports performance reviews. *Id.*

DOE sought comment on any aspects of cleaning performance that provide differentiation between the use of an agitator or a wash plate that are not reflected in the Consumer Reports washing performance ratings evaluated in the March 2023 NOPR. 88 FR 13520, 13602. DOE sought comment on whether any lessening of the utility or performance of top-loading standard-size RCWs, in accordance with 42 U.S.C. 6295(o)(2)(B)(i)(IV), would result from a potential standard that would preclude the use of a traditional agitator. *Id.* In particular, DOE sought information and data on how such utility or performance would be measured or evaluated. *Id.*

GEA commented that the standards proposed in the March 2023 NOPR would eliminate the use of traditional agitators in top-loading RCWs. (*Id.* at pp. 2–3) GEA noted that agitators in top-loading RCWs are such an important feature that GEA includes it as a specific filter for consumers on its website, as do major retailers. (*Id.*)

Whirlpool commented that the standards proposed in the March 2023 NOPR would remove key consumer-friendly features like agitators from the market. (Whirlpool, No. 462 at p. 11) Whirlpool commented that the elimination of agitators would be concerning, as shipment data show that the majority of consumers greatly prefer agitators for top-loading RCWs. (*Id.*) Whirlpool further commented that there is a strong consumer perception that performance is enhanced by the presence of a traditional agitator due to observed load motion. (*Id.*) Whirlpool asserted that agitators encourage even distribution of the loads and minimize out-of-balance conditions. (*Id.*)

Strauch commented in opposition of the loss of agitators at the proposed standard level. (Strauch, No. 430 at p. 2)

During the public webinar, Mannino commented that consumers are saying they do not see as much load turnover in large RCWs with wash plates compared to RCWs with agitators and noted that in one technician's experience, RCWs with agitators have better cleaning performance. (*Id.* at p. 85)

Representatives Latta *et al.* commented that the standards proposed in the March 2023 NOPR would likely result in the elimination of consumer-desired features such as agitators. (Representatives Latta *et al.,* No. 456 at p. 2)

DOE notes that the standards adopted in this direct final rule for RCWs do not preclude the ability to offer agitators. All major top-loading standard-size RCW manufacturers offer models at the ENERGY STAR level—which is equivalent to the amended standard level enacted by this direct final rule—that include an agitator.[198]

d. Conclusion

For the reasons discussed in the previous sections, and based on the additional confirming statements from the Joint Agreement signatories, DOE has concluded that the standards adopted in this direct final rule will not lessen the utility or performance of the RCWs under consideration in this rulemaking.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.E.1.e of this document, EPCA directs the Attorney General of the United States (''Attorney General'') to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination in writing to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. To assist the Attorney General in making this determination, DOE will provide the DOJ with copies of this direct final rule and the TSD for review.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand

[198] See, for example, GE PTW705BPTDG at *www.geappliances.com/appliance/GE-Profile-5-3-cu-ft-Capacity-Washer-with-Smarter-Wash-Technology-and-FlexDispense-PTW705BPTDG;* Kenmore 29152 at *www.kenmore.com/products/kenmore-29152-4-4-cu-ft-energy-star-174-he-top-load-washer-w-triple-action-agitator-white/;* LG WT7155CW at *www.lg.com/us/washers-dryers/lg-wt7155cw-top-load-washer;* Maytag MVW7230HW at *www.maytag.com/washers-and-dryers/washers/top-load-washers/p.smart-capable-top-load-washer-with-extra-power-button-5.2-cu.-ft.mvw7230hw.html;* and Samsung WA49B5205AW at *www.samsung.com/us/home-appliances/washers/top-load/4-9-cu--ft--capacity-top-load-washer-with-activewave--agitator-and-active-waterjet-in-white-wa49b5205aw-us/.*

due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the direct final rule TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for RCWs is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.28 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the direct final rule TSD.

TABLE V.28—CUMULATIVE EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED DURING THE PERIOD 2027–2056 *

| | Trial standard level | | | |
|---|---|---|---|---|
| | 1 | 2 | 3 | 4 |
| **Electric Power Sector Emissions** | | | | |
| $CO_2$ (*million metric tons*) | 11.6 | 12.6 | 28.1 | 49.9 |
| $CH_4$ (*thousand tons*) | 0.8 | 0.9 | 1.7 | 2.6 |
| $N_2O$ (*thousand tons*) | 0.1 | 0.1 | 0.2 | 0.4 |
| $NO_X$ (*thousand tons*) | 6.7 | 7.0 | 17.0 | 32.8 |
| $SO_2$ (*thousand tons*) | 3.1 | 3.6 | 6.8 | 10.1 |
| Hg (*tons*) | 0.0 | 0.0 | 0.0 | 0.1 |
| **Upstream Emissions** | | | | |
| $CO_2$ (*million metric tons*) | 1.2 | 1.3 | 3.1 | 5.8 |
| $CH_4$ (*thousand tons*) | 116.0 | 123.7 | 292.5 | 551.8 |
| $N_2O$ (*thousand tons*) | 0.0 | 0.0 | 0.0 | 0.0 |
| $NO_X$ (*thousand tons*) | 19.3 | 20.7 | 48.5 | 90.9 |
| $SO_2$ (*thousand tons*) | 0.1 | 0.1 | 0.1 | 0.2 |
| Hg (*tons*) | 0.0 | 0.0 | 0.0 | 0.0 |
| **Total FFC Emissions** | | | | |
| $CO_2$ (*million metric tons*) | 12.9 | 14.0 | 31.2 | 55.8 |
| $CH_4$ (*thousand tons*) | 116.7 | 124.6 | 294.1 | 554.5 |
| $N_2O$ (*thousand tons*) | 0.1 | 0.1 | 0.2 | 0.4 |
| $NO_X$ (*thousand tons*) | 26.0 | 27.7 | 65.5 | 123.7 |
| $SO_2$ (*thousand tons*) | 3.2 | 3.6 | 7.0 | 10.3 |
| Hg (*tons*) | 0.0 | 0.0 | 0.0 | 0.1 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of $CO_2$ that DOE estimated for each of the considered TSLs for RCWs. Section IV.L of this document discusses the estimated SC–$CO_2$ values that DOE used. Table V.29 presents the value of $CO_2$ emissions reduction at each TSL for each of the SC–$CO_2$ cases. The time-series of annual values is presented for the selected TSL in chapter 14 of the direct final rule TSD.

TABLE V.29—PRESENT VALUE OF $CO_2$ EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED DURING THE PERIOD 2027–2056 *

| TSL | SC–$CO_2$ case | | | |
|---|---|---|---|---|
| | Discount rate and statistics | | | |
| | 5% | 3% | 2.5% | 3% |
| | Average | Average | Average | 95th Percentile |
| | million 2022$ | | | |
| 1 | 152 | 615 | 947 | 1,873 |
| 2 | 160 | 655 | 1,011 | 1,993 |
| 3 | 354 | 1,456 | 2,250 | 4,427 |
| 4 | 618 | 2,563 | 3,971 | 7,790 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

As discussed in section IV.L.2 of this document, DOE estimated the climate benefits likely to result from the reduced emissions of methane and $N_2O$ that DOE estimated for each of the considered TSLs for RCWs. Table V.30 presents the value of the $CH_4$ emissions reduction at each TSL, and Table V.31 presents the value of the $N_2O$ emissions reduction at each TSL. The time-series of annual values is presented for the selected TSL in chapter 14 of the direct final rule TSD.

TABLE V.30—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED DURING THE PERIOD 2027–2056 *

| TSL | SC–$CH_4$ case | | | |
|---|---|---|---|---|
| | Discount rate and statistics | | | |
| | 5% | 3% | 2.5% | 3% |
| | Average | Average | Average | 95th Percentile |
| | million 2022$ | | | |
| 1 | 62 | 174 | 239 | 462 |
| 2 | 65 | 184 | 253 | 487 |
| 3 | 152 | 432 | 595 | 1,144 |
| 4 | 280 | 806 | 1,115 | 2,135 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

TABLE V.31—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED DURING THE PERIOD 2027–2056 *

| TSL | SC–$N_2O$ case | | | |
|---|---|---|---|---|
| | Discount rate and statistics | | | |
| | 5% | 3% | 2.5% | 3% |
| | Average | Average | Average | 95th Percentile |
| | million 2022$ | | | |
| 1 | 0.5 | 1.8 | 2.8 | 4.9 |
| 2 | 0.5 | 2.0 | 3.1 | 5.4 |
| 3 | 1.1 | 4.0 | 6.1 | 10.7 |
| 4 | 1.6 | 6.2 | 9.5 | 16.5 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

DOE is well aware that scientific and economic knowledge about the contribution of $CO_2$ and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in $CO_2$ and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes, however, that the adopted standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the economic benefits associated with $NO_X$ and $SO_2$ emissions reductions anticipated to result from the considered TSLs for RCWs. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.32 presents the present value for $NO_X$ emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.33 presents similar results for $SO_2$ emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the selected TSL in chapter 14 of the direct final rule TSD.

TABLE V.32—PRESENT VALUE OF $NO_X$ EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED DURING THE PERIOD 2027–2056 *

| TSL | 7% Discount rate | 3% Discount rate |
|---|---|---|
| | million 2022$ | |
| 1 | 593 | 1,279 |
| 3 | 608 | 1,357 |
| 4 | 1,349 | 3,030 |
| 5 | 2,329 | 5,379 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

TABLE V.33—PRESENT VALUE OF $SO_2$ EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED DURING THE PERIOD 2027–2056 *

| TSL | 7% Discount rate | 3% Discount rate |
|---|---|---|
| | million 2022$ | |
| 1 | 112 | 235 |
| 3 | 120 | 263 |
| 4 | 229 | 498 |
| 5 | 324 | 718 |

* The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

Not all the public health and environmental benefits from the reduction of greenhouse gases, $NO_X$, and $SO_2$ are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM and other co-pollutants may be significant. DOE has not included monetary benefits of the reduction of Hg emissions because the amount of reduction is very small.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.34 presents the NPV values that result from adding the estimates of the economic benefits resulting from reduced GHG, $NO_X$, and $SO_2$ emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered products, and are measured for the lifetime of products shipped in 2027–2056.[199] The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of RCWs shipped during the period 2027–2056.[200]

TABLE V.34—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| **Using 3% discount rate for Consumer NPV and Health Benefits (billion 2022$)** | | | | |
| 5% Average SC–GHG case | 10.2 | 10.6 | 18.7 | 28.1 |
| 3% Average SC–GHG case | 10.8 | 11.2 | 20.1 | 30.6 |
| 2.5% Average SC–GHG case | 11.2 | 11.6 | 21.1 | 32.3 |
| 3% 95th percentile SC–GHG case | 12.3 | 12.8 | 23.8 | 37.2 |
| **Using 7% discount rate for Consumer NPV and Health Benefits (billion 2022$)** | | | | |
| 5% Average SC–GHG case | 4.7 | 4.2 | 8.0 | 12.3 |
| 3% Average SC–GHG case | 5.3 | 4.8 | 9.4 | 14.8 |
| 2.5% Average SC–GHG case | 5.7 | 5.3 | 10.4 | 16.5 |
| 3% 95th percentile SC–GHG case | 6.8 | 6.5 | 13.1 | 21.4 |

*C. Conclusion*

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this direct final rule, DOE considered the impacts of amended standards for RCWs at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

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

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy

[199] The analysis period for TSL 2 (the Recommended TSL) is 2028–2057.

[200] *Id.*

savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

It is important to recognize that while DOE is promulgating two separate regulatory actions for energy efficiency standards for RCWs and consumer clothes dryers, clothes washers and dryers are complementary products, and they are sometimes sold and purchased together as joint goods. This type of consumer purchasing behavior is not typical of DOE energy efficiency standards. These products are available in a variety of combinations and the efficiency and/or product class of one product does not restrict the efficiency and/or product class of the other. The efficiency levels are independent of each other. Hence, DOE does not directly model the joint purchasing decision of clothes washers and dryers in this rule. It is possible that if only one machine fails, consumers could replace one machine or could replace both machines jointly. If consumers replace both machines when one fails, aggregate lifecycle costs would be the combination of impacts as presented in both final rules.

Consumers value a variety of attributes in RCWs. These attributes can factor into consumer purchasing decisions along with installation and operating cost. For example, DOE understands certain consumers make purchasing decisions on non-efficiency attributes such as color or other visual features such as control panel layout, which may overlap with efficiency considerations related to and a potential preference for mechanical over electronic controls.

One specific attribute related to the joint use of clothes washers and dryers worth noting is the moisture content of clothes as consumers wash and dry them. DOE recognizes that amended RCW standards could result in less total moisture needing to be removed from the clothing in a clothes dryer, whereas amended consumer clothes dryer standards could result in a less energy-intensive process for removing that moisture. As explained in section IV.E of this document, the amended dryer test procedure in appendix D2 includes incoming RMC values (*i.e.,* a starting lower moisture content for the load) that are more representative of the resulting moisture content seen in high-efficiency clothes washers. Due to the uniqueness of the Joint Recommendation where the clothes washer and dryer proposals and compliance dates were aligned, the consumer clothes dryer rulemaking encompasses these lower initial moisture values as a starting point for the energy use analysis, so the effect of faster spin speeds resulting in less ''wet'' clothes is already captured by DOE. The relative comparison of efficiency levels for a given product would remain the same, even if the baseline energy consumption were adjusted due to an increase in efficiency in the complementary product.

General considerations for consumer welfare and preferences as well as the special cases of complementary goods are areas DOE plans to explore in a forthcoming RFI related to the agency's updates to its overall analytic framework.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the direct final rule TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[201]

1. Benefits and Burdens of TSLs Considered for Residential Clothes Washer Standards

Tables V.35 and V.36 summarize the quantitative impacts estimated for each TSL for RCWs. The national impacts are measured over the lifetime of RCWs purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2027–2056 for all TSLs except TSL 2, *i.e.,* the ''Recommended TSL'' for RCWs, and 2028–2057 for TSL 2). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. DOE is presenting monetized benefits of GHG emissions reductions in accordance with the applicable Executive orders and DOE would reach the same conclusion presented in this document in the absence of the social cost of greenhouse gases, including the Interim Estimates presented by the Interagency Working Group. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.35—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLs: NATIONAL IMPACTS

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| **Cumulative FFC National Energy Savings** | | | | |
| Quads | 0.58 | 0.67 | 1.34 | 2.12 |
| **Cumulative FFC Emissions Reduction** | | | | |
| $CO_2$ (million metric tons) | 12.88 | 13.96 | 31.22 | 55.77 |
| $CH_4$ (thousand tons) | 116.74 | 124.57 | 294.14 | 554.46 |
| $N_2O$ (thousand tons) | 0.11 | 0.12 | 0.24 | 0.38 |

[201] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies.* 2005. 72(3): pp. 853–883. doi: 10.1111/0034–6527.00354.

TABLE V.35—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLS: NATIONAL IMPACTS—Continued

| Category | TSL 1 | TSL 2 | TSL 3 | TSL 4 |
|---|---|---|---|---|
| $NO_X$ (thousand tons) | 26.03 | 27.74 | 65.47 | 123.66 |
| $SO_2$ (thousand tons) | 3.18 | 3.65 | 6.97 | 10.33 |
| Hg (tons) | 0.02 | 0.02 | 0.05 | 0.07 |
| **Present Value of Benefits and Costs (3% discount rate, billion 2022$)** | | | | |
| Consumer Operating Cost Savings | 12.99 | 17.92 | 26.18 | 34.19 |
| Climate Benefits * | 0.79 | 0.84 | 1.89 | 3.38 |
| Health Benefits ** | 1.51 | 1.62 | 3.53 | 6.10 |
| Total Benefits † | 15.30 | 20.38 | 31.60 | 43.66 |
| Consumer Incremental Product Costs ‡ | 4.51 | 9.20 | 11.50 | 13.07 |
| Consumer Net Benefits | 8.48 | 8.71 | 14.68 | 21.12 |
| Total Net Benefits | 10.79 | 11.18 | 20.10 | 30.59 |
| **Present Value of Benefits and Costs (7% discount rate, billion 2022$)** | | | | |
| Consumer Operating Cost Savings | 6.61 | 8.65 | 12.90 | 16.61 |
| Climate Benefits * | 0.79 | 0.84 | 1.89 | 3.38 |
| Health Benefits ** | 0.70 | 0.73 | 1.58 | 2.65 |
| Total Benefits † | 8.11 | 10.22 | 16.37 | 22.64 |
| Consumer Incremental Product Costs ‡ | 2.83 | 5.37 | 6.94 | 7.86 |
| Consumer Net Benefits | 3.78 | 3.28 | 5.96 | 8.76 |
| Total Net Benefits | 5.28 | 4.85 | 9.43 | 14.79 |

**Note:** This table presents the costs and benefits associated with RCWs shipped during the period 2027–2056 for all TSLs except for TSL 2 (the Recommended TSL). These results include benefits to consumers which accrue after 2056 from the products shipped during the period 2027–2056. For TSL 2, this table presents the costs and benefits associated with RCWs shipped during the period 2028–2057.

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

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

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

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

TABLE V.36—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLS: MANUFACTURER AND CONSUMER IMPACTS

| Category | TSL 1 | TSL 2 ** | TSL 3 | TSL 4 |
|---|---|---|---|---|
| Industry NPV (million 2022$) (No-new-standards case INPV = 1,707.9) | 1,639.0 to 1,710.7 | 1,429.6 to 1,560.9 | 1,053.8 to 1,234.5 | 535.8 to 738.2. |
| Industry NPV (% change) | (4.0) to 0.2 | (16.3) to (8.6) | (38.3) to (27.7) | (68.6) to (56.8). |
| **Consumer Average LCC Savings (2022$)** | | | | |
| Top-Loading Ultra-Compact | n.a | n.a | n.a | n.a. |
| Top-Loading Standard-Size | $122 | $111 | $116 | $133. |
| Front-Loading Compact | 0 | 9 | 8 | 38. |
| Front-Loading Standard-Size | 26 | 46 | 15 | 49. |
| Semi-Automatic | 280 | 284 | 280 | 188. |
| Shipment-Weighted Average * | 98 | 96 | 91 | 111. |
| **Consumer Simple PBP (years)** | | | | |
| Top-Loading Ultra-Compact | n.a | n.a | n.a | n.a. |
| Top-Loading Standard-Size | 4.4 | 6.2 | 5.7 | 5.4. |
| Front-Loading Compact | 9.6 | 9.3 | 9.5 | 8.0. |
| Front-Loading Standard-Size | 0.9 | 1.4 | 1.6 | 1.7. |
| Semi-Automatic | 0.5 | 0.5 | 0.5 | 0.6. |
| Shipment-Weighted Average * | 3.6 | 4.9 | 4.6 | 4.4. |
| **Percent of Consumers that Experience a Net Cost** | | | | |
| Top-Loading Ultra-Compact | n.a | n.a | n.a | n.a. |
| Top-Loading Standard-Size | 16 | 27 | 28 | 26. |
| Front-Loading Compact | 0 | 21 | 22 | 35. |
| Front-Loading Standard-Size | 1 | 2 | 20 | 16. |

TABLE V.36—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLs: MANUFACTURER AND CONSUMER IMPACTS—Continued

| Category | TSL 1 | TSL 2 ** | TSL 3 | TSL 4 |
|---|---|---|---|---|
| Semi-Automatic | 0 | 0 | 0 | 0. |
| Shipment-Weighted Average * | 12 | 20 | 25 | 23. |

Parentheses indicate negative (-) values. The entry "n.a." means not applicable because there is no change in the standard at certain TSLs.
* Weighted by shares of each product class in total projected shipments in 2027 except for TSL 2 (the Recommended TSL).
** For TSL 2 (the Recommended TSL), shipment-weighted averages are weighted by shares of each product class in total projected shipments in 2028.

DOE first considered TSL 4, which represents the max-tech efficiency levels for all product classes. Specifically for top-loading standard-size RCWs, DOE's expected design path for TSL 4 (which represents EL 4 for this product class) incorporates the use of a direct drive motor, stainless steel basket and more robust suspension and balancing systems (as methods for enabling faster spin speeds), a wash plate (as a means for enabling reduced water levels), reduced hot and warm wash water temperatures compared to temperatures available on baseline units, spray rinse, the fastest achievable spin speeds, and an increase in tub size compared to the baseline (as a means for reducing energy and water use on a per-pound of clothing basis).[202] Among these design options, use of a direct drive motor, stainless steel basket and more robust suspension and balancing systems, reduced wash water temperatures, and fastest achievable spin speeds reduce energy use only; spray rinse reduces water use only; and the wash plate and increase in tub size reduce both energy and water use together.[203]

For front-loading standard-size RCWs, DOE's expected design path for TSL 4 (which represents EL 4 for this product class) incorporates the use of the most efficient available direct drive motor, the implementation of advanced sensors, the fastest achievable spin speeds, and lower cold water volume (but with no change to total hot water use). Among these design options, the direct drive motor, more advanced sensors, and faster spin speeds reduce energy use only; whereas the lower cold water volume reduces water use only.

TSL 4 would save an estimated 2.12 quads of energy and 2.73 trillion gallons of water, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $8.76 billion using a discount rate of 7 percent, and $21.12 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 55.77 Mt of $CO_2$, 10.33 thousand tons of $SO_2$, 123.66 thousand tons of $NO_X$, 0.07 tons of Hg, 554.46 thousand tons of $CH_4$, and 0.38 thousand tons of $N_2O$. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC-GHG at a 3-percent discount rate) at TSL 4 is $3.38 billion. The estimated monetary value of the health benefits from reduced $SO_2$ and $NO_X$ emissions at TSL 4 is $2.65 billion using a 7-percent discount rate and $6.10 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced $SO_2$ and $NO_X$ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is $14.79 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $30.59 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At TSL 4, the average LCC impact is a savings of $133 for top-loading standard-size, $38 for front-loading compact, $49 for front-loading standard-size, and $188 for semi-automatic clothes washers. The simple payback period is 5.4 years for top-loading standard-size, 8.0 years for front-loading compact, 1.7 years for front-loading standard-size, and 0.6 years for semi-automatic clothes washers. The fraction of consumers experiencing a net LCC cost is 26 percent for top-loading standard-size, 35 percent for front-loading compact, 16 percent for front-loading standard-size, and zero percent for semi-automatic clothes washers. For the top-loading standard-size product class, which represents 71 percent of the market, TSL 4 would increase the first cost by $166, in comparison to an installed cost of $690 for baseline units. For the front-loading standard-size product class, which represents 25 percent of the market, TSL 4 would increase the first cost by $93, compared to an installed cost of $1,027 for baseline units. At TSL 4, the standard for top-loading ultra-compact RCWs is at the baseline, resulting in no LCC impact, no simple PBP, and no consumers experiencing a net LCC cost. Additionally, as a result of lower costs associated with well water and septic tanks in rural areas, about 40 percent of well-water households would experience a net LCC cost at TSL 4.

At TSL 4, the projected change in INPV ranges from a decrease of $1,172.0 million to a decrease of $969.6 million, which correspond to a decrease of 68.6 percent and 56.8 percent, respectively. The loss in INPV is largely driven by industry conversion costs as manufacturers work to redesign their portfolios of model offerings and re-tool entire factories to comply with amended standards at this level. Industry conversion costs could reach $1,321.2 million at this TSL.

Conversion costs at max-tech are significant, as nearly all existing RCW models would need to be redesigned to meet the required efficiencies. Currently, approximately 4 percent of RCW annual shipments meet the max-tech levels. For top-loading standard-size RCWs, which DOE projects will account for 71 percent of annual shipments in 2027, less than 1 percent of current shipments meet this level. Of the nine OEMs offering top-loading standard-size products, one OEM offers five basic models (representing approximately 1 percent of all top-loading standard-size basic models) that meet the efficiencies required by TSL 4. The remaining eight OEMs would need to overhaul their existing platforms and make significant updates to their production facilities. Those manufacturers may need to incorporate increased tub capacities, wash plate designs, direct drive motors, reinforced wash baskets, robust suspension and balancing systems, and advanced sensors. These product changes require significant investment. In interviews, several manufacturers expressed concerns about their ability to meet

[202] As discussed previously, DOE's direct final rule analysis indicates that an increase in tub capacity is not required to achieve EL 5; however, manufacturers are currently implementing this design option in EL 5 models currently available on the market.

[203] As discussed previously in section IV.A.2 of this document, because the energy used to heat the water consumed by the RCW is included as part of the EER energy use metric, technologies that decrease hot water use also inherently decrease energy use.

existing market demand given the required scale of investment, redesign effort, and 3-year compliance timeline.

At TSL 3 and higher, manufacturers expressed concerns and presented data regarding potential impacts to product performance, including wash temperatures, cleaning and rinsing performance, and fabric care. At TSL 4, such concerns and uncertainties would be further exacerbated. Consumers that experience any such negative impacts on product performance could potentially alter their usage patterns, for example by using more energy-intensive settings more frequently (*e.g.,* Extra-Hot temperature setting); using more water-intensive cycle options (*e.g.,* Deep Fill option; extra rinse cycles); using non-regulated cycles (*e.g.,* Heavy Duty cycle); or re-washing clothing that has not been cleaned sufficiently. Such changes to consumer usage patterns may counteract the energy and water savings that DOE has estimated would be achieved at TSL 4. For these reasons, DOE cannot be certain that the designs associated with TSL 4 efficiencies would not negatively impact certain aspects of standard-size RCW performance and consequently may jeopardize the energy and water savings that would be achieved at these efficiency levels. DOE emphasizes that its findings in this regard are based on the data available at this time and are predicated on the current state of clothes washer technology. Additional data that could become available, as well as future advances in washing technologies and design strategies, could alleviate any such concerns or uncertainties regarding product performance and could lead DOE to reach a different conclusion in a future rulemaking.

Based upon the above considerations, the Secretary concludes that at TSL 4 for RCWs, the benefits of energy and water savings, positive NPV of consumer benefits, and emission reductions would be outweighed by the potential for negative consumer utility impacts, which may jeopardize the energy and water savings that would be achieved at TSL 4, and the impacts on manufacturers, including the large potential reduction in INPV. DOE estimated the potential loss in INPV to be as high as 68 percent. The potential losses in INPV are primarily driven by large conversion costs that must be made ahead of the compliance date. At max-tech, manufacturers would need to make significant upfront investments to update nearly all product lines and manufacturing facilities. Manufacturers expressed concern that they would not be able to complete product and production line updates within the 3-year conversion period. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which represents the ENERGY STAR Most Efficient level for the front-loading product classes, the CEE Tier 1 level for the top-loading standard-size product class, and a gap fill level for the semi-automatic product classes.[204] Specifically, for top-loading standard-size RCWs, DOE's expected design path for TSL 3 (which represents EL 3 for this product class) incorporates many of the same technologies and design strategies as described for TSL 4. At TSL 3, top-loading standard-size units would incorporate a direct drive motor, stainless steel basket and more robust suspension and balancing systems (as methods for enabling faster spin speeds), a wash plate (as a means for enabling reduced water levels), and spray rinse, consistent with TSL 4. Models at TSL 3 would also incorporate slightly reduced hot wash water temperatures compared to temperatures available on baseline units, faster spin speeds compared to the baseline (although not as fast as TSL 4), and an increase in tub size compared to the baseline (as a means for reducing energy and water use on a per-pound of clothing basis).[205] Among these design options, use of a direct drive motor, stainless steel basket and more robust suspension and balancing systems, reduced wash water temperatures, and faster spin speeds reduce energy use only; spray rinse reduces water use only; and the wash plate and increase in tub size reduce both energy and water use together.

For front-loading standard-size RCWs, DOE's expected design path for TSL 3 (which represents EL 3 for this product class) incorporates the use of the most efficient direct drive motor available, spin speeds that are faster than the baseline level but not as fast as at TSL 4, and lower water volume (but with no change to total hot water heating). Among these design options, the direct drive motor and faster spin speeds reduce energy use only; whereas the lower water volume reduces water use only.

TSL 3 would save an estimated 1.34 quads of energy and 2.33 trillion gallons of water, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $5.96 billion using a discount rate of 7 percent, and $14.68 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 31.22 Mt of $CO_2$, 6.97 thousand tons of $SO_2$, 65.47 thousand tons of $NO_X$, 0.05 tons of Hg, 294.14 thousand tons of $CH_4$, and 0.24 thousand tons of $N_2O$. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC-GHG at a 3-percent discount rate) at TSL 3 is $1.89 billion. The estimated monetary value of the health benefits from reduced $SO_2$ and $NO_X$ emissions at TSL 3 is $1.58 billion using a 7-percent discount rate and $3.53 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced $SO_2$ and $NO_X$ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is $9.43 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $20.10 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At TSL 3, the average LCC impact is a savings of $116 for top-loading standard-size, $8 for front-loading compact, $15 for front-loading standard-size, and $280 for semi-automatic clothes washers. The simple payback period is 5.7 years for top-loading standard-size, 9.5 years for front-loading compact, 1.6 years for front-loading standard-size, and 0.5 years for semi-automatic clothes washers. The fraction of consumers experiencing a net LCC cost is 28 percent for top-loading standard-size, 22 percent for front-loading compact, 20 percent for front-loading standard-size, and zero percent for semi-automatic clothes washers. For the top-loading standard-size product class, TSL 3 would increase the first cost by $160, in comparison to an installed cost of $690 for baseline units. For the front-loading standard-size product class, TSL 3 would increase the first cost by $78, compared to an installed cost of $1,027 for baseline units. At TSL 3, the standard for top-loading ultra-compact RCWs is at the baseline, resulting in no LCC impact, no simple PBP, and no consumers

[204] Tables IV.6 and IV.8 of this document provide the and ENERGY STAR Most Efficient and CEE Tier 1 equivalencies between the current metrics (IMEF and IWF) and the new metrics (EER and WER) for the top-loading and front-loading standard-size product classes, respectively.

[205] As discussed previously, DOE's direct final rule analysis indicates that an increase in tub capacity is not required to achieve EL 3; however, manufacturers are currently implementing this design option in EL 3 models currently available on the market.

experiencing a net LCC cost. Overall, across all product classes, around 25 percent of consumers would experience a net LCC cost at TSL 3. DOE estimates that about 16 percent of low-income households would experience a net LCC cost at TSL 3, and as a result of having generally smaller households and lower annual usage, about 33 percent of senior-only households would experience a net LCC cost at TSL 3. Additionally, as a result of lower costs associated with well water and septic tanks in rural areas, about 41 percent of well-water households would experience a net LCC cost at TSL 3.

At TSL 3, the projected change in INPV ranges from a decrease of $654.1 million to a decrease of $473.3 million, which correspond to a decrease of 38.3 percent and 27.7 percent, respectively. The loss in INPV is largely driven by industry conversion costs as manufacturers work to redesign their portfolios of model offerings and update production facilities to comply with amended standards at this level. Industry conversion costs could reach $724.6 million at this TSL.

For top-loading standard-size products, approximately 3 percent of shipments meet TSL 3. Of the nine OEMs offering top-loading standard-size products, two OEMs offer 20 basic models (representing approximately 4 percent of all top-loading standard-size basic models) that meet the efficiencies required by TSL 3. At this level, the remaining seven manufacturers would likely implement largely similar design options as at TSL 4, but to a lesser extent for the increase in tub size and hardware changes associated with faster spin speeds (*e.g.,* reinforced wash baskets, robust suspension and balancing systems, and advanced sensors)—which are faster than the baseline level but not as fast as TSL 4. Although top-loading standard-size RCW manufacturers indicated that meeting TSL 3 efficiencies would require a less-extensive redesign than meeting TSL 4 efficiencies, these product changes would still require significant investment.

As discussed above, manufacturers expressed concerns and presented data regarding potential impacts to product performance, including wash temperatures, cleaning and rinsing performance, and fabric care. DOE's analysis of third-party clothes washer performance ratings as well as DOE's own performance testing on a representative sample of top-loading standard-size and front-loading standard-size RCWs suggested that TSL 3 can be achieved with key performance attributes (*e.g.,* wash temperatures, stain removal, mechanical action, and cycle duration) that are largely comparable to the performance of lower-efficiency units available on the market today. However, manufacturers presented additional data suggesting that other attributes of clothes washer performance not specifically evaluated by DOE may be negatively impacted at TSL 3 for particularly heavily soiled clothing loads, given current design technologies and approaches. For these reasons, DOE cannot be certain that the designs associated with TSL 3 efficiencies would not negatively impact certain aspects of standard-size RCW performance and consequently may jeopardize the energy and water savings that would be achieved at these efficiency levels. As with TSL 4, DOE emphasizes that its findings in this regard are based on the data available at this time and are predicated on the current state of clothes washer technology. Additional data that could become available, as well as future advances in washing technologies and design strategies, could alleviate any such concerns or uncertainties regarding product performance and could lead DOE to reach a different conclusion in a future rulemaking.

Based upon the above considerations, the Secretary concludes that at TSL 3 for RCWs, the benefits of energy and water savings, positive NPV of consumer benefits, and emission reductions would be outweighed by the potential for negative consumer utility impacts, which may jeopardize the energy and water savings that could be achieved at TSL 3, and the impacts on manufacturers, including the large potential reduction in INPV. DOE estimates the potential loss in INPV to be as high as 38 percent. The potential losses in INPV are primarily driven by large conversion costs associated with redesigning top-loading standard-size RCWs that must be made ahead of the compliance date. Consequently, the Secretary has concluded that TSL 3 is not economically justified.

DOE then considered the Recommended TSL, which represents the ENERGY STAR v.8.1 level for the top-loading and front-loading standard-size product classes, the ENERGY STAR Most Efficient level for the front-loading compact, and a gap fill level for the semi-automatic product classes.[206] DOE's expected design path for top-loading standard-size RCWs at the Recommended TSL (which represents EL 2 for this product class) incorporates a direct drive motor, stainless steel basket and more robust suspension and balancing systems (as methods for enabling faster spin speeds), and spray rinse. Models at the Recommended TSL would also require faster spin speeds compared to the baseline (although not as fast as at TSL 3), lower water volume (but with no change to total hot water heating energy), and may include an increase in tub size compared to the baseline (as a potential means for reducing energy and water use on a per-pound of clothing basis).[207] Among these design options, use of a direct drive motor, stainless steel basket and more robust suspension and balancing systems, and faster spin speeds reduce energy use only; spray rinse reduces water use only; and the lower water volume reduces water use only. Any potential increase in tub size would reduce both energy and water use together.

For front-loading standard-size RCWs, DOE's expected design path for the Recommended TSL (which represents EL 2 for this product class) incorporates the use of a direct drive motor, spin speeds that are faster than the baseline level but not as fast as at TSL 3, and lower water volume (but with no change to total hot water heating energy). Among these design options, the direct drive motor and faster spin speeds reduce energy use only; whereas the lower water volume reduces water use only.

The Recommended TSL would save an estimated 0.67 quads of energy and 1.89 trillion gallons of water, an amount DOE considers significant. Under the Recommended TSL, the NPV of consumer benefit would be $3.28 billion using a discount rate of 7 percent, and $8.71 billion using a discount rate of 3 percent.

The cumulative emissions reductions at the Recommended TSL are 13.96 Mt of $CO_2$, 3.65 thousand tons of $SO_2$, 27.74 thousand tons of $NO_X$, 0.02 tons of Hg, 124.57 thousand tons of $CH_4$, and 0.12 thousand tons of $N_2O$. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC-GHG at a 3-percent discount rate) at the Recommended TSL is $0.84 billion. The estimated monetary value of the health benefits from reduced $SO_2$ and $NO_X$ emissions at the Recommended TSL is

[206] Tables IV.6 and IV.8 of this document provide the ENERGY STAR v.8.1 and ENERGY STAR Most Efficient equivalencies between the current metrics (IMEF and IWF) and the new metrics (EER and WER) for the top-loading and front-loading standard-size product classes, respectively.

[207] As discussed previously, DOE's direct final rule analysis indicates that an increase in tub capacity is not required to achieve EL 2; however, manufacturers are currently implementing this design option in EL 2 models currently available on the market.

$0.73 billion using a 7-percent discount rate and $1.62 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced $SO_2$ and $NO_X$ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at the Recommended TSL is $4.85 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at the Recommended TSL is $11.18 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At the Recommended TSL, the average LCC impact is a savings of $111 for top-loading standard-size, $9 for front-loading compact, $46 for front-loading standard-size, and $284 for semi-automatic clothes washers. The simple payback period is 6.2 years for top-loading standard-size, 9.3 years for front-loading compact, 1.4 years for front-loading standard-size, and 0.5 years for semi-automatic clothes washers. The fraction of consumers experiencing a net LCC cost is 27 percent for top-loading standard-size, 21 percent for front-loading compact, 2 percent for front-loading standard-size, and zero percent for semi-automatic clothes washers. For the top-loading standard-size product class, The Recommended TSL would increase the first cost by $146, in comparison to an installed cost of $687 for baseline units in 2028. For the front-loading standard-size product class, the Recommended TSL would increase the first cost by $67, compared to an installed cost of $1,021 for baseline units in 2028. At the Recommended TSL, the standard for top-loading ultra-compact RCWs is at the baseline, resulting in no LCC impact, no simple PBP, and no consumers experiencing a net LCC cost. Overall, across all product classes, around 20 percent of consumers would experience a net LCC cost at the Recommended TSL. DOE estimates that about 12 percent of low-income households would experience a net LCC cost at the Recommended TSL, and as a result of smaller households and lower annual usage, about 26 percent of senior-only households would experience a net LCC cost at the Recommended TSL. Additionally, as a result of lower costs associated with well water and septic tanks in rural areas, about 37 percent of well-water households would experience a net LCC cost at the Recommended TSL.

At the Recommended TSL, the projected change in INPV ranges from a decrease of $278.3 million to a decrease of $146.9 million, which corresponds to decreases of 16.3 percent and 8.6 percent, respectively. Industry conversion costs could reach $320.0 million at this TSL.

At this level, many existing top-loading standard-size products would need to be redesigned to meet the Recommended TSL efficiencies; however, there are a wide range of top-loading standard-size models currently available on the market due to manufacturers' participation in the ENERGY STAR program. Currently, approximately 49 percent of RCW shipments meet the Recommended TSL efficiencies, including approximately 31 percent of all top-loading standard-size shipments. Of the nine OEMs with top-loading standard-size products, six OEMs offer 166 basic models (representing approximately 30 percent of all top-loading standard-size basic models) that meet the Recommended TSL efficiencies. These six OEMs that currently offer top-loading standard-size RCW models that meet the Recommended TSL efficiencies collectively account for over 95 percent of overall top-loading standard-size RCW shipments. At this level, a substantial number of front-loading standard-size products are available on the market due to manufacturers' participation in the ENERGY STAR program. Currently, approximately 92 percent of front-loading standard-size shipments meet the Recommended TSL. Of the seven OEMs with front-loading standard-size products, six OEMs offer 169 basic models (representing approximately 89 percent of all front-loading standard-size basic models) that meet the Recommended TSL efficiencies.

For all TSLs considered in this direct final rule—except for the Recommended TSL—DOE is bound by the 3-year lead time requirements in EPCA when determining compliance dates (*i.e.,* compliance with amended standards required in 2027). For the Recommended TSL, DOE's analysis utilized the March 1, 2028, compliance date specified in the Joint Agreement as it was an integral part of the multi-product joint recommendation. A 2028 compliance year provides manufacturers additional flexibility to spread capital requirements, engineering resources, and conversion activities over a longer period of time depending on the individual needs of each manufacturer. Furthermore, these delayed compliance dates provide additional lead time and certainty for suppliers of components that improve efficiency.

At the Recommended TSL, DOE's data demonstrates no negative impact on consumer utility for both top-loading and front-loading RCWs. Manufacturers did not provide any specific data nor express any specific concerns regarding clothes washer performance at the Recommended TSL. In addition, in the second joint statement from the same group of stakeholders that submitted the Joint Agreement states that DOE's test data and industry experience agrees that the recommended standard level for RCWs can maintain good cleaning performance and do not preclude the ability to provide high wash temperatures.[208] Based on the information available, DOE concludes that no lessening of product utility or performance would occur at the Recommended TSL.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that at a standard set at the Recommended TSL for RCWs would be economically justified. At the Recommended TSL, the average LCC savings for all product classes is positive. An estimated 27 percent of top-loading standard-size users, 21 percent of front-loading compact, 2 percent of front-loading standard-size, and zero percent of semi-automatic clothes washer consumers experience a net cost. At the Recommended TSL, the positive average LCC savings across all product classes and cost savings for approximately two-thirds of RCWs consumers, outweigh the negative average LLC savings of $20 for well-water households and the 37 percent of these households that might experience a net cost. DOE notes that its analysis ensures that the financial implications for households with wells and/or septic systems are comprehensively incorporated into the national LCC analysis. In addition, the FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At the Recommended TSL, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 11 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at the Recommended TSL are economically justified even without weighing the

[208] This document is available in the docket at: *www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.*

estimated monetary value of emissions reductions. When those emissions reductions are included—representing $ 0.84 billion in climate benefits (associated with the average SC-GHG at a 3-percent discount rate), and $ 1.62 billion (using a 3-percent discount rate) or $ 0.73 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908. Although DOE has not conducted a comparative analysis to select the amended energy conservation standards, DOE notes that as compared to TSL 4 and TSL 3, the Recommended TSL has a lower maximum decrease in INPV and lower manufacturer conversion costs.

Accordingly, the Secretary has concluded that the Recommended TSL would offer the maximum improvement in efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy.

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

While DOE considered each potential TSL under the criteria laid out in 42 U.S.C. 6295(o) as discussed above, DOE notes that the Recommended TSL for RCWs adopted in this direct final rule is part of a multi-product Joint Agreement covering six rulemakings (RCWs; consumer clothes dryers; consumer conventional cooking products; dishwashers; refrigerators, refrigerator-freezers, and freezers; and miscellaneous refrigeration products). The signatories indicate that the Joint Agreement for the six rulemakings should be considered as a joint statement of recommended standards, to be adopted in its entirety. (Joint Agreement, No. 505 at p. 3) As discussed in section V.B.2.e of this document, many RCW OEMs also manufacture consumer clothes dryers; consumer conventional cooking products; dishwashers; refrigerators, refrigerator-freezers, and freezers; and miscellaneous refrigeration products. Therefore, there are potential integrated benefits to the Joint Agreement. Rather than requiring compliance with five amended standards in a single year (2027),[209] the negotiated multi-product Joint Agreement staggers the compliance dates for the five amended standards over a 4-year period (2027–2030). In response to the March 2023 NOPR, AHAM expressed concerns about the timing of ongoing home appliance rulemakings. Specifically, AHAM commented that the combination of the stringency of DOE's proposals, the short lead-in time under EPCA to comply with standards, and the overlapping timeframe of multiple standards affecting the same manufacturers represents significant cumulative regulatory burden for the home appliance industry. (AHAM, No. 464 at pp. 41–42) AHAM has submitted similar comments to other ongoing home appliance rulemakings.[210]

As AHAM is a key signatory of the Joint Agreement, DOE understands that the compliance dates recommended in the Joint Agreement would help reduce cumulative regulatory burden. These compliance dates help relieve concern on the part of some manufacturers about their ability to allocate sufficient resources to comply with multiple concurrent amended standards and about the need to align compliance dates for products that are typically designed or sold as matched pairs. The Joint Agreement also provides additional years of regulatory certainty for manufacturers and their suppliers.

For RCWs and consumer clothes dryers specifically, aligned compliance dates would help reduce cumulative regulatory burden for the 13 OEMs that manufacture both RCWs and consumer clothes dryers. In response to the March 2023 NOPR, AHAM commented that laundry products (RCWs and consumer clothes dryers) are designed and used in pairs. (AHAM, No. 464 at p. 44) AHAM stated that an additional design cycle for clothes washers and/or clothes dryers may be necessary if the effective compliance dates for the two products were out of sync and this would undermine the investment and associated recovery assumptions underlying the MIA from the consumer clothes dryer rulemaking. (*Id.*)

The amended energy conservation standards for RCWs, which are expressed in EER and WER, are shown in Table V.37.

TABLE V.37—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

| Product class | Minimum energy efficiency ratio (lb/kWh/cycle) | Minimum water efficiency ratio (lb/gal/cycle) |
|---|---|---|
| Automatic Clothes Washers: | | |
| Top-Loading Ultra-Compact (less than 1.6 ft³ capacity) | 3.79 | 0.29 |
| Top-Loading Standard-Size (1.6 ft³ or greater capacity) | 4.27 | 0.57 |
| Front-Loading Compact (less than 3.0 ft³ capacity) | 5.02 | 0.71 |
| Front-Loading Standard-Size (3.0 ft³ or greater capacity) | 5.52 | 0.77 |
| Semi-Automatic Clothes Washers | 2.12 | 0.27 |

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

[210] AHAM has submitted written comments regarding cumulative regulatory burden for the other five rulemakings included in the multi-product Joint Agreement. AHAM's written comments on cumulative regulatory burden are available at: *www.regulations.gov/comment/EERE-2014-BT-STD-0058-0046* (pp. 12–13) for consumer clothes dryers; *www.regulations.gov/comment/EERE-2014-BT-STD-0005-2285* (pp. 44–47) for consumer conventional cooking products; *www.regulations.gov/comment/EERE-2019-BT-STD-0039-0051* (pp. 21–24) for dishwashers; *www.regulations.gov/comment/EERE-2017-BT-STD-0003-0069* (pp. 20–22) for refrigerators, refrigerator-freezers, and freezers; and *www.regulations.gov/comment/EERE-2020-BT-STD-0039-0031* (pp. 12–15) for miscellaneous refrigeration products.

2. Annualized Benefits and Costs of the Adopted Standards

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

Table V.38 shows the annualized values for RCWs under the Recommended TSL, expressed in 2022$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced $NO_X$ and $SO_2$ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards adopted in this rule is $530.1 million per year in increased equipment costs, while the estimated annual benefits are $853.9 million in reduced equipment operating costs, $46.9 million in climate benefits, and $71.9 million in health benefits. In this case, the net benefit would amount to $442.5 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the standards is $513.1 million per year in increased equipment costs, while the estimated annual benefits are $998.9 million in reduced operating costs, $46.9 million in climate benefits, and $90.3 million in health benefits. In this case, the net benefit would amount to $623.0 million per year.

TABLE V.38—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS (RECOMMENDED TSL) FOR RESIDENTIAL CLOTHES WASHERS

[2028–2057]

| | Million 2022$/year | | |
|---|---|---|---|
| | Primary estimate | Low-net-benefits estimate | High-net-benefits estimate |
| **3% discount rate** | | | |
| Consumer Operating Cost Savings | 998.9 | 957.2 | 1,020.9 |
| Climate Benefits * | 46.9 | 45.2 | 47.5 |
| Health Benefits ** | 90.3 | 87.1 | 91.6 |
| Total Benefits † | 1,136.1 | 1,089.5 | 1,160.0 |
| Consumer Incremental Product Costs ‡ | 513.1 | 551.8 | 468.6 |
| Net Benefits | 623.0 | 537.7 | 691.4 |
| Change in Producer Cash Flow (INPV ‡‡) | (27)–(14) | (27)–(14) | (27)–(14) |
| **7% discount rate** | | | |
| Consumer Operating Cost Savings | 853.9 | 821.2 | 871.7 |
| Climate Benefits * (3% discount rate) | 46.9 | 45.2 | 47.5 |
| Health Benefits ** | 71.9 | 69.6 | 72.8 |
| Total Benefits † | 972.6 | 935.9 | 992.0 |
| Consumer Incremental Product Costs ‡ | 530.1 | 564.6 | 489.5 |
| Net Benefits | 442.5 | 371.3 | 502.5 |
| Change in Producer Cash Flow (INPV ‡‡) | (27)–(14) | (27)–(14) | (27)–(14) |

**Note:** This table presents the costs and benefits associated with RCWs shipped in 2028–2057. These results include consumer, climate, and health benefits that accrue after 2057 from the products shipped in 2028–2057. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2023* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in sections IV.F.1 and IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

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

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

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

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

‡‡ Operating Cost Savings are calculated based on the life cycle costs analysis and national impact analysis as discussed in detail below. *See* sections IV.F and IV.H of this document. DOE's national impact analysis includes all impacts (both costs and benefits) along the distribution chain beginning with the increased costs to the manufacturer to manufacture the product and ending with the increase in price experienced by the consumer. DOE also separately conducts a detailed analysis on the impacts on manufacturers (MIA). *See* section IV.J of this document. In the detailed MIA, DOE models manufacturers' pricing decisions based on assumptions regarding investments, conversion costs, cashflow, and margins. The MIA produces a range of impacts, which is the rule's expected impact on the INPV. The change in INPV is the present value of all changes in industry cash flow, including changes in production costs, capital expenditures, and manufacturer profit margins. The annualized change in INPV is calculated using the industry weighted average cost of capital value of 9.3 percent that is estimated in the MIA (*see* chapter 12 of the direct final rule TSD for a complete description of the industry weighted average cost of capital). For RCWs, the annualized change in INPV ranges from −$27 million to −$14 million. DOE accounts for that range of likely impacts in analyzing whether a TSL is economically justified. *See* section V.C of this document. DOE is presenting the range of impacts to the INPV under two manufacturer markup scenarios: the Preservation of Gross Margin scenario, which is the manufacturer markup scenario used in the calculation of Consumer Operating Cost Savings in this table, and the Preservation of Operating Profit scenario, where DOE assumed manufacturers would not be able to increase per-unit operating profit in proportion to increases in manufacturer production costs. DOE includes the range of estimated annualized change in INPV in the above table, drawing on the MIA explained further in section IV.J of this document to provide additional context for assessing the estimated impacts of this direct final rule to society, including potential changes in production and consumption, which is consistent with OMB's Circular A–4 and E.O. 12866. If DOE were to include the annualized change in INPV into the annualized net benefit calculation for this direct final rule, the annualized net benefits, using the primary estimate, would range from $596 million to $609 million at 3-percent discount rate and would range from $415 million to $428 million at 7-percent discount rate. Parentheses () indicate negative values.

## VI. Severability

DOE added a new paragraph (g)(2)(ii) into 10 CFR 430.32 to provide that each energy and water conservation for each RCW category is separate and severable from one another, and that if any energy or water conservation standard is stayed or determined to be invalid by a court of competent jurisdiction, the remaining standards shall continue in effect. This severability clause is intended to clearly express the Department's intent that should an energy or water conservation standard for any product class be stayed or invalidated, the other conservation standards shall continue in effect. In the event a court were to stay or invalidate one or more energy or water conservation standards for any product class as finalized, the Department would want the remaining energy conservation standards as finalized to remain in full force and legal effect.

## VII. Procedural Issues and Regulatory Review

### *A. Review Under Executive Orders 12866, 13563, and 14094*

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action constitutes a ''significant regulatory action'' within the scope of section 3(f) of E.O. 12866. DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the final regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

### *B. Review Under the Regulatory Flexibility Act*

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

DOE is not obligated to prepare a regulatory flexibility analysis for this rulemaking because there is not a requirement to publish a general notice of proposed rulemaking under the Administrative Procedure Act. See 5 U.S.C. 601(2), 603(a). As discussed previously, DOE has determined that the Joint Agreement meets the necessary requirements under EPCA to issue this direct final rule for energy conservation standards for RCWs under the procedures in 42 U.S.C. 6295(p)(4). DOE notes that the NOPR for energy conservation standards for RCWs published elsewhere in this issue of the **Federal Register** contains an IRFA.

*C. Review Under the Paperwork Reduction Act*

Under the procedures established by the Paperwork Reduction Act of 1995 (''PRA''), a person is not required to respond to a collection of information by a Federal agency unless that collection of information displays a currently valid OMB Control Number.

OMB Control Number 1910–1400, Compliance Statement Energy/Water Conservation Standards for Appliances, is currently valid and assigned to the certification reporting requirements applicable to covered products, including RCWs.

DOE's certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of part 429, part 430, and/or part 431. Certification reports provide DOE and consumers with comprehensive, up-to-date efficiency information and support effective enforcement.

Revised certification data will be required for RCWs to demonstrate compliance with the amended standards enacted in this direct final rule, which are based on different metrics than the current standards. However, DOE is not amending certification or reporting requirements for RCWs in this direct final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for RCWs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

*D. Review Under the National Environmental Policy Act of 1969*

Pursuant to the National Environmental Policy Act of 1969 (''NEPA''), DOE has analyzed this rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B, categorical exclusion B5.1, because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

*E. Review Under Executive Order 13132*

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735.

In the March 2023 NOPR, DOE tentatively determined that the proposed rule 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. 88 FR 13520, 13616. Furthermore, DOE stated that EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of the proposed rule and that States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. *Id.* (citing 42 U.S.C. 6297). Accordingly, DOE concluded that no further action was required by E. O. 13132.

The AGs of TN *et al.* commented that DOE's conclusion regarding E.O. 13132 in the March 2023 NOPR is incorrect because the proposed standards have significant federalism implications within the meaning of E.O. 13132. (AGs of TN *et al.,* No. 438 at p. 3) The AGs of TN *et al.* commented that if the proposed standards are promulgated, ''[a]ny State regulation which sets forth procurement standards'' relating to clothes washers is ''superseded'' unless those ''standards are more stringent than the corresponding Federal energy conservation standards'' and preempting, even in part, State procurement rules directly affects the States and alters the Federal-State relationship by directly regulating the States. (*Id.*) The AGs of TN *et al.* commented that States own appliances like clothes washers, which indicates the proposed standards implicate reliance interests DOE must take into consideration. (*Id.* citing *Dep't of Homeland Sec.* v. *Regents of the Univ. of Cal.,* 140 S. Ct. 1891, 1913 (2020)) The AGs of TN *et al.* added that the standards will have an effect on the States that could give rise to ''substantial direct compliance costs,'' and since the proposed efficiency standards are ''not required by statute,'' section 6(b) of E.O. 13132 applies. (*Id.*)

DOE reiterates that this direct final rule does not have significant federalism implications. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and expressly prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this direct final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13135.

Even if DOE were to find otherwise, with regards to the AGs of TN *et al.*'s arguments regarding section 6(c) of E.O.

13132, DOE notes that the AGs of TN *et al.* do not provide any examples of a state procurement rule that conflicts with the standards adopted in this rulemaking and DOE is not aware of any such conflicts. While it is possible that a State may have to revise its procurement standards to reflect the new standards, States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. Absent such information, DOE concludes that no further action would be required by E.O. 13132 even if the Executive order were applicable here. Moreover, assuming the hypothetical preemption alleged by the AGs of TN *et al.* were to present itself, DOE notes, that like all interested parties, states were presented with an opportunity to engage in the rulemaking process early in the development of the proposed rule. Prior to publishing the proposed rulemaking, on August 2, 2019, DOE published an RFI to collect data and information to help DOE determine whether any new or amended standards for RCWs would result in a significant amount of additional energy savings and whether those standards would be technologically feasible and justified. 84 FR 37794. DOE then published a notification of availability of a preliminary technical support document on September 29, 2021, and sought public comment again. 86 FR 53886. DOE extended the comment period on that document by 45 days. 86 FR 59889. Finally, DOE published a notification of data availability to present the results of additional testing conducted to develop the translations between the current and then proposed test procedure. 87 FR 21816. As such, states were provided the opportunity to meaningful and substantial input as envisioned by the Executive order.

With regards to the AGs of TN *et al.*'s arguments regarding section 6(b) of E.O. 13132, the potential effect alleged by the AGs of TN *et al.* is the same effect experienced by all RCW consumers—models manufactured after a specific date must meet the revised efficiency standards. This impact does not constitute a ''substantial'' impact as required by the Executive order. Further, contrary to the assertions of the AGs of TN e*t al.,* the direct final rule is required by law. As noted previously, where DOE determines that a proposed amended standard is designed to achieve the maximum improvement in energy efficiency and is both technologically feasible and economically justified, it must adopt it. Therefore, section 6(b) is inapplicable. Executive Order 13132, section 6(b) (applicable to regulation ''that is not required by statute'').

*F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this direct final rule meets the relevant standards of E.O. 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

DOE has concluded that this direct final rule may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include (1) investment in research and development and in capital expenditures by RCW manufacturers in the years between the direct final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency RCWs, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the direct final rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this document and the TSD for this direct final rule respond to those requirements.

Under section 205 of UMRA, DOE is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(m), this direct final rule establishes amended energy conservation standards for RCWs that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 6295(o)(2)(A) and 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this direct final rule.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Although this direct final rule would not have any impact on the autonomy or integrity of the family as an institution as defined, this rule could impact a family's well-being. When developing a Family Policymaking Assessment, agencies must assess whether: (1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; (2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; (3) the action helps the family perform its functions, or substitutes governmental activity for the function; (4) the action increases or decreases disposable income or poverty of families and children; (5) the proposed benefits of the action justify the financial impact on the family; (6) the action may be carried out by State or local government or by the family; and whether (7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

DOE has considered how the proposed benefits of this rule compare to the possible financial impact on a family (the only factor listed that is relevant to this final rule). As part of its rulemaking process, DOE must determine whether the energy conservation standards contained in this direct final rule are economically justified. As discussed in section V.C.1 of this document, DOE has determined that the standards are economically justified because the benefits to consumers far outweigh the costs to manufacturers. Families will also see LCC savings as a result of this final rule. Moreover, as discussed further in section V.B.1 of this document, DOE has determined that for low-income households, average LCC savings and PBP at the considered efficiency levels are improved (*i.e.,* higher LCC savings and lower payback period) as compared to the average for all households. Further, the standards will also result in climate and health benefits for families.

*I. Review Under Executive Order 12630*

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this direct final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth amended energy conservation standards for RCWs, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this direct final rule.

*L. Information Quality*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin'') 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and prepared a report describing that peer review.[211] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve DOE's analyses. DOE is in the process of evaluating the resulting report.[212]

*M. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation

[211] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed July 10, 2023).

[212] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

of this rule prior to its effective date. The report will state that the Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).

## VIII. Approval of the Office of the Secretary

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

### List of Subjects in 10 CFR Part 430

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

### Signing Authority

This document of the Department of Energy was signed on February 29, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 1, 2024.

**Treena V. Garrett,**

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

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

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

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

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

* * * * *

(g) *Clothes washers.* (1) Clothes washers manufactured on or after January 1, 2018, shall have an Integrated Modified Energy Factor no less than, and an Integrated Water Factor no greater than:

| Product class | Integrated modified energy factor (cu.ft./kWh/cycle) | Integrated water factor (gal/cycle/cu.ft.) |
|---|---|---|
| (i) Top-loading, Compact (less than 1.6 $ft^3$ capacity) | 1.15 | 12.0 |
| (ii) Top-loading, Standard (1.6 $ft^3$ or greater capacity) | 1.57 | 6.5 |
| (iii) Front-loading, Compact (less than 1.6 $ft^3$ capacity) | 1.13 | 8.3 |
| (iv) Front-loading, Standard (1.6 $ft^3$ or greater capacity) | 1.84 | 4.7 |

(2) Clothes washers manufactured on or after March 1, 2028:

(i) Shall have an Energy Efficiency Ratio and a Water Efficiency Ratio no less than:

| Product class | Energy efficiency ratio (lb/kWh/cycle) | Water efficiency ratio (lb/gal/cycle) |
|---|---|---|
| (A) Automatic Clothes Washers:. | | |
| (*1*) Top-Loading Ultra-Compact (less than 1.6 $ft^3$ capacity) | 3.79 | 0.29 |
| (*2*) Top-Loading Standard-Size (1.6 $ft^3$ or greater capacity) [1] | 4.27 | 0.57 |
| (*3*) Front-Loading Compact (less than 3.0 $ft^3$ capacity) [2] | 5.02 | 0.71 |
| (*4*) Front-Loading Standard-Size (3.0 $ft^3$ or greater capacity) [3] | 5.52 | 0.77 |
| (B) Semi-Automatic Clothes Washers | 2.12 | 0.27 |

[1] The energy conservation standards in this table do not apply to top-loading standard-size clothes washers with an average cycle time less than 30 minutes.
[2] The energy conservation standards in this table do not apply to front-loading clothes washers with a capacity greater than or equal to 1.6 $ft^3$ and less than 3.0 $ft^3$ with an average cycle time of less than 45 minutes.
[3] The energy conservation standards in this table do not apply to front-loading standard-size clothes washers with an average cycle time less than 45 minutes.

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

* * * * *

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Part III

## Consumer Financial Protection Bureau

12 CFR Part 1026
Credit Card Penalty Fees (Regulation Z); Final Rule

## CONSUMER FINANCIAL PROTECTION BUREAU

### 12 CFR Part 1026

**[Docket No. CFPB–2023–0010]**

**RIN 3170–AB15**

## Credit Card Penalty Fees (Regulation Z)

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Final rule; official interpretation.

**SUMMARY:** The Consumer Financial Protection Bureau (CFPB or Bureau) amends Regulation Z, which implements the Truth in Lending Act (TILA), to address late fees charged by card issuers that together with their affiliates have one million or more open credit card accounts (referred to as ''Larger Card Issuers'' herein). This final rule adopts a late fee safe harbor threshold of $8 for those issuers and provides that the annual adjustments to reflect changes in the Consumer Price Index (CPI) do not apply to this $8 amount.

**DATES:** *Effective date:* May 14, 2024.

**FOR FURTHER INFORMATION CONTACT:** Adrien Fernandez, Counsel; Krista Ayoub and Steve Wrone, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Summary of the Final Rule

The CFPB is amending provisions in Regulation Z, § 1026.52(b) and its accompanying commentary as they relate to credit card penalty fees.[1] Currently, under § 1026.52(b)(1), a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan, such as a late payment, exceeding the credit limit, or a returned payment, unless the issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the issuer for that type of violation as set forth in § 1026.52(b)(1)(i) (so-called cost analysis provisions) or complies with the safe harbor provisions set forth in § 1026.52(b)(1)(ii). Section 1026.52(b)(1)(ii)(A) and (B) currently sets forth a safe harbor of $30 generally for penalty fees, except that it sets forth a safe harbor of $41 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles.[2] The CFPB has determined that for Larger Card Issuers (*i.e.,* card issuers that together with their affiliates have one million or more open credit card accounts),[3] the discretionary safe harbor dollar amounts for late fees, as currently set forth in § 1026.52(b)(1)(ii)(A) and (B), are too high and, therefore, are not consistent with TILA's statutory requirement that such fees be reasonable and proportional to the omission or violation to which the fee relates. With respect to the current higher safe harbor threshold for late fees for certain subsequent violations, the CFPB also is concerned based on data from certain Larger Card Issuers that this amount is higher than is justified based on consumer conduct and to deter future violations and, indeed, a late fee that is too high could interfere with a consumer's ability to make future payments on the account.

To address these concerns, this final rule amends § 1026.52(b) and its accompanying commentary to help ensure that the safe harbor sets late fees imposed by Larger Card Issuers at amounts that are consistent with the TILA's requirement that such fees be reasonable and proportional to the cost from an omission or violation. First, with respect to Larger Card Issuers, this final rule repeals the current safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B), adopts in § 1026.52(b)(1)(ii) a late fee safe harbor dollar amount of $8, and eliminates for late fees a higher safe harbor dollar amount for subsequent violations of the same type that occur during the same billing cycle or in one of the next six billing cycles.[4] Second, with respect to late fees imposed by Larger Card Issuers, this final rule provides that the current provision in § 1026.52(b)(1)(ii)(D) that provides for annual adjustments for the safe harbor dollar amounts to reflect changes in the CPI will not apply to the $8 safe harbor amount for those late fees. This final rule also amends comments 7(b)(11)–4, 52(a)(1)–1.i and iv, 60(a)(2)–5.ii, and sample forms in appendix G to revise current examples of late fee amounts to be consistent with the $8 safe harbor late fee amount discussed above.

This final rule does not adopt the following revisions for Smaller Card Issuers as defined in new § 1026.52(b)(3): (1) repeal of the current safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B), adoption of $8 late fee safe harbor threshold amount, and elimination of a higher late fee safe harbor dollar amount for subsequent violations; and (2) the elimination of the annual adjustments for the safe harbor threshold dollar amounts. This final rule defines the term ''Smaller Card Issuer'' in § 1026.52(b)(3) to mean a card issuer that together with its affiliates had fewer than one million open credit card accounts for the entire preceding calendar year.[5] For purposes of defining ''Smaller Card Issuer,'' this final rule incorporates the definition of ''open credit card account'' from § 1026.58(b)(6), which defines the term to mean a credit card account under an open-end (not home-secured) consumer credit plan and either: (1) The cardholder can obtain extensions of credit on the account; or (2) There is an outstanding balance on the account that has not been charged off. As discussed below, the safe harbors in § 1026.52(b)(1)(ii)(A) and (B), as revised in this final rule pursuant to the annual adjustments in § 1026.52(b)(1)(ii)(D), will continue to apply to late fees imposed by Smaller Card Issuers.

[1] When amending commentary, the Office of the Federal Register (OFR) requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of regulatory text and commentary included in this document show the language of those sections as amended by this final rule. In addition, the CFPB is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the revisions by this final rule to the regulatory text and commentary of Regulation Z. This redline can be found on the CFPB's website, *https://files.consumerfinance.gov/f/documents/cfpb_unofficial-redline_credit-card-penalty-fees_final-rule_2024-01.pdf.* If any conflicts exist between the redline and the text of Regulation Z, its commentary, or this final rule, the documents published in the **Federal Register** are the controlling documents.

[2] Although the safe harbors discussed above apply to charge card accounts, § 1026.52(b)(1)(ii)(C) provides an additional safe harbor when a charge card account becomes seriously delinquent.

[3] This final rule does not define the term ''Larger Card Issuer'' in the regulatory or commentary text, but this document uses this term to aid understanding of the changes in this final rule and readability of the document. This document uses the term ''Larger Card Issuers'' to refer to card issuers that are not Smaller Card Issuers as defined in § 1026.52(b)(3) and thus are card issuers that together with their affiliates have one million or more open credit card accounts.

[4] This final rule does not amend the safe harbor set forth in § 1026.52(b)(1)(ii)(C) applicable to charge card accounts.

[5] This final rule contains an exception if a card issuer together with its affiliates had fewer than one million open credit card accounts for the entire preceding calendar year but meets or exceeds that number of open credit card accounts in the current calendar year. In this case, this final rule provides that the card issuer will no longer be a Smaller Card Issuer as of 60 days after meeting or exceeding that number of open credit card accounts. *See* § 1026.52(b)(3)(ii).

Pursuant to the annual adjustments for safe harbor dollar amounts in § 1026.52(b)(1)(ii)(D), this final rule revises the safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) to $32, except that it sets forth a safe harbor of $43 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles. These revised safe harbor threshold amounts of $32 and $43 apply to penalty fees other than late fees for all card issuers (*i.e.,* Smaller Card Issuers and Larger Card Issuers) as well as late fees imposed by Smaller Card Issuers, as noted above.

This final rule also amends comment 52(b)(1)(i)–2.i to make it explicitly clear that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions. This clarification applies to all card issuers that use the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts, including late fees.

**II. Background**

*A. The CARD Act*

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) was signed into law on May 22, 2009.[6] The CARD Act primarily amended TILA[7] and instituted new substantive and disclosure requirements to establish fair and transparent practices for open-end consumer credit plans. The CARD Act added TILA section 149, which provides, among other things, that the amount of any penalty fee with respect to a credit card account under an open-end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee or any other penalty fee or charge, must be ''reasonable and proportional'' to such omission or violation.[8]

At the time of its passage, the CARD Act required the Board of Governors of the Federal Reserve System (Board) to issue rules establishing standards for assessing the reasonableness and proportionality of such penalty fees.[9] In issuing these rules, the CARD Act required the Board to consider (1) the cost incurred by the creditor from an omission or violation; (2) the deterrence of omissions or violations by the cardholder; (3) the conduct of the cardholder; and (4) such other factors deemed necessary or appropriate by the Board.[10] The CARD Act authorized the Board to establish different standards for different types of fees and charges, as appropriate.[11] The CARD Act also granted the Board discretion to provide an amount for any penalty fee or charge that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates.[12] As discussed in more detail below, the authority to implement TILA, including TILA section 149, transferred from the Board to the CFPB in 2011.

*B. The Board's Implementing Rule*

On June 29, 2010, the Board issued a final rule implementing new TILA section 149 in its Regulation Z, 12 CFR 226.52(b) (2010 Final Rule).[13] The Board's Regulation Z, § 226.52(b) provided that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account, such as a late payment, exceeding the credit limit, or returned payments, unless the issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the issuer for that type of violation as set forth in § 226.52(b)(1)(i). Alternatively, if the card issuer did not want to use the cost analysis provisions in § 226.52(b)(1)(i) to determine the late fee amount, the issuer could use the safe harbors set forth in § 226.52(b)(1)(ii).[14] The Board set the safe harbor amounts in § 226.52(b)(1)(ii) at $25 generally for penalty fees, except that it set forth a safe harbor of $35 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles.[15] Although the safe harbors discussed above applied to charge card accounts, the Board's Regulation Z, § 226.52(b)(1)(ii) also provided an additional safe harbor when a charge card account becomes seriously delinquent.[16] The Board's Regulation Z, § 226.52(b)(1)(ii)(D) provided that the safe harbor dollar amounts would be adjusted annually to the extent that changes in the CPI would result in an increase or decrease of $1.[17]

The Board's Regulation Z, § 226.52(b)(2) also contained other restrictions on card issuers for imposing penalty fees. Specifically, § 226.52(b)(2)(i) prohibited issuers from imposing penalty fees that exceed the dollar amount associated with the violation.[18] In addition, § 226.52(b)(2)(ii) prohibited issuers from imposing multiple penalty fees based on a single event or transaction.[19]

*C. Transfer of Authority for TILA to the CFPB and the CFPB's Rule*

The Board's 2010 Final Rule implementing TILA section 149 took effect on August 22, 2010.[20] Nearly one year later, on July 21, 2011, the Board's rulemaking authority to implement the provisions of TILA, including TILA section 149, transferred to the CFPB pursuant to sections 1061 and 1100A of the Consumer Financial Protection Act of 2010 (CFPA).[21]

On December 22, 2011, the CFPB issued an interim final rule issuing its Regulation Z, 12 CFR part 1026, to reflect its assumption of rulemaking authority over TILA.[22] As set forth in the interim final rule, the CFPB's Regulation Z, § 1026.52(b) contained the same restrictions on penalty fees as set forth in the Board's Regulation Z, § 226.52(b).[23]

The dollar safe harbor amounts adopted by the Board in 2010 have been adjusted pursuant to § 1026.52(b)(1)(ii)(D).[24] Section 1026.52(b)(1)(ii) currently sets forth a safe harbor of $30 generally for penalty fees, except that it sets forth a safe harbor of $41 for each subsequent violation of the same type that occur during the same billing cycle or in one of the next six billing cycles.[25]

*D. A Decade of the Late Fee Safe Harbor*

In the wake of the Board's and the CFPB's implementation of TILA section 149, late fees represent almost all

[6] Public Law 111–24, 123 Stat. 1734 (2009).

[7] 15 U.S.C. 1601 *et seq.*

[8] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. 1665d(a)).

[9] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. 1665d(b)).

[10] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. 1665d(c)).

[11] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. (1665d(d)).

[12] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. (1665d(e)).

[13] 75 FR 37526 (June 29, 2010).

[14] 12 CFR 226.52(b)(1).

[15] 12 CFR 226.52(b)(1)(ii)(A) and (B).

[16] 12 CFR 226.52(b)(1)(ii)(C).

[17] 12 CFR 226.52(b)(1)(ii)(D).

[18] 12 CFR 226.52(b)(2)(i).

[19] 12 CFR 226.52(b)(2)(ii).

[20] 75 FR 37526 at 37526.

[21] Public Law 111–203, 124 Stat. 1376, 1955–2113 (2010).

[22] 76 FR 79768 (Dec. 22, 2011); *see also* 81 FR 25323 (Apr. 28, 2016).

[23] 76 FR 79768 at 79822.

[24] Comment 52(b)(1)(ii)–2.

[25] Although the safe harbors discussed above apply to charge card accounts, § 1026.52(b)(1)(ii)(C) provides an additional safe harbor when a charge card account becomes seriously delinquent. Specifically, § 1026.52(b)(1)(ii)(C) provides that, when a card issuer has not received the required payment for two or more consecutive billing cycles on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle, it may impose a late payment fee that does not exceed 3 percent of the delinquent balance.

penalty fee volume on credit cards. Over-the-limit fees are now practically nonexistent and fees for returned payments account for less than one percent of total fee volume based on Y–14+ data collected from a group of mass market and specialized issuers.[26]

Prior to the passage of the CARD Act in 2009, the average late fee was $33 for issuers in the CFPB's Credit Card Database (CCDB) which includes information on the full consumer and small business credit card portfolios of large credit card lenders, covering approximately 85 percent of all credit card accounts in the U.S. between April 2008 and April 2016.[27] With the effective date of the safe harbor threshold amounts in 2010, the average late fee in the CCDB declined by over $10 to $23 in the fourth quarter of 2010.[28]

However, from 2010 through the onset of the COVID–19 pandemic, issuers had steadily been charging consumers more in credit card late fees each year—growing to over $14 billion in total late fee volume for issuers contained in the Y–14+ data in 2019.[29] At the end of 2012, the average late fee for major issuers in the CCDB reached about $27.[30] It remained at about that level until rising to $28 in 2018 for issuers in the Y–14+, consistent with the first safe harbor adjustment to reflect changes in the CPI in 2014.[31] In 2019, the average late fee charged by credit card issuers in the Y–14+ rose to $31, approaching nominal pre-CARD Act levels.[32] In 2020, the average late fee for issuers in the Y–14+ data stayed at $31.[33]

Total late fee volume for issuers contained in the Y–14+ exceeded pre-pandemic levels in 2022, following declines in both 2020 and 2021 given record-high payment rates and public and private relief efforts, as discussed in the 2023 Proposal (88 FR 18906 (Mar. 29, 2023)).[34] Data published after the 2023 Proposal found issuers in the Y–14+ reported $14.5 billion in late fees in 2022, up from $11.3 billion in 2021, $11.9 billion in 2020, and slightly above $14.2 billion in 2019.[35] The average late fee increased from $31 in 2021 to $32 in 2022 across both first-time and repeat incidents of late payment, explaining part of the increase in total volume in 2022.[36]

*E. Credit Card Issuers' Use of the Late Fee Safe Harbor*

Currently, § 1026.52(b)(1)(ii) sets forth a safe harbor of $30 generally for a late payment, except that it sets forth a safe harbor of $41 for each subsequent late payment within the next six billing cycles. A card issuer is not required to use the cost analysis provisions in § 1026.52(b)(1)(i) to determine the amount of late fees if it complies with these safe harbor amounts.[37]

As noted in the 2023 Proposal, an analysis by the CFPB in 2022 of credit card agreements submitted to the CFPB's Credit Card Agreement Database in the fourth quarter of 2020 found no evidence of any issuers using the cost analysis provisions to charge an amount higher than the safe harbor.[38] Most top issuers by outstanding balances have taken advantage of the increased safe harbors as annually adjusted to reflect changes in the CPI by increasing their fee amounts.[39] Eighteen of the top 20 issuers by outstanding balances contracted a maximum late fee at or near the higher safe harbor amount of $40 in 2020 based on analysis of the maximum late fee disclosed by an institution in agreements submitted to the CFPB's Credit Card Agreement Database in the fourth quarter of that year.[40] Yet, the most common maximum late fee disclosed in agreements submitted to the CFPB was $25, as driven by the practices of smaller banks and credit unions not in the top 20 issuers by asset size.[41] Finally, a small but growing number of issuers offer credit card products with no late fees.[42]

An analysis by the CFPB in 2023 of credit card agreements submitted to the CFPB's Credit Card Agreement Database in the second quarter of 2023 was consistent with the 2022 results. The CFPB did not find evidence of issuers using the cost analysis provision to charge an amount higher than the safe harbor. Of the approximately 30 to 35 submitters that the CFPB would expect to be Larger Card Issuers, most of those issuers continued to contract at a maximum late fee at or near the higher safe harbor amount of $41 in 2023 with all Larger Card Issuers in the Y–14+ data charging a maximum late fee between $38 and $41. For Larger Card Issuers, the maximum late fee in their submitted agreements ranged from $20 to $41 with 13 issuers charging $40 and 11 charging $41. Smaller Card Issuers with more than 10,000 accounts submitting agreements to the CPFB's Credit Card Database continue to charge far below the late fee safe harbor. Only six Smaller Card Issuers for whom the CFPB has data charged a maximum late fee of $41. Over two-thirds of the sample of Smaller Issuers charge $25 or less per late payment and 10 already charge $8 or less.

Some Larger Card Issuers may be disincentivized to lower late fee amounts below the safe harbor, given that the industry as a whole continues to rely on late fees as a source of revenue and many consumers may not shop for credit cards based on the amount of the late fee. For the Larger Card Issuers in the Y–14+ data, late fees represented 10 percent of charges to consumers in 2020, but individual card issuers' revenue from late fees varied.[43] The share of late fees for Larger Card Issuers in the Y–14+ data ranged from approximately five to 30 percent of total consumer charges in 2019. Among issuers there is a strong correlation between reliance on late fees and concentration of subprime accounts. Yet, the industry as a whole continues to rely on late fees as a source of revenue.[44]

As noted in the 2023 Proposal, many consumers may not shop for credit cards based on the amount of late fees, which also may lessen card issuers incentive to charge late fees lower than the safe harbor amount. Survey data suggest that other factors, such as rewards, annual fees, and annual percentage rate(s)

[26] Consumer Fin. Prot. Bureau (CFPB), *The Consumer Credit Card Market,* at 62–67 (Oct. 2023) (2023 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf. See* part V for a description of the Y–14+ data.

[27] CFPB, *Card Act Report,* at 23 (Oct. 2013) (2013 Report), *https://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.* From 2008 to 2015, the CFPB used the CCDB to measure the amount of average late fees to include in the CARD Act reports that the CFPB releases every two years. In its 2017 report, the CFPB started using the Y–14 data to measure the amount of average late fees to include in its CARD Act reports and began using the Y–14+ data to calculate metrics including average late fee beginning with its 2019 report. *See* part V for a description of the Y–14 and Y–14+ data.

[28] *Id.*

[29] CFPB, *Credit Card Late Fees,* at 4 (Mar. 2022) (Late Fee Report), *https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf.*

[30] 2013 Report, at 23.

[31] CFPB, *The Consumer Credit Card Market,* at 69 (Dec. 2019) (2019 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf.*

[32] Late Fee Report, at 6.

[33] Late Fee Report, at 5; CFPB, *The Consumer Credit Card Market,* at 55 (Sept. 2021) (2021 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf.*

[34] 2021 Report, at 117; 2023 Report, at 65.

[35] 2023 Report, at 65.

[36] *Id.*

[37] *See* comment 52(b)(1)–1.i.A.

[38] Late Fee Report, at 14.

[39] *Id.*

[40] *Id.* The Credit Card Agreement Database is available at *https://www.consumerfinance.gov/credit-cards/agreements.*

[41] Late Fee Report, at 14.

[42] *Id.* at 15.

[43] *Id.* at 13.

[44] *Id.* at 14.

(APR), drive credit card usage.[45] In addition, recent academic work [46] directly observed that credit card offers highlight rewards, annual fees, and APRs more than late fees based on the position of the information and the size of the font.[47] Only 6.06 percent of the 611,797 card offers in their data spanning from 1999 to 2007 mentioned late fees on the front page, with an average font size of 9.56. In contrast, (1) rewards were displayed on the front page 93.68 to 100 percent of the time (depending on the type of rewards) with an average font size of 12.12 to 16.56; (2) the annual fee was disclosed on the front page 78.02 percent of the time with an average font size of 13.39; and (3) APRs were displayed on the front page 27.95 percent of the time with an average font size of 13.02. The CFPB notes that the authors of the study explained that most of the analysis reported in the paper excludes the post-2007 data to abstract from the impact of the 2008 financial crisis and the CARD Act.[48] However, the authors also stated that ''the main results are qualitatively and quantitatively very similar if we include data until 2016.'' [49] Since the CFPB issued the 2023 Proposal, other survey data indicate that late fee amounts are less impactful to consumers than annual fees, rewards, intro sign-up bonuses, credit limits, other benefits, and promotional or ongoing interest rates when deciding whether to apply for a new credit card or choosing whether to use an existing credit card.[50]

*F. Consumer Impact of Late Fees*

As noted in the 2023 Proposal, late fees represented over one-tenth of the $120 billion issuers in the Y–14+ charged to consumers in interest and fees in 2019, totaling over $14 billion in that year.[51] Since the CPFB issued the 2023 Proposal, this remains true as late fees represented over one-tenth of the more than $130 billion issuers in the Y–14+ charged to consumers in interest and fees in 2022, totaling over $14 billion that year.[52] A small share of accounts in low credit score tiers incur a high proportion of late fees.[53] Overall, the average deep subprime account in the Y–14 data [54] was charged $138 in late fees in 2019, compared with $11 for the average superprime account.[55] The higher incidence of late fees for accounts in lower tiers, combined with higher average charges for repeat late fees within six billing cycles of the initial late fee, drives this disparity.[56]

Credit card accounts in the Y–14 data held by cardholders living in the U.S.' poorest neighborhoods paid twice as much on average in total late fees than those in the richest areas.[57] Cardholders in majority-Black areas paid more in late fees for each card they held with major credit card issuers in 2019 than majority white areas.[58] And people in areas with the lowest rates of economic mobility paid nearly $10 more in late fee charges per account compared to people in areas with the highest rates of economic mobility.[59]

*G. Other Consequences to Consumers of Late Payment*

When a consumer does not make at least the minimum payment by the periodic statement due date, a late fee may not be the only consequence. However, the effect of a missed payment depends on cardholder conduct both prior to and after the due date.

For cardholders who typically pay their balance in full every month (so-called transactors), a late payment generally means both a late fee and new interest incurred for carrying or revolving a balance. For the cardholders who do not roll over a balance in the month before or after a late fee is assessed, the loss of a grace period [60] and coinciding interest charges may pose a similar or even greater burden than the late fee itself. For cardholders who regularly revolve a balance from one month to the next, a late fee is the main financial consequence of a missed payment if the payment is made prior to the next statement due date, as the additional interest charges on the unpaid minimum amount due for a limited number of days will likely be minimal.

However, if a consumer does not make at least the minimum payment due for more than one billing cycle, non-payment may carry more severe consequences. After approximately 30 days, consumers' credit scores may decline after issuers report the delinquency to credit bureaus. A card issuer also may take actions to reprice new transactions on the account according to a penalty rate, if permitted under § 1026.55(b)(3).[61] After 60 days, issuers may take action to reprice the entire outstanding balance on the account according to a penalty rate, if permitted under § 1026.55(b)(4). At any point as an account becomes more delinquent, an issuer may take steps to reduce a cardholder's credit line or suspend use of the card, limit their earning or redemption of rewards, or increase outreach to collect the outstanding debt. After 180 days of delinquency, an issuer will typically close and charge off the credit card account which may carry a large and long-term financial penalty for a consumer.

## III. Summary of Rulemaking Process

*A. Advance Notice of Proposed Rulemaking*

On June 22, 2022, the CFPB issued an advance notice of proposed rulemaking (ANPR) seeking information from credit card issuers, consumer groups, and the public regarding credit card late fees and late payments, and card issuers' revenue and expenses.[62] The CFPB received 43 comments in response to the ANPR.

Consumer group commenters generally made a number of recommendations with respect to restrictions on late fees, including that the CFPB should more closely tailor the late fee safe harbor to the amount of the debt owed by the cardholder, such as by establishing a sliding scale for the safe harbor amount so that late fees are proportional to the account balance.

Card issuers and their trade associations that commented on the ANPR generally opposed revisions to

[45] Karen Augustine, *U.S. Consumers and Credit: Rising Usage,* Mercator Advisory Group, at 40 (2018).

[46] Hong Ru & Antoinette Schoar, *Do Credit Card Companies Screen for Behavioural Biases?* (Feb. 21, 2023), BIS Working Paper No. 842, *https://ssrn.com/abstract=3549532.*

[47] *Id.* This survey used detailed information from Comperemedia on more than 1.3 million individual credit card offers that were sent to a set of representative households in the United States between 1999 and 2016. Thus, the CFPB expects that this survey likely focused on Larger Card Issuers, which represent the bulk of the credit card market in terms of outstanding balances. *Id.* at 3.

[48] *Id.* at 12.

[49] *Id.*

[50] Auriemma Consulting Group, Impact of Late Fee and Interchange Regulation, Variable Rates, and Credit Card Value Proposition Preferences (Oct. 2023).

[51] Late Fee Report, at 4.

[52] 2023 Report, at 65.

[53] Late Fee Report, at 7; 2023 Report, at 65.

[54] The Y–14 data are discussed in more detail in part V.

[55] Late Fee Report, at 8.

[56] *Id.*

[57] *Id.* at 9.

[58] *Id.* at 10.

[59] *Id.* at 11.

[60] A grace period is a period within which credit extended may be repaid without incurring a finance charge due to a periodic interest rate. *See, e.g.,* § 1026.6(b)(2)(v) and comments 5(b)(2)(ii)–3.i and 54(a)(1)–2.

[61] If a consumer does not make the required payment by the due date, § 1026.55(b)(3) permits a card issuer to take actions to reprice new transactions on the account according to a penalty rate in certain circumstances. The CFPB understands, however, that most card issuers do not take actions to reprice new transactions to the penalty rate until the consumer is more than 60 days late. 2021 Report, at 51.

[62] 87 FR 38679 (June 29, 2022).

Regulation Z's safe harbor provisions related to late fees, including lowering the safe harbor amounts. Several industry trade association commenters also asserted that because lowering the safe harbor would have a significant impact on small financial institutions, the CFPB must comply with the Small Business Regulatory Enforcement Fairness Act (SBREFA) by convening a SBREFA panel in any late fee rulemaking.

*B. 2023 Proposal*

On February 1, 2023, the CFPB issued a notice of proposed rulemaking containing several proposed amendments to Regulation Z, which implements TILA, to better ensure that the late fees charged on credit card accounts are ''reasonable and proportional'' to the late payment as required under TILA. This notice of proposed rulemaking was published in the **Federal Register** on March 29, 2023 (2023 Proposal).[63] The CFPB generally proposed that the final rule, if adopted, would take effect 60 days after publication in the **Federal Register**.

As described more fully below, the CFPB proposed to amend provisions in § 1026.52(b) and its accompanying commentary as they relate to credit card late fees. Because late fees are by far the most prevalent penalty fees charged by card issuers and the CFPB's current data primarily relate to late fees, the CFPB's proposed changes to the restrictions in § 1026.52(b) were limited to late fees, although the CFPB solicited comments on whether the proposed amendments should apply to other penalty fees.

The proposal would have amended § 1026.52(b) and its accompanying commentary to help ensure that late fees are reasonable and proportional. First, the proposal would have amended § 1026.52(b)(1)(ii) to lower the safe harbor dollar amount for late fees to $8 and to no longer apply to late fees a higher safe harbor dollar amount for subsequent violations of the same type that occur during the same billing cycle or in one of the next six billing cycles.[64] Second, the proposal would have provided that the current provision in § 1026.52(b)(1)(ii)(D) that provides for annual adjustments to reflect changes in the CPI for the safe harbor dollar amounts would not apply to the safe harbor amount for late fees. Third, the proposal would have amended § 1026.52(b)(2)(i)(A) to provide that late fee amounts must not exceed 25 percent of the required payment; currently, late fee amounts must not exceed 100 percent. The proposal also would have amended comments 7(b)(11)–4, 52(a)(1)–1.i and iv, and 60(a)(2)–5.ii to revise current examples of late fee amounts to be consistent with the proposed $8 safe harbor late fee amount. The CFPB also solicited comment on whether card issuers should be prohibited from imposing late fees on consumers that make the required payment within 15 calendar days following the due date. In addition, the CFPB solicited comment on whether, as a condition of using the safe harbor for late fees, it may be appropriate to require card issuers to offer automatic payment options (such as for the minimum payment amount), or to provide notification of the payment due date within a certain number of days prior to the due date, or both.

The CFPB proposed one clarification that would have applied to penalty fees generally. Specifically, the proposal would have amended comment 52(b)(1)(i)–2.i to make it explicitly clear that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions. In addition, the CFPB solicited comment on several issues related to penalty fees generally. First, the CFPB solicited comment on whether the same or similar changes described above should be applied to other penalty fees, such as over-the-limit fees, returned-payment fees, and declined access check fees, or in the alternative, whether the CFPB should finalize the proposed safe harbor for late fees and eliminate the safe harbors for other penalty fees. Second, the CFPB solicited comment on whether instead of revising the safe harbor provisions set forth in § 1026.52(b)(1)(ii) as they apply to late fees as discussed above, the CFPB should instead eliminate the safe harbor provisions in § 1026.52(b)(1)(ii) for late fees or should instead eliminate the safe harbor for all penalty fees, including late fees, over-the-limit fees, returned-payment fees, and declined access check fees. If the safe harbor provisions were eliminated, card issuers would need to use the cost analysis provisions set forth in § 1026.52(b)(1)(i) to determine the amount of the penalty fees (subject to the limitations in § 1026.52(b)(2)). The CFPB also solicited comment on whether, in that event, the cost analysis provisions would need to be amended and, if so, how.

The CFPB received approximately 57,900 responses to the 2023 Proposal. Of those responses, around 56,800 were from consumers that generally supported the 2023 Proposal. The vast majority of these consumer letters had the same content, and specifically supported the proposed $8 safe harbor threshold amount for late fees. In certain consumer letters, consumers who supported the proposal included additional information, such as their experiences with late fees. Some consumers who supported the proposal indicated they had limited income and that even a small late fee can impact consumers on a tight budget. Some consumers who supported the proposal indicated that they were charged a late fee in the past because (1) their mailed payment was not received by the card issuer by the due date because of slower postal service; (2) they paid on the due date but after the cut off time on the due date; (3) they forgot to pay on time because of vacations, medical issues, or family issues; or (4) they experienced cash flow issues because of unexpected expenses, such as an illness, and in some cases were not able to change the due date for their payments.

Around 350 individual consumers, including approximately 170 individuals who identified themselves as ''bankers'' who submitted the same letter, opposed the proposed $8 safe harbor amount. The individuals who identified themselves as bankers asserted that the CFPB should withdraw the proposal and restart the rulemaking process after taking into consideration small business' input through the SBREFA process.

Consumer group commenters generally supported the 2023 Proposal. These consumer group commenters expressed strong support for: (1) the CFPB's proposed safe harbor of $8 for credit card late fees; and (2) the CFPB's proposal to limit the dollar amount associated with a late payment to 25 percent of the required minimum periodic payment due immediately prior to assessment of the late payment.

The CFPB received around 100 comment letters from industry commenters. Industry commenters generally opposed the proposal, including the following proposed changes: (1) lowering the late fee safe harbor amount to $8 and eliminating the higher safe harbor amount for subsequent late payments; (2) eliminating the annual adjustment provisions for late fee amounts; (3) limiting late fee amounts to 25 percent of the require minimum payment; and (4) clarifying that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any

[63] 88 FR 18906 (Mar. 29, 2023).

[64] The proposal would not have amended the safe harbor set forth in § 1026.52(b)(1)(ii)(C) applicable to charge card accounts.

collection costs that are incurred after an account is charged off pursuant to loan loss provisions.

One Member of Congress was concerned about the impact of the 2023 Proposal on small issuers. This commenter advised that the CFPB either work to ensure that the cost analysis provisions—an alternative to the safe harbor—would not impose undue burdens on small issuers or that the CFPB consider a separate safe harbor for small issuers that more accurately reflects their unique costs.

The Office of Advocacy, an independent office within the Small Business Administration (SBA), expressed concern that the CFPB's analysis of pre-charge-off costs from the Y–14 issuers does not accurately represent the collection costs for late payments of smaller issuers. The agency also criticized the CFPB for insufficiently considering the extent to which the proposed $8 safe harbor amount would cover the collection costs of smaller issuers.

The CFPB also received comments from other types of entities, namely several academics, law firms, and financial regulatory advocacy groups. The comments from these entities varied, with some of these entities generally supporting the 2023 Proposal, and some of them generally opposing it. These comments, as well as the other comments received by the CFPB on the 2023 Proposal, are discussed in more detail below in part VII.

*C. CARD Act Consultation With Certain Federal Agencies*

Consistent with the CARD Act, the CFPB consulted with the following agencies regarding rules that implement TILA section 149, both before issuing the 2023 Proposal and before issuing this final rule: (1) the Comptroller of the Currency; (2) the Board of Directors of the Federal Deposit Insurance Corporation (FDIC); and (3) the National Credit Union Administration Board.[65] The CFPB also consulted with the Board and several other Federal agencies, before issuing the 2023 Proposal and before issuing this final rule, as discussed in part IX.

## IV. Legal Authority

*A. Section 1022 of the CFPA*

Section 1022(b)(1) of the CFPA authorizes the CFPB to prescribe rules ''as may be necessary or appropriate to enable the CFPB to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.''[66] Among other statutes, the CFPA and TILA are Federal consumer financial laws.[67] Accordingly, in issuing this final rule, the CFPB exercises its authority under the CFPA section 1022(b)(1) to prescribe rules under TILA and the CFPA that carry out the purposes and objectives and prevent evasion of those laws.

*B. The Truth in Lending Act*

As amended by the CFPA, TILA section 105(a)[68] directs the CFPB to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that, in the judgment of the CFPB, are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. Pursuant to TILA section 102(a), a purpose of TILA is to assure a meaningful disclosure of credit terms to enable the consumer to avoid the uninformed use of credit and compare more readily the various credit terms available to the consumer. This stated purpose is tied to Congress' finding that economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.[69] Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

As described above, the CARD Act was signed into law on May 22, 2009,[70] and the Act amended TILA[71] by adding section 149, which provides, among other things, that the amount of any penalty fee with respect to a credit card account under an open-end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee or any other penalty fee or charge, must be ''reasonable and proportional'' to such omission or violation.[72]

At the time of its passage, the CARD Act added section 149(b) to TILA, which required the Board to issue rules establishing standards for assessing the reasonableness and proportionality of such penalty fees, with a statutory deadline of February 22, 2010, for issuing this required rule.[73] Section 149(d) also authorized the Board to establish different standards for different types of fees and charges, as appropriate.[74] The CARD Act also allowed, but did not require, the Board to issue rules to provide for a safe harbor amount for any such penalty fee that is presumed to be reasonable and proportional to such omissions or violations.[75] This grant of discretionary authority did not include a deadline. The Board issued a rule on June 29, 2010, completing the required rulemaking (now contained in the CFPB's Regulation Z, 12 CFR 1026.52(b)(1)(i)). That required rulemaking included cost analysis provisions that enabled issuers to determine the late fee amount that were reasonable and appropriate under the statute. In addition, the Board exercised its discretionary power to include optional safe harbor provisions that issuers could elect to use as an alternative to the cost analysis provisions (now contained in the CFPB's Regulation Z, 12 CFR 1026.52(b)(1)(ii)).

On July 21, 2011, the Board's rulemaking authority to implement the provisions of TILA, including the discretionary authority to issue rules regarding penalty fee safe harbors in TILA section 149(e), transferred to the CFPB pursuant to sections 1061 and 1100A of the CFPA.[76]

For the reasons discussed in this final rule, the CFPB is amending certain provisions in Regulation Z that impact the amount of late fees that Larger Card Issuers can charge.

With respect to late fees charged, pursuant to section 149(e), the CFPB has analyzed whether the current safe harbor threshold amounts for late fees should be presumed to be reasonable and proportional to a cardholder's omission or violation. In considering whether and what is the appropriate amount for the safe harbor, the CFPB

[65] 15 U.S.C. 1665d(b) and 1665d(e).

[66] 12 U.S.C. 5512(b)(1).

[67] CFPA section 1002(14); codified at 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of the CFPA); CFPA section 1002(12); codified at 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA).

[68] 15 U.S.C. 1604(a).

[69] TILA section 102(a), codified at 15 U.S.C. 1601(a).

[70] Public Law 111–24, 123 Stat. 1734 (2009).

[71] 15 U.S.C. 1601 *et seq.*

[72] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. 1665d(a)).

[73] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. 1665d(b)).

[74] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. 1665d(d)).

[75] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. 1665d(e)).

[76] Public Law 111–203, 124 Stat. 1376 (2010).

looked to whether the safe harbor is a ''reasonable and proportional'' fee, as originally prescribed by the Board, such that any fee under the safe harbor amount should be presumed to have met that standard. In addition, the CFPB is guided by, but was not required to consider, the four statutory factors applicable to the Board's 2010 Final Rule: (1) the cost incurred by the creditor from an omission or violation; (2) the deterrence of omissions or violations by the cardholder; (3) the conduct of the cardholder; and (4) such other factors deemed necessary or appropriate.

As described below and pursuant to its rulemaking authority under TILA sections 105(a) and 149(e),[77] the CFPB has determined that the current safe harbor thresholds are too high with respect to late fees charged by Larger Card Issuers, and therefore, repeals the safe harbor provisions with respect to late fees charged by those issuers. The CFPB then establishes a new safe harbor of $8 applicable to late fees charged by Larger Card Issuers. Separately, at this time and as described below, the CFPB is not exercising its discretionary authority to impose the new $8 threshold amount on Smaller Card Issuers.

## V. Data Considered for This Rulemaking

### *A. The CFPB's Proposal*

The CFPB considered four primary data sources in developing the 2023 Proposal, as described below: (1) Y–14; (2) Y–14+; (3) credit card debt collection data received from an information order made pursuant to section 1022(c)(4) of the CFPA; and (4) the CFPB's Credit Card Agreement Database.

#### Y–14 Data

First, as explained in the 2023 Proposal, the CFPB relied upon data that the Board collects as part of its Y–14M (Y–14) data.[78] Since June 2012, the Board has collected these data monthly from bank holding companies with total consolidated assets exceeding $50 billion (from June 2012 to November 2019) and exceeding $100 billion (from December 2019 to present).[79] For this collection, surveyed financial institutions report comprehensive data on their assets on the last business day of each calendar month. These data are used to support the Board's supervisory stress test models and provide one source of data for the CFPB's biennial report to Congress on the consumer credit card market.

The Y–14 data contain confidential supervisory information.[80] Given this and as detailed in the 2023 Proposal, the CFPB could not release the raw data, but did provide the data in summary form and explained the source of the data, the analysis, and the metrics used in its analysis. The 2023 Proposal began by explaining that these data contain reported information on the following four metrics used in developing the 2023 Proposal:

*Late Fee Income:* Reported net fee income assessed for late or nonpayment accounts in a given domestic credit card portfolio by card type (*e.g.,* general purpose or private label). This is late fee income for the CFPB's purposes in developing the 2023 Proposal.

*Collection Costs:* Reported costs incurred to collect problem credits that include the total collection cost of delinquent, recovery, and bankrupt accounts. Issuers report these aggregate costs monthly for their domestic credit card portfolios and separately by credit card type.[81] These reported costs do not include projected losses, and the dollar amount of charge-offs and any associated recoveries.[82]

*Late Fee Amount:* Reported amount of the late fee charged on a particular account in a particular month.

*Total Required Payments:* Reported total payment amount on a particular account in a particular month, including any missed payments or fees that were required to be paid in a particular billing cycle. This typically includes the minimum payment due, past due payments, and any amount reported as over the credit limit.

As described in the 2023 Proposal, the Y–14 data received by the CFPB covered the period from the middle of 2012 through September 2022 and are provided by certain Larger Card Issuers that account for just under 70 percent of outstanding balances on U.S. consumer credit cards as of year-end 2020. With respect to credit card data, the 2023 Proposal explained that, for purposes of its analysis, the CFPB generally used the complete portfolio data (including late fee income and collection costs) for all the Y–14 issuers included in the data collection. The 2023 Proposal also explained that the analysis generally used a random 40 percent subsample of account information (including late fee amounts and total required payments) reported by card issuers included in the data collection. For the purposes of the analysis using these data in the 2023 Proposal, the CFPB only considered account- and portfolio-level data for issuers in a given month for consumer general purpose and private label credit cards for which there existed data on late fee income, collection costs, late fee amounts, and total required payments in the Y–14 data.

#### Determination of Post-Charge-Off Collection Costs Using Credit Card Debt Collection Data Received From an Information Order Made Pursuant to Section 1022(c)(4) of the CFPA

In the 2023 Proposal, the CFPB stated its understanding that collection costs in the Y–14 data are total collection costs, therefore include both pre-charge-off and post-charge-off collection costs because, as described in the 2023 Proposal, the Board requires that issuers report in the Y–14 data ''costs incurred to collect problem credits that include *the total collection cost* of delinquent, recovery, and bankrupt accounts'' (emphasis added). While the line item reported to the Board for the Y–14 data relates to total collection costs, the Board's 2010 Final Rule generally explains that the collection costs used for determining late fees under the cost analysis provisions in § 1026.52(b)(1)(i) are limited to the use of pre-charge off collection costs. As explained in the 2023 Proposal and as the Board noted in

[77] 15 U.S.C. 1604(a).

[78] *See* Bd. of Governors of the Fed. Rsrv. Sys., Report Forms FR Y–14M, *https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDYnbIw+U9pka3sMtCMopzoV* (for more information on the Y–14M collection). The CFPB is one of several government agencies with whom the Board shares the data. Information in the Y–14 data do not include any personal identifiers. Additionally, accounts associated with the same consumer are not linked across or within issuers. The Y–14 data also do not include transaction-level data pertaining to consumer purchases.

[79] In the 2023 Proposal, the CFPB incorrectly indicated that the Y–14 data from June 2012 to the present is collected from bank holding companies with total consolidated assets exceeding $50 billion. In fact, in December 2019, the Board adjusted the cutoff threshold from $50 million to $100 billion. This difference in the threshold to submit Y–14 data does not impact the CFPB's analysis because the CFPB was merely describing the issuers covered by that data, which the CFPB still used in its totality. The increased threshold did not impact the analysis of pre-charge-off collection costs set forth in the section-by-section of § 1026.52(b)(1)(ii) because that analysis focused on periods after 2019.

[80] The Board's instructions to Y–14 issuers provide: As these data will be collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act. 5 U.S.C. 552(b)(8). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under Exemption 4. 5 U.S.C. 552(b)(4). Disclosure determinations would be made on a case-by-case basis. *https://www.federalreserve.gov/apps/reportingforms/Download/DownloadAttachment?guid=dce3da6a-55b4-4fb4-8730-3fec04d32627.*

[81] Types include General Purpose, Private Label, Business, and Corporate cards.

[82] Issuers report projected losses, the dollar amount of charge-offs and any associated recoveries, interest expense, and loan loss provisions separately.

that 2010 Final Rule ''it would be inconsistent with the purpose of the [CARD Act] to permit card issuers to begin recovering losses and associated costs through penalty fees rather than through upfront rates.'' [83] The Board further noted that ''it would be inconsistent with TILA section 149(c)(1) to permit the costs of the loss to be included as 'costs incurred by the creditor from [an] omission or violation,' which could be construed to mean that it is appropriate to exclude losses where—as here—card issuers do not incur losses as a result of the overwhelming majority of violations.'' [84]

The CFPB did not propose to amend the Board's rule in this respect and further noted that this limitation was appropriate given that card issuers write accounts off as a loss when an account has been charged off; therefore, any cost in collecting amounts owed to a card issuer that incurred post-charge-off is related to mitigating a loss as opposed to the cost of a violation of the account terms.[85]

Given that the rule's cost analysis provisions in § 1026.52(b)(1)(i) limit the collection costs to costs that are incurred pre-charge off, consistent with the statute, the CFPB similarly limited its calculation of the appropriate safe harbor to this pre-charge off cost in the Y–14 data by excluding the post-charge-off collection costs. As explained in the 2023 Proposal, to do this, the CFPB estimated the percentage of collection costs that may occur after charge-off so that they could be excluded from the collection costs in the Y–14 data.

To determine what percentage of Y–14 data were pre-charge off, the CFPB examined confidential information gathered in the course of its statutory functions [86] on commissions paid to third-party debt collectors for charged-off accounts that six major card issuers paid in 2019 and 2020, representing 91 percent of balances and 93 percent of collection costs among portfolios with positive collection expenses reported in the Y–14 data in the twelve months leading up to August 2022.[87] In the 2023 Proposal, the CFPB noted that the most significant post-charge-off collection costs are likely to be commissions paid to third-party debt collectors for charged-off accounts. The CFPB stated its understanding that such commission payments, made to third-party debt collection companies, would be made almost exclusively in connection with accounts that have been charged off, and represent a conservative estimate of post-charge-off collection costs, as there may be other costs associated with collections post-charge-off beyond such commission payments.

As explained in the 2023 Proposal, the methodology for estimating post-charge-off commissions considered the amount of charged-off balances and then estimated the commission on the volume of recovered balances by using the recovery and commission rates. For example, if an issuer had a total of $1 million in newly charged-off balances in a given year, a cumulative recovery rate for that year of five percent, and a post-charge-off commission rate of 20 percent, the CFPB estimated the post-charge-off commission costs to be $10,000. As noted in the proposal, to calculate the post-charge-off collection costs as a share of total cost of collections, the CFPB then divided the estimated post-charge-off commission costs by the total collection costs the bank reported in the Y–14 data. For issuers who sell debt, the cost of collections calculation used charge-off balances net of asset sales. The commission rate for each issuer is an average weighted by the share of post-charge-off balances in each tier placement (*e.g.,* primary, secondary, and tertiary placements).

Based on these commission expenses that these six major card issuers paid in 2019 and 2020 to third-party debt collectors for charged-off accounts, the CFPB explained in the 2023 Proposal that it estimated that these post-charge-off costs are around 25 percent of total collection costs for these issuers; the average ratio was 27 percent in 2019 and 21 percent in 2020. In 2019, the median ratio of estimated post-charge-off commission costs to annual collection costs in the Y–14 for individual issuers was 28 percent; in 2020, it was 23 percent. Based on these data, in the 2023 Proposal, the CFPB estimated that pre-charge-off collection costs were equal to 75 percent of the collection costs included in the Y–14 data for purposes of its analysis related to the proposed changes to the safe harbor thresholds for late fees in § 1026.52(b)(1)(ii).

Y–14+ Data

As discussed in the 2023 Proposal, the CFPB also considered Y–14+ data in developing the proposal. The Y–14+ data include confidential information gathered in the course of statutory functions from the Board's Y–14 data and a diverse group of specialized issuers.[88] The additional data that included specialized issuers were used to calculate the average late fee charged by Y–14+ issuers in 2019 and 2020. As explained in the proposal, in 2019, the average late fee charged by issuers in the Y–14+ data was $31. In the proposal, the CFPB noted that because the average late fee charged by the Y–14+ issuers is lower than the current maximum safe harbor of $41 and yet issuers still generate late fee income that is more than five times the ensuing (estimated) pre-charge-off collection costs since August 2021, the CFPB preliminarily concluded that $8 is likely to recover the average issuer's pre-charge-off collection costs. In addition, in the proposal, the CFPB used the average late fee charged by Y–14+ issuers in 2020 in forming its expectation that the proposed $8 amount would have a proportionately smaller impact on smaller issuers' late fee income, due to smaller issuers' having lower late fee amounts. In 2020, the average late fee for issuers in the Y–14+ data was $31. The CFPB noted that it collects card agreements from more smaller issuers than issuers for which the CFPB has financial data. Based on the CFPB's 2022 review of agreements from over 500 credit card issuers having more than 10,000 credit card accounts, the CFPB established that issuers outside the top 20 by outstanding credit card balances charged smaller late fees in 2020 than issuers within the top 20.

CFPB's Credit Card Agreement Database

In the 2023 Proposal, the CFPB discussed a 2022 review conducted by the CFPB of credit card agreements submitted to the CFPB's Credit Card Agreement Database in the fourth quarter of 2020 to determine the maximum late fee amount charged across agreements by issuers submitting to that database. As discussed above, the 2023 Proposal relied on these data in

[83] 75 FR 37526 at 37538.

[84] *Id.*

[85] In the 2023 Proposal, the CFPB proposed to amend comment 52(b)(1)(i)–2.i to make it explicitly clear that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions.

[86] The CFPB collected these confidential data through an information order pursuant to section 1022(c)(4) of the CFPA.

[87] As part of its review of the practices of credit card issuers for its biennial review of the consumer credit card market, the CFPB surveys several large issuers to better understand practices and trends in credit card debt collection. These data provided in response to data filing orders served as the basis of this calculation. For more information on these data, *see* 2021 Report, at 17.

[88] The CFPB received the information from the specialized issuers through an information order pursuant to section 1022(c)(4) of the CFPA which provides that the CFPB will treat the information received in response to the order in accordance with its confidentiality regulations at 12 CFR 1070.40 through 1070.48.

developing preliminary conclusions about the potential impact the proposed $8 late fee safe harbor threshold amount would have on card issuers, including smaller issuers.

*B. CFPB Revenue and Collection Costs Report*

At the time it issued the 2023 Proposal, the CFPB also published a related report, ''Credit Card Late Fees: Revenue and Collection Costs at Large Bank Holding Companies'' (Revenue-Costs Report).[89] Although the CFPB recognized that it could not publish the confidential Y–14 data, as discussed above, the Revenue-Costs Report provides additional information on the monthly values for the aggregate late fee revenue and collection costs for general purpose and private label credit cards in the Y–14 data since 2016. The Revenue-Costs Report includes the total number of accounts in these portfolios, aggregate interest revenue for these accounts, the CFPB's estimate of pre-charge-off collection costs, total account balances, and the weighted ratio of late fee income to estimated pre-charge-off collection costs.[90] The CFPB provided this information in order to enable commenters to better understand how the CFPB determined the relationship between late fee revenue and pre-charge-off collection costs for Y–14 issuers for purposes of the 2023 Proposal. The Revenue-Costs Report shows that revenue from late fees has consistently far exceeded pre-charge-off collection costs over the last several years.

*C. Comments Received Related to Data and Analysis*

Using Y–14 Data Without Releasing Underlying Data

Several credit unions, industry trade associations, and individuals on behalf of a credit union, one law firm representing several card issuers, and one academic commenter criticized the CFPB for failure to release the underlying Y–14 data. These commenters asserted they did not have the ability to understand or evaluate the CFPB's proposal in a thorough and meaningful way or to replicate the CFPB's analysis due to the lack of insight into the underlying data, methodology used, and analyses that form the basis of the 2023 Proposal. Several of these commenters asserted that the failure to disclose the raw Y–14 data relied upon in the rulemaking conflicts with requirements under section 553 of the Administrative Procedure Act (APA).[91]

One of the credit union commenters urged the CFPB to provide a breakdown of the components used to arrive at the proposed $8 late fee safe harbor and the source of the data. One of the industry trade association commenters noted that the CFPB failed to provide a clearly defined list of data inputs that banks provide in reporting collection costs on the Y–14 data. The law firm representing several card issuers asserted that, although the CFPB compiled and released a set of aggregated and anonymized values at the same time as the proposal, it did not include an explanation of which Y–14 data fields it used to populate the document, how and why the CFPB designated the data for inclusion in the categories the document sets forth, or how the CFPB ensured that the data categorizations were consistent from bank to bank—all of which it claimed prevented commenters from assessing the validity and accuracy of the proposal or the conclusions it supports.

One of the industry trade association commenters also expressed concerns that the CFPB did not provide information about the distribution of the ratio of late fee income to future collection costs for the Y–14 issuers; and about whether the CFPB used all of the issuers in the Y–14 data in analyzing the ratio of late fee income to future collection costs.

The academic commenter focused on a narrower set of data related to a Y–14 seven-month analysis. These data were used to support analysis in the proposal that lower late fees in month seven do not affect the late payment rate. This commenter asserted that these claims would require further review and validation by industry and urged the CFPB to release the underlying Y–14 data used in this seven-month analysis.

Several of the industry trade association commenters and the academic commenter also requested that the CFPB release further anonymized or aggregated Y–14 data to the public and postpone the rulemaking until it could release these additional data.

The CFPB disagrees with the commenters that the 2023 Proposal failed to provide sufficient data or description of methodology for commenters to offer meaningful comment. The CFPB also does not agree that it is improper to cite supervisory or other confidential data gathered for statutory functions or shared by the Board pursuant to those statutory functions in the rulemaking process; this is information the CFPB obtains as part of its lawful and authorized activities, and it provides insight into the issues addressed here. CFPB's published reports were collected through its supervision function, and the CFPB's regulations protect confidential supervisory information from disclosure. As noted above, the Board's instructions to the Y–14 issuers indicates that the Y–14 data are collected as part of the supervisory process and are subject to confidential treatment under certain exemptions of the Freedom of Information Act.[92] The CFPB was authorized to use this robust dataset if it complied with the Board's confidentiality conditions, and it would have been unreasonable to burden the industry with duplicative data requests. Also, as noted above, the CFPB collects certain information pursuant to information orders under section 1022(c)(4) of the CFPA and those orders provide that the CFPB will treat the information received in response to the order in accordance with its confidentiality regulations at 12 CFR 1070.40 through 1070.48. Courts have held that an agency can rely on confidential information in its rulemaking so long as the agency discloses information to allow interested parties to comment on the methodology and general data.[93] The CFPB disclosed how it obtained the data, the methodologies used to analyze the data, the number of accounts reviewed, characteristics about the accounts reviewed, and the results of the various studies.

As noted above, the 2023 Proposal provides a detailed description of each of the four sources of data used in the rulemaking: (1) Y–14; (2) Y–14+; (3) credit card debt collection data received from an information order made pursuant to section 1022(c)(4) of the CFPA; and (4) the CFPB's Credit Card Agreement Database. Although the CFPB did not release the raw Y–14 data used in developing the 2023 Proposal, it took several steps to release aggregate data, as well as providing detailed descriptions of methodology and analysis, so that commenters could evaluate and provide meaningful

[89] CFPB, *Credit Card Late Fees: Revenue and Collection Costs at Large Bank Holding Companies* (Revenue-Costs Report) (Feb. 2023), *https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees-revenue-collection-costs-large-bank_2023-01.pdf.*

[90] Since not every issuer in the Y–14 data reports values for every month, the Revenue-Costs Report also included the number of portfolios that are included in the aggregate for the applicable month.

[91] 5 U.S.C. 553(b), (c).

[92] *See supra* note 80.

[93] *See NRDC* v. *Thomas,* 805 F.2d 410, 418 n.13 (D.C. Cir. 1986); *see also Riverkeeper Inc.* v. *EPA,* 475 F.3d 83, 112 (2d Cir. 2007); *rev'd on other grounds,* 556 U.S. 208 (2009).

comment on the CFPB's data and analysis.

As noted above, contrary to what some commenters stated, the 2023 Proposal explained the source of the Y–14 data (from the Board), as well as the specific question about estimating collection costs for late fees that was used to generate the data. In the 2023 Proposal, the CFPB also described the four types of Y–14 data that it used for the analysis in the proposal, namely, late fee income, collection costs, late fee amount, and total required payments.[94] The 2023 Proposal further detailed the relevant years of data examined, as well as the reasons why the CFPB preliminarily determined it was appropriate to rely on data from the Y–14 issuers, noting that those issuers constituted approximately 70 percent of the market. The CFPB also adequately described in the 2023 Proposal how it used the Y–14 data in the analysis, including the methodology it used to calculate the ratio of collection costs to late fee income.[95] As described in the 2023 Proposal, that methodology involved the CFPB comparing each month's late fee income for a particular portfolio to the portfolio's average estimated pre-charge-off collection costs for that month, where that estimate was based on estimated pre-charge-off collection costs that occurred two through six months later.[96] The CFPB developed monthly estimates of this late fee income-to-cost ratio for each year from 2013 up to early 2022. The CFPB also described the methodology for conducting the Y–14 seventh-month analysis in relation to the impact of higher subsequent late fees on late payment incidence, which included conducting statistical analysis on a random subsample from account-level data available in 2019 from the Y–14 data to investigate whether the lower late fee amount in month seven leads to a discontinuous jump in late payments in the seventh month after the last late payment.[97]

As noted above, the CFPB also issued along with the 2023 Proposal the Revenue-Costs Report at the time of the proposal to aid in the ability of commenters to examine data from issuers and provide additional analysis and methodology, enhancing the ability of commenters to offer meaningful comment. The Revenue-Costs Report included additional monthly values for the aggregate late fee revenue and collection costs for general purpose and private label credit cards in the Y–14 data since 2016.[98] The report also provided (1) the number of portfolios that are included in the aggregate for the applicable month; (2) the total number of accounts in these portfolios, (3) aggregate interest revenue for these accounts, and (4) the CFPB's estimate of pre-charge-off collection costs, total account balances, and the weighted ratio of late fee income to estimated pre-charge-off collection costs. Many credit unions and individuals on behalf of credit unions and one industry credit union trade association used the information in the Revenue-Costs Report to compare the average pre-charge-off collection cost and the average late fee income per account for the Y–14 issuers to the average pre-charge-off collection cost and the average late fee income per account for the credit card industry. Specifically, using the information in the Revenue-Costs Report, these commenters calculated the annual average pre-charge-off collection cost and the annual average late fee income per account for the Y–14 issuers ($0.22 and $13.80 respectively) using monthly averages for the 12-month period ending September 2022 contained in the Revenue-Costs Report and compared these data to the annual average pre-charge-off cost per account and the annual average late fee income for the credit union industry that the commenters collected ($0.33 and $7 respectively).

Throughout the process, the CFPB sought to provide as much information as possible to ensure that commenters could themselves analyze the CFPB methodology, critique data, and provide feedback. Indeed, as described below, the CFPB received approximately 10 comments that specifically analyzed the CFPB's use of the Y–14 data, as well as the CFPB's methodology and analysis. For example, the CFPB received comments that criticized the CFPB's bottom line late fee estimate and offered contrary amounts based on issuers' own analysis using the CFPB's methodology. Other commenters also provided meaningful feedback on the source of the data and data fields. The CFPB has determined this feedback further supports the fact that throughout this rulemaking (including an ANPR that sought data from issuers), the CFPB has sought to share as much information as possible. For comparison, the CFPB's rulemaking, unlike the original 2010 rule, analyzed and presented 10 years of data specifically from card issuers' own reports of collection costs. While these raw data could not be disclosed, the CFPB published data in an aggregate form, and in both the 2023 Proposal and the related Revenue-Costs Report, the CFPB described its methodology and analysis to further the ability of commenters to meaningfully examine, understand, and comment on the data.

Y–14 Data as Representative of Issuers' Collection Costs and Late Fee Income

As noted in the 2023 Proposal, the Y–14 data provided 10 years of information related to total collection costs, which as required by the Board is defined to include ''costs incurred to collect problem credits that include the total collection cost of delinquent, recovery, and bankrupt accounts.''

Several industry trade associations and one law firm representing several card issuers asserted that the CFPB improperly relied on this Y–14 data field in developing the proposal because that ''total collection cost'' line item may be underinclusive of some issuers' collection costs. The law firm representing several card issuers asserted that there are expenses caused by late payments that are not included in the ''total collection cost'' line item relied on by the CFPB in the Y–14 data. For example, this commenter asserted that technology-related expenses associated with delinquent customer servicing and processing platforms, forms of customer communications for consumers in delinquent status, payment-processing expenses associated with programs for late payers, and costs associated with supporting collection activities such as human resources, risk management, and legal may not be reported.

Several industry trade associations asserted that the CFPB's analysis of this line item from the Y–14 data incorrectly excludes attributable expenses and overhead, including systems expenses and risk department expenses related to consumer credit card accounts. These

[94] 88 FR 18906 at 18910–11.

[95] *Id.* at 18916–18.

[96] For example, if an issuer were to report late fee income of $15 million in January for a portfolio and total collection costs for that portfolio of $20 million in March through July, the CFPB estimated $15 million in pre-charge-off collection costs in March through July and calculated an average monthly collection cost of $3 million for purposes of this analysis—resulting in a ratio of late fee income of $15 million to collection cost of $3 million for this portfolio for the month of January. In the 2023 Proposal, the CFPB noted that its preliminary findings based on the weighted average of this ratio across issuers and market segments were robust to shifting, expanding, or shortening the time period of delay in collection costs as they relate to late fee income.

[97] *Id.* at 18920. The CFPB observed in the Y–14 data that, consistent with the safe harbor provisions of the current rule, consumers who paid late again within the six months after a late payment paid higher late fees during those six months than they paid after the initial late fee.

[98] *See supra* note 89.

trade association commenters also stated that the amount excluded the costs of funding delinquent accounts (*i.e.,* costs to fund the balances for longer than expected because of late payments), and these commenters asserted that indirect costs represent real and reasonable expenses associated with late and delinquent accounts. While these commenters did not provide data for the costs associated with all late payments, these commenters did provide data for accounts that were late for 60 days or more and estimated that these 60-day plus delinquent accounts cost issuers $46.30, including $33.00 in direct expenses, $9.00 in attributable expenses, and $4.30 in funding costs.

Another industry trade association asserted that the Y–14 total collection cost line item on which the CFPB relied is not a sufficiently uniform or defined data set for purposes of assessing card issuer collection costs associated with late payments, due to variations in the way that the largest banks report their data. Specifically, this commenter asserted that Y–14 data are reported for stress-testing purposes, and as a result, institutions may not report it in a uniform way because for stress-testing purposes, it is less important whether an institution reports a particular cost in this line item or in another line item for costs, so long as the institution reports that particular cost in some way in the reporting forms overall. According to this commenter, some banks include certain overhead and fixed costs such as real estate and information technology (IT) in the total collection cost line item, while others do not. This commenter further asserted that the share of total collection costs across an institution's divisions may result in variation of how they report the Y–14 collection cost line item. In addition, this commenter asserted that not all reporting banks include commissions paid to third party collections agencies after a loan is charged off, which could mean that the reported amount is underinclusive.

This same industry trade association commenter also asserted that the Y–14 data on late fee income may be overstated. This commenter asserted that the Y–14 item for late fee income is the sum of fees assessed during the month minus fee reversals and refunds applied during the month (which included reversals due to charge off). According to this commenter, however, in accordance with banks' loss mitigation practices, each month some delinquent accounts may be modified through re-aging or converted into fixed payment plans, while others may be closed in a debt settlement, without explicit reversal of late fees but with concessions to the borrower. This commenter asserted that these implicit reversals of fee income are not captured in the Y–14 item for net fees assessed for some issuers, which therefore may overstate those issuers' realized late fee income.

Although several commenters stated that there were potential variations in the Y–14 data, the CFPB has determined that such data are relevant and an important source of information on total collection costs and late fee income. As discussed below, the CFPB notes that the Y–14 data contains 10 years of data that is collected directly from certain Larger Card Issuers by the Board, using its supervisory powers, and these issuers accounted for just under 70 percent of outstanding balances on U.S. consumer credit cards as of year-end 2022. The Y–14 dataset contains data fields that are clearly worded to collect data relevant to this rulemaking, such as late fee income and collection expenses. The CFPB notes that many of the studies cited by industry commenters, and discussed in the section-by-section analysis of § 1026.52(b)(1)(ii) in part VII, used smaller subsets of the Y–14 data or notably similar precursors for their analysis related to late fees and late payments. The CFPB recognizes that there may be some potential variation in the Y–14 data collected based on the variation of inputs from card issuers, but as discussed below, the CFPB has determined that some variations in the costs that issuers' consider to be collection costs are consistent with the cost analysis provisions in § 1026.52(b)(1)(i) and are not likely to impact the analysis related to the $8 late fee safe harbor threshold for Larger Card Issuers set forth in the section-by-section analysis of § 1026.52(b)(2)(ii).

With respect to the argument that some issuers may exclude post-charge off amounts from the total collection costs line item, the plain definition provided by the Board for such data contains no such exclusion. The total collection costs line item instructs issuers to report ''costs incurred to collect problem credits that include the *total* collection cost of delinquent, recovery, and bankrupt accounts'' (emphasis added). Given that the definition is inclusive of total collection costs, the CFPB has determined it appropriately relied upon this line item.

In addition, as explained in the 2023 Proposal and above, this total collection costs line-item requests cost data that are generally consistent with the collection costs that may appropriately be considered under the cost analysis provisions in § 1026.52(b)(1)(i), except with respect to post-charge-off collection costs.

Current comment 52(b)(1)(i)–6.i provides that for purposes of § 1026.52(b)(1)(i), the costs incurred by a card issuer as a result of late payments include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements). The Y–14 total collection costs line item, therefore, provides a source of data that enables the CFPB to examine more than a decade of late fee collection cost information that is relevant to the rule.

The one difference in the data, as discussed in the CFPB's 2023 Proposal, is that the Board's Y–14 late fee cost information includes post-charge off collection costs. As a result, and as described in detail in the proposal, the CFPB used a ratio based on debt collection agreements to appropriately limit the total collection costs to pre-charge off collection costs. With respect to the one comment that some issuers may not include commissions paid to third party collections agencies after a loan is charged off when reporting total collection costs in the Y–14 data, the CFPB recognizes that some issuers may not report post-charge-off costs but would expect that these issuers are outliers since the plain language of the instruction for the Y–14 data asks for total collection costs, which would cover both pre-charge-off and post-charge-off collection costs. In addition, the comments do not suggest that most card issuers exclude post-collection costs from the Y–14 data. As such, the CFPB has determined that it is appropriate to exclude the estimated ratio of post-charge-off collection costs from the Y–14 data for total collection costs when setting the safe harbor amount to be consistent with the collection costs that may be considered for purposes of the cost analysis provisions in § 1026.52(b)(1)(i).

The CFPB also recognizes that there may be some variation in the particular costs that issuers report in the Y–14 total collection costs line item with respect to late payments. For example, several trade association commenters indicated that some banks include certain overhead and fixed costs such as real estate and IT in the total collection cost line item, while others do not. Nonetheless, the CFPB has determined that these variations do not undermine the reliance on this data field to help the CFPB determine total collection costs related to late payments, particularly given that the total collection costs line

item is nearly the same as the definition for collection costs in the rule, and that this data field allows the CFPB to examine 10 years of data that were not available at the time of the original rule.

The CFPB notes that the cost analysis provisions in § 1026.52(b)(1)(i) also would involve a certain amount of variability from issuer to issuer in terms of which costs the issuer determines are related to collecting late payments for purposes of determining late fees amounts. As a general matter, if a card issuer is using the cost analysis provisions § 1026.52(b)(1)(i), the card issuer has the responsibility to determine whether certain costs it incurs relate to the collection of late payments based on all relevant facts and circumstances, within the framework set forth in § 1026.52(b)(1)(i) and related commentary. For example, while not all overhead costs would be costs of collecting late payment, some overhead costs may be incurred as a result of collecting late payments, depending on all the relevant facts and circumstances. A card issuer, however, must be able to demonstrate to the regulator responsible for enforcing compliance with TILA and Regulation Z that its determination is consistent with § 1026.52(b)(1)(i) and related commentary.[99] Thus, the CFPB has determined that that some variations in the costs that issuers' consider to be collection costs are consistent with the cost analysis provisions in § 1026.52(b)(1)(i) and are not likely to impact the analysis related to the $8 late fee safe harbor threshold for Larger Card Issuers set forth in the section-by-section analysis of § 1026.52(b)(2)(ii). The CFPB also notes that many of the studies cited by industry commenters, and discussed in the section-by-section analysis of § 1026.52(b)(1)(ii) in part VII, used smaller subsets of the Y–14 data or notably similar precursors for their analysis related to late fees and late payments. As such, the Y–14 data is more than sufficient to make appropriate estimates of (1) the collection costs that the Y–14 issuers incur in collecting late payments for purposes of guiding the CFPB in determining an appropriate safe harbor threshold amount for late fees charged by Larger Card Issuers; and (2) how collection costs for Larger Card Issuers change over time in relation to changes in the CPI.

With respect to the late fee income reported in the Y–14 data, some industry commenters suggest that the reported late fee income may be overinclusive because it includes late fees where there has not been an explicit reversal of late fees, yet there have been concessions to the borrower as a result of delinquent accounts being modified through re-aging or converted into fixed payment plans or closed in a debt settlement. Although there may be instances where the late fees are waived, subject to a concession, or otherwise removed or reduced, the CFPB has determined that some overinclusion based on fee waivers would not significantly impact the ratio of pre-charge-off collection costs to late fee income discussed in the section-by-section analysis of § 1026.52(b)(1)(ii).

Further, in response to the commenter, the CFPB also notes the fact that certain fees may be waived is generally consistent with the fact that the cost analysis provisions only permit certain uncollected fees to be considered under § 1026.52(b)(1)(i). Specifically, comment 52(b)(1)(i)–5 provides that for purposes of § 1026.52(b)(1)(i), a card issuer may consider fees that it is unable to collect when determining the appropriate fee amount under the cost analysis provisions. Fees that the card issuer is unable to collect include fees imposed on accounts that have been charged off by the card issuer, fees that have been discharged in bankruptcy, and fees that the card issuer is required to waive in order to comply with a legal requirement (such as a requirement imposed by 12 CFR part 1026 or 50 U.S.C. app. 527). However, fees that the card issuer chooses not to impose or chooses not to collect (such as fees the card issuer chooses to waive at the request of the consumer or under a workout or temporary hardship arrangement) are not relevant for purposes of determining the late fee amount under the cost analysis provisions.

The CFPB also notes that it has repeatedly provided opportunities for issuers to provide specific data about their late fees, including in an ANPR, and it has carefully considered all such data that were provided, in addition to seeking out and considering additional data on its own. The Y–14 data provide the best means for the CFPB to examine relevant collections costs and late fee income data in order to determine what costs are incurred and to guide its determination of an appropriate safe harbor threshold for late fees, except with respect to Smaller Card Issuers, as discussed in part VI below. The CFPB is not using the Y–14 collection costs and late fee income data to cap the late fee amounts that issuers can charge. If the $8 safe harbor amount adopted as part of this final rule for those issuers that are subject to this safe harbor amount is not sufficient to cover a particular card issuer's pre-charge-off costs in collecting late payments, the card issuer can charge a higher amount consistent with the cost analysis provisions in § 1026.52(b)(1)(i) and the requirements in § 1026.52(b)(2). In other words, to the extent that an issuer has higher costs and determines the safe harbor amount is too low based on its own cost analysis calculation, that issuer may charge a higher late fee. The Y–14 data, therefore, are not used to create a limit on fees, but rather to ensure that the CFPB's discretionary safe harbor is appropriate and consistent with the statutory requirement that is intended to limit fees to those that are ''reasonable and proportional'' to the late payment.

Thus, for the reasons discussed above, the CFPB has determined that it is appropriate to use the Y–14 data for total collection costs and late fee income in this final rule to estimate (1) the collection costs that the Y–14 issuers incur in collecting late payments and the late fee income they collect for purposes of guiding the CFPB in determining an appropriate safe harbor threshold amount for late fees charged by Larger Card Issuers; and (2) how collection costs for Larger Card Issuers change over time in relation to changes in the CPI.

Y–14 Data Do Not Include Cost Information for Smaller Issuers

As discussed in part VI below, many smaller issuers and industry trade associations, several individual consumers on behalf of credit unions, one Member of Congress, and the Office of Advocacy, an independent office within the SBA, expressed concern that the CFPB's analysis of pre-charge-off costs from the Y–14 issuers does not accurately represent the collection costs for late payments of smaller issuers. These comments are discussed in more detail in part VI.

*D. The Final Rule*

Consistent with the 2023 Proposal, the CFPB considered four primary data sources in developing this final rule: (1) Y–14; (2) Y–14+; (3) credit card debt collection data received from an information order made pursuant to section 1022(c)(4) of the CFPA; and (4)

[99] The CFPB's determinations are consistent with how the Board viewed the costs analysis provisions when it adopted its version of these provisions in § 226.52(b)(1)(i). 75 FR 37526 at 37536. See also *id.* at 37540 where the Board discussed whether all overhead costs should be excluded from the cost analysis provisions and noted that it believes that the determination of whether certain costs are incurred as a result of violations of the account terms or other requirements should be made based on all the relevant facts and circumstances.

the CFPB's Credit Card Agreement Database.

Y–14 Data

For the reasons discussed above, the CFPB has determined that it is appropriate to consider the Y–14 data as one basis for adopting the changes to Regulation Z contained in this final rule. Prior to issuing the 2023 Proposal, the Y–14 data received by the CFPB covered the period from the middle of 2012 through September 2022 and are provided by certain Larger Card Issuers that are covered by the $8 amount. These issuers accounted for just under 70 percent of outstanding balances on U.S. consumer credit cards as of year-end 2022. Consistent with the 2023 Proposal, with respect to credit card data, in this final rule, the CFPB generally uses the complete portfolio data (including late fee income and collection costs) for all the card issuers included in the data collection. The CFPB also generally uses only a random 40 percent subsample of account information (including late fee amounts and total required payments) reported by card issuers included in the data collection. Consistent with the 2023 Proposal, the CFPB for this final rule only considered account- and portfolio-level data for issuers in a given month for consumer general purpose and private label credit cards for which there existed non-zero data on late fee income, collection costs, late fee amounts, and total required payments in the Y–14 data.

For this final rule, the CFPB relied upon the data in the proposal for its analysis. After issuing the 2023 Proposal, the CFPB received 14 more months of data for the Y–14 issuers (account-level data through November 2023, portfolio data up to August 2023). These additional data did not change the CFPB's original findings or rationale as set forth in 2023 Proposal. Because the data are relevant, however, the CFPB has determined that it is appropriate to explain how those new data supplement and support its original data and analysis. The CFPB's use of the Y–14 data (including the supplemental data received after the 2023 Proposal was issued) is discussed in more detail in part VII.

Determination of Post-Charge-Off Collection Costs Using Credit Card Debt Collection Data Received From an Information Order Made Pursuant to Section 1022(c)(4) of the CFPA

In addition, for the reasons discussed above, and consistent with the 2023 Proposal, the CFPB has determined that it is appropriate to subtract an estimate of the post-charge-off collection costs from the total collection costs Y–14 data. Consistent with the 2023 Proposal, for this final rule, the CFPB used commissions paid to third-party debt collectors for charged-off accounts to estimate the percentage of collection costs that may occur after charge-off. The CFPB understands that such commission payments, made to third-party debt collection companies, would be made almost exclusively in connection with accounts that have been charged off, and represent a conservative estimate of post-charge-off collection costs, as there may be other costs associated with collections post-charge-off beyond such commission payments. Consistent with the 2023 Proposal, the CFPB's methodology for estimating post-charge-off commissions considered the amount of charged-off balances and then estimated the commission on the volume of recovered balances by using the recovery and commission rates.[100]

As discussed above, for the 2023 Proposal, the CFPB estimated from debt collection reports the commission expenses that six major card issuers paid in 2019 and 2020 and based on those data, the CFPB estimated that these post-charge-off costs are around 25 percent of total collection costs for these issuers. Based on those data, for the 2023 Proposal, the CFPB estimated that pre-charge-off collection costs were equal to 75 percent of the collection costs included in the Y–14 data for purposes of its analysis related to the proposed changes to the safe harbor thresholds for late fees in § 1026.52(b)(1)(ii).

For this final rule, the CFPB relied upon the data in the proposal for its analysis. In addition, after the Proposal's release—as part of the CFPB's 1022(b)(2) market gathering for purposes of its CARD Market Report—the CFPB also obtained updated data for 2021 and 2022 related to commission expenses that the CFPB collected for its most recent biennial review of the consumer credit card market released in October 2023. These additional data did not change the CFPB's original findings or rationale. Because the data are relevant, however, the CFPB has determined it is appropriate to explain how those new data supplement and support its original data and analysis. Based on commission expenses that six major card issuers paid in 2021 and 2022 to third-party debt collectors for charged-off accounts, the CFPB estimated that these post-charge-off costs are around 20 percent of total collection costs for these issuers; the average ratio was 20 percent in 2021 and 21 percent in 2022. In 2021, the median ratio of estimated post-charge-off commission costs to annual collection costs for the six major issuers surveyed was 19.0 percent; in 2022, it was 23.7 percent. Thus, for 2021 and 2022, the CFPB estimated that pre-charge-off collection costs were equal to 80 percent of the collection costs. These new data indicate pre-charge-off collection costs in 2021 and 2022 that were similar, though slightly higher than in the proposal and, therefore, supplemented and supported the CFPB's data and analysis. Both the estimates of pre-charge-off collection costs for Y–14 issuers used in the 2023 Proposal (based on the 75 percent estimate) and developed using the supplemental information (based on the 80 percent estimate) are discussed in more detail in the section-by-section analysis of § 1026.52(b)(1)(ii) for purposes of its analysis related to the final changes to the safe harbor thresholds for late fees for Larger Card Issuers.

Y–14+ Data

Consistent with the 2023 Proposal, the CFPB also considered Y–14+ data in developing this final rule. As noted above, the Y–14+ data include confidential information from the Board's Y–14 data and a diverse group of specialized issuers. In the 2023 Proposal, these additional data that included specialized issuers were used to calculate the average late fee charged by Y–14+ issuers in 2019 and 2020. As explained in the proposal, in 2019 and 2020, the average late fee charged by issuers in the Y–14+ data was $31. The updated data from the Y–14+ issuers further support this original analysis because, based on the CFPB calculations, they show that the average late fee charged by those issuers was $31 in 2021 and $32 in 2022.

In addition, after issuing the 2023 Proposal, the CFPB obtained confidential total collection costs and late fee income data from specialized issuers that are included in the Y–14+ data. In particular, the CFPB requested from these issuers' data for total

[100] For example, if an issuer had a total of $1 million in newly charged-off balances in a given year, a cumulative recovery rate for that year of five percent, and a post-charge-off commission rate of 20 percent, the CFPB would estimate the post-charge-off commission costs to be $10,000. To calculate the post-charge-off collection costs as a share of total cost of collections, the CFPB then divided the estimated post-charge-off commission costs by the total collection costs the bank reported in the Y–14 data. For issuers who sell debt, the cost of collections calculation uses charge-off balances net of asset sales. The commission rate for each issuer is an average weighted by the share of post-charge-off balances in each tier placement (*e.g.,* primary, secondary, and tertiary placements).

collections costs and late fee revenue using the same instructions for this data request that are used in the Y–14 data collection. These additional data did not change the CFPB's original findings or rationale. Because the data are relevant, however, the CFPB has determined it is appropriate to explain how those new data supplement and support its original data and analysis. These additional data are consistent with the CFPB's determination in this final rule based on the data used for the proposal related to Y–14 issuers that the average Larger Card Issuer would recover pre-charge-off collection costs even if late fees were reduced to one-fifth of their current level.

The average late fees charged by the Y–14+ issuers in 2020 and 2022 and the data on total collections costs and late fee income from the specialized issuers in the Y–14+ are discussed in more detail in the section-by-section analysis of § 1026.52(b)(1)(ii).

CFPB's Credit Card Agreement Database

As noted above, in the 2023 Proposal, the CFPB discussed a 2022 review conducted by the CFPB of credit card agreements submitted to the CFPB's Credit Card Agreement Database in the fourth quarter of 2020 to determine the maximum late fee amount charged across agreements by issuers submitting to that database. Since the 2023 Proposal was issued, the CFPB in 2023 conducted a subsequent review of agreements submitted to that database as of the second quarter of 2023 to determine the maximum late fee amount charged across agreements by issuers submitting to that database.

These additional data did not change the CFPB's original findings or rationale. Because the data are relevant, however, the CFPB has determined it is appropriate to explain how those new data supplement and support its original data and analysis. As discussed in part II.E, the results of the 2023 survey of agreements to determine the maximum late fee amount charged across agreements by issuers submitting to that database are consistent with the results of the 2022 survey of agreements with respect to the maximum late fee amount charged across agreements by issuers submitting to that database. The data from the 2022 review of agreements and the 2023 review of agreements are discussed in more detail in part II.E and the section-by-section analysis of § 1026.52(b)(1)(ii).

## VI. Certain Provisions Not Applicable to Issuers That Together With Their Affiliates Have Less Than One Million Open Credit Card Accounts

### *A. The CFPB's Proposal*

The 2023 Proposal would have applied the revisions in the proposal to all card issuers of credit card accounts under an open-end (not home-secured) consumer credit plan. Specifically, the 2023 Proposal would have applied the following proposed revisions to all issuers of such accounts: (1) the $8 late fee safe harbor threshold and the elimination of the higher late fee safe harbor amount for subsequent violations; (2) the elimination of the annual adjustments for the proposed $8 safe harbor threshold, (3) the restriction on late fee amounts to 25 percent of the required minimum payment; and (4) the clarification in comment 52(b)(1)(i)–2.i that the collection costs to calculate penalty fees under the cost analysis provisions does not include post-charge-off collection costs.

With respect to proposed revisions to the late fee safe harbor amounts, in the 2023 Proposal, the CFPB recognized its estimates of pre-charge-off collection costs incurred by card issuers were based on late fee income and collection cost data from larger issuers that report to the Y–14 collection, as well as data from some additional Y–14+ issuers. The CFPB did not have data equivalent to the Y–14 data for smaller issuers' pre-charge-off collection costs, but the CFPB stated that it had no reason to expect that smaller issuers would have substantially higher pre-charge-off collection costs than larger issuers. Based on a 2022 review of about 2,500 credit card agreements from over 500 card issuers (as discussed in part II.E), the CFPB also noted that smaller issuers appeared to charge lower late fee amounts, and therefore, any reduction in late fee amounts would have a proportionately smaller impact on their late fee income. Specifically, in the 2023 Proposal, the CFPB noted that (1) in 2020, the average late fee charged by larger issuers included in the Y–14+ data was $31;[101] (2) the CFPB collects card agreements from more smaller issuers than issuers for which the CFPB has financial data; and (3) based on the review of agreements, as described above in part II.E, the CFPB established that issuers outside the top 20 by outstanding credit card balances charged smaller late fees in 2020 than issuers within the top 20.[102] In the 2023 Proposal, the CFPB solicited comment on this analysis and the potential impact on smaller issuers of the proposed $8 safe harbor amount, including whether smaller issuers could provide data or evidence related to the cost of collecting late payments. The CFPB also solicited comment on whether the pre-charge-off collection costs for smaller issuers differ from such costs for larger issuers, and if so, how the costs differ.

For the reasons discussed below, including the CFPB's review of the comment letters about collection costs, as well as the CFPB's concerns about impact on consumers and competition, the CFPB is not adopting at this time certain proposed changes for Smaller Card Issuers as defined in new § 1026.52(b)(3). The term "Smaller Card Issuer" is defined to mean a card issuer that together with its affiliates had fewer than one million open credit card accounts as defined in § 1026.58(b)(6) for the entire preceding calendar year.[103] Specifically, the following proposed changes are not being adopted at this time for Smaller Card Issuers (1) the $8 late fee safe harbor threshold and the elimination of the higher late fee safe harbor amount for subsequent violations; and (2) the elimination of the annual adjustments for the safe harbor threshold dollar amounts.

For these Smaller Card Issuers, the safe harbor thresholds in § 1026.52(b)(1)(ii)(A) through (C) will continue to apply to late fees that they charge (as revised in this final rule pursuant to the annual adjustment provisions in § 1026.52(b)(1)(ii)(D)). In addition, the annual adjustment provisions for the safe harbor dollar amount thresholds to reflect changes in the CPI in § 1026.52(b)(1)(ii)(D) will continue to apply to late fees imposed by Smaller Card Issuers. Also, as discussed in the section-by-section analysis of § 1026.52(b)(2)(i), the proposed provisions to restrict late fee amounts to 25 percent of the required minimum payment are not being finalized in this final rule with respect to any card issuers, including Smaller Card Issuers. In contrast, the clarification in comment 52(b)(1)(i)–2.i that the collection costs for calculating penalty fee amounts under the cost analysis provisions in § 1026.52(b)(1)(i) do not include post-charge-off collection costs is being adopted for all card issuers, including Smaller Card Issuers, because this provision is intended to

[101] 2021 Report, at 55. The average late fee charged by issuers included in the Y–14+ data is based on the Y–14 data and data collected from other specialized card issuers in response to an information order pursuant to section 1022(c)(4) of the CFPA.

[102] Late Fee Report, at 14.

[103] *See supra* note 5.

clarify the existing rule and commentary.

*B. Comments Received*

*Impact on credit unions and small card issuers—$8 late fee safe harbor amount.* Many banks and credit unions, industry trade associations, and individual consumers on behalf of credit unions, one Member of Congress, and the Office of Advocacy, an independent office within the SBA, expressed concern that the CFPB's estimated pre-charge-off collection costs for Y–14 issuers that the CFPB used in its analysis to support the proposed $8 do not accurately represent the pre-charge-off collection costs for late payments of smaller issuers.

Many credit unions and individuals on behalf of credit unions and one industry credit union trade association commenter asserted that (1) credit union call report data indicate that credit card late fees incurred per member per year are only $2.65; (2) annual total pre-charge-off collection costs per credit card account offered by credit unions amounted to $0.33, which is 10 cents higher than the pre-charge-off collection costs per credit card account for large issuers that the CFPB notes in the proposal; (3) and the ratio of monthly late fees to total pre-charge-off costs for the credit union industry is 2.8, compared to 5.7 for large issuers in 2022. These commenters also asserted that credit unions (1) have much lower fee-to-cost ratios than big card issuers because credit unions are not-for-profit, community focused, relationship-oriented financial institutions; and (2) face higher pre-charge-off collection costs as compared to big banks that can achieve economies of scale based on their numbers of customers and employees.

Many credit unions and individuals on behalf of credit unions and three industry trade association commenters asserted that Federal credit unions did not have the same options as larger issuers to recover potential lost revenue from late fees, and this could impact their ability to offer credit cards to consumers. Specifically, these commenters explained that Federal Credit Union Act limits Federal credit unions' ability to increase APRs in order to recover revenue losses resulting from a lower late fee safe harbor amount. Two of these industry trade associations indicated that National Credit Union Administration (NCUA) Board's action in January 2023 regarding the Federal Credit Union Act currently imposes a cap of 18.0 percent on the APR.[104] The other industry trade association asserted that the Federal Credit Union Act makes the credit union business model fundamentally different than that of the largest credit card issuers and that these limitations should not be ignored by the CFPB.

Many credit unions and individuals on behalf of credit unions and one industry credit union trade association commenter asserted that credit unions already offer some of the lowest late fees in the market, which benefits consumers. One of the credit union commenters asserted that its net earnings are returned to members in the form of higher annual percentage yields (APYs), lower APRs, and greater servicing.

More than fifty individual commenters on behalf of credit unions asserted that the proposal, if adopted, would have potentially massive unintended consequences, including that some credit unions would leave the market. They asserted that this, in turn, could limit credit availability and increase industry consolidation, and would restrict credit unions' ability to offer solutions to consumers experiencing real financial hardship. A bank and a community bank trade association commenter expressed similar comments and indicated that the 2023 Proposal, if adopted, ultimately would force many community banks to exit the credit card market, leaving consumers, and in particular, rural consumers, fewer options for financial services.

A credit union trade association commenter asserted that the 2023 Proposal, if adopted, would (1) make it more difficult for credit unions to balance safety and soundness considerations with the desire to provide credit access to all consumers, especially those building or rebuilding their credit; and (2) further consolidate credit card issuers, strengthening the largest providers that may compensate lower late payment fees with product add-ons and other practices that are not consumer friendly. This commenter also asserted that (1) use of the cost-analysis provisions are not feasible for credit unions; (2) while the risk of operating outside of the safe harbor provision is common for the largest credit card issuers with large legal departments, not-for-profit credit unions are in a different position; (3) even when the fee is reasonable, it would be a safety and soundness concern to charge more than $8 as the risk of class action lawsuits continues to grow; (4) defending a reasonable fee through litigation is cost prohibitive for a not-for-profit financial institution and could severely impact their operations; and (5) while the safe harbor late fee amount proposed would not be a legal cap it may become an effective cap for credit unions, once again only benefiting the largest credit card issuers.

Many credit unions and individuals on behalf of credit unions urged the CFPB to exempt credit unions from its rulemaking as credit unions do not profit from any fees assessed to their members and the data are clear that credit unions already offer some of the lowest fees available in the market. Some of these commenters indicated that if the CFPB is hesitant to exempt just a particular type of financial institution, in light of the considerable impact that the 2023 Proposal is likely to have on small entities, the CFPB should consider a broader exemption for small entities, currently defined by the SBA's size standard of $850 million in total assets. These commenters asserted this would allow smaller entities to continue to maintain their ability to cover the costs of offering credit card accounts and remain competitive in the marketplace. An industry credit union trade association commenter asserted that one possible way to negate the impact of the 2023 Proposal on credit unions is to scale the rule for larger and smaller issuers.

One Member of Congress noted from the Congressional Research Service that smaller issuers sometimes serve more subprime cardholders who are more likely to make late payments which therefore implies that certain smaller issuers would face higher than average collection costs from late payments. The commenter noted that although the CFPB's proposal asserts that credit cards represent only a small percentage of credit unions' assets and revenues, the loss of late fee revenue would represent a distinct impact on credit unions because as nonprofits, they are unable to raise funds from stockholders. This commenter advised that the CFPB either work to ensure that the cost analysis provisions—an alternative to the safe harbor—would not impose undue burdens on small issuers or that the CFPB consider a separate safe harbor for

[104] The Federal Credit Union Act generally limits Federal credit unions to a 15 percent interest rate ceiling on loans. However, the NCUA Board may establish a temporary, higher rate for up to 18 months after considering certain statutory criteria. National Credit Union Administration Letter (23–FCU–02), *Permissible Loan Interest Rate Ceiling Extended* (Mar. 2023), *https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/permissible-loan-interest-rate-ceiling-extended-2.* A January 2023 NCUA Board action established a temporary 18 percent interest rate ceiling through September 10, 2024. *See id.*

smaller issuers that more accurately reflects their unique costs.

The Office of Advocacy, an independent office within the SBA, criticized the CFPB for insufficiently considering the extent to which the proposed $8 safe harbor amount would cover the collection costs of smaller issuers. This agency asserted that (1) determining a late fee amount under the cost analysis provisions may not be feasible for smaller institutions; (2) small institutions may not have ready access to professional staff or consultants to develop a late fee that qualifies under the cost analysis provisions, and also may lack the information systems to provide the necessary support to determine the late fee amount under those provisions; and (3) for that reason, smaller institutions may rely on safe harbors to be certain that they are complying with the law. As such, this agency noted that an adequate safe harbor amount that reflects the costs that small entities incur in processing late payments is necessary to prevent small institutions from incurring potential legal fees if they were to use the incorrect late fee amount under the cost analysis provisions. The commenter further asserted that consumers, including small businesses, may choose to obtain their credit cards from small depository institutions that offer credit cards for a variety of reasons, including the ability of consumers with low credit scores to obtain a credit card that may otherwise be unavailable. The commenter also expressed concern that if the safe harbor amount does not cover the costs of providing the service, small depository institutions may decide to stop issuing credit cards.

*Impact on credit unions and small card issuers—elimination of annual adjustment.* Several banks and credit unions, and a few credit union trade associations urged the CFPB to consider the impact eliminating the annual adjustments for safe harbor threshold amounts to reflect changes in the CPI may have on credit unions and small card issuers. For example, one credit union and one credit union trade association asserted that credit unions typically have higher than average per account collection costs than larger banks. This credit union trade association further asserted that credit unions currently report that fee revenue does not cover the full cost of delinquency and collections. Another credit union trade association asserted that credit unions have less diversified revenue streams to make up for costs in other areas. A bank commenter indicated that small issuers have a smaller credit base by which economic effects may be mitigated. Yet another credit union trade association asserted that (1) elimination of the annual adjustments would increase credit card losses and that Federal credit unions are subject to interest rate caps; and (2) credit unions would have a limited ability to recoup credit card losses.

*Impact on credit unions and small card issuers—25 percent limitation.* As discussed in more detail in the section-by-section analysis of § 1026.52(b)(2)(i), several banks, credit unions and industry trade associations and one individual commenter urged the CFPB to consider the disproportionate impact the 25 percent limitation may have on credit unions, small card issuers, and private label card issuers.

*Lack of SBREFA panel.* Many banks and credit unions, industry trade associations, and individuals on behalf of credit unions, the Office of Advocacy, an independent office within the SBA, and one law firm representing several card issuers asserted that the 2023 Proposal, if adopted, would have a significant economic impact on a substantial number of small entities (SISNOSE) and thus the CFPB is required to hold a small business review panel (SBREFA panel) under the Regulatory Flexibility Act (RFA) prior to finalizing the rulemaking. These comments are discussed in more detail in part X.

*C. The Final Rule*

For the reasons discussed below, the CFPB is not adopting at this time the following proposed changes for Smaller Card Issuers that are defined in § 1026.52(b)(3) as a card issuer that together with its affiliates had fewer than one million ''open credit card accounts'' as defined in § 1026.58(b)(6) for the entire preceding calendar year: [105] (1) the $8 late fee safe harbor threshold and the elimination of the higher late fee safe harbor amount for subsequent violations; and (2) the elimination of the annual adjustments for the safe harbor threshold. For Smaller Card Issuers, at this time, the safe harbor thresholds set forth in § 1026.52(b)(1)(ii)(A) through (C) will continue to apply to late fees charged by Smaller Card Issuers (as revised in this final rule pursuant to the annual adjustment provisions in § 1026.52(b)(1)(ii)(D)). In addition, the annual adjustment provisions for the safe harbor thresholds to reflect changes in the CPI in § 1026.52(b)(1)(ii)(D) will continue to apply to late fees imposed by Smaller Card Issuers. Also, as discussed in the section-by-section analysis of § 1026.52(b)(2)(i), the proposed provisions to restrict late fee amounts to 25 percent of the required minimum payment are not being finalized in this final rule with respect to any card issuers, including Smaller Card Issuers. In contrast, the clarification in comment 52(b)(1)(i)–2.i that the collection costs for calculating penalty fee amounts under the cost analysis provisions in § 1026.52(b)(1)(i) do not include post-charge-off collection costs is being adopted for all card issuers, including Smaller Card Issuers, because this provision is intended to clarify the existing rule and commentary.

The CFPB also explains below that the limit to qualify as a Smaller Card Issuers is set at one million open credit card accounts. The CFPB has determined that a one million open credit card account limit for this final rule is appropriate because comment letters have highlighted several concerns specific to these Smaller Card Issuers. The CFPB has determined that, based on comment letters from smaller issuers, the 2023 Proposal's late fee $8 safe harbor threshold would have impacted Smaller Card Issuers more significantly than Larger Card Issuers, and that Smaller Card Issuers might not have been as capable of responding by using the cost analysis provisions to cover their pre-charge-off collection costs related to late payments. Taken together, this result could harm consumers and the credit card market as a whole.

The CFPB has determined to act cautiously and ensure that all card issuers, large and small, can at least cover pre-charge-off collection costs with their late fees. If Smaller Card Issuers have higher pre-charge-off collections costs than Larger Card Issuers, Smaller Card Issuers may need to rely on the cost analysis provisions in § 1026.52(b)(1)(i) to cover their pre-charge-off collection costs, resulting in heightened compliance burden for issuers with less assets to cover them. Alternatively, Smaller Card Issuers may choose to forgo those compliance burdens by using the safe harbor threshold amount even if it does not cover their pre-charge-off collection costs rather than use the cost analysis provisions in § 1026.52(b)(1)(i). The CFPB anticipates that under this final rule Larger Card Issuers generally will recoup their applicable pre-charge-off collection costs using late fees, either using the safe harbor (which is more likely to be enough for the average Larger Card Issuer) or using the cost-analysis provisions (the compliance

[105] *See supra* note 5.

burdens of which Larger Card Issuers are more capable of absorbing). Since the CFPB recognizes that Smaller Card Issuers may face additional challenges in recouping pre-charge off collection costs using late fees, it is exercising caution and not finalizing the proposal with regard to Smaller Card Issuers.

Smaller Card Issuer commenters indicated that if the 2023 Proposal were adopted, they might leave the market or cease offering credit cards to certain consumers, particularly those with lower credit scores. It is unclear to the CFPB whether Smaller Card Issuers would actually leave the market entirely because they could not cover their pre-charge-off collection costs through the proposed $8 late fee safe harbor threshold. However, if they did, the CFPB is concerned about the potential detriment of these actions to consumers. Based on comments, the CFPB recognizes that consumers may choose to obtain their credit cards from small depository institutions that offer credit cards for a variety of reasons, including the access to credit cards issued by small credit unions with substantially lower annual percentage rates [106] and the ability of consumers with low credit scores to obtain a credit card that may otherwise be unavailable. Further, the top 10 issuers by average credit card outstandings represented 83 percent of credit card loans in 2022,[107] and a further reduction in competition could be detrimental to all consumers in the credit card market.

Based on its review of comment letters, data from the proposal, and market expertise, the CFPB has determined that the appropriate definition of ''Smaller Card Issuer'' is issuers that together with their affiliates had fewer than one million open credit card accounts for the entire preceding calendar year.[108] By using the one million open credit card account limit to qualify as a Smaller Card Issuers, based on its review of both public and confidential data, the CFPB expects the new $8 safe harbor amounts would apply to approximately the largest 30 to 35 issuers by outstanding balances (out of around 4,000 financial institutions that offer credit cards). This would cover over 95 percent of the of the total outstanding balances in the credit card market as of the end of 2022.

The new safe harbor limit for Larger Card Issuers, which covers issuers that together with their affiliates have one million or more open credit card accounts, is consistent with the Y–14 data used in the CFPB's proposal to determine pre-charge off collection costs, as it would cover the Y–14 issuers for which the CFPB had total collections and late fee revenue data prior to the 2023 Proposal, the specialized issuers in the Y–14+ for which the CFPB obtained total collections and late fee revenue data after issuing the 2023 Proposal, and about a dozen other similarly sized issuers with large credit card portfolios. In choosing this threshold, the CFPB has determined it is appropriate to limit the rule at this time to the larger issuers that either submitted data to or had economies of scale similar to those issuers that provided Y–14 and Y–14+ data because those data support the CFPB's conclusion that the 2010 Final Rule's safe harbor amounts as to those Larger Card Issuers were not reasonable and proportional to the costs of the omission or violation, as required by the statute. For similar reasons and administrability, the CFPB has determined that it is appropriate at this time to only eliminate the annual adjustment provisions in § 1026.52(b)(1)(ii)(D) to the late fees charged by Larger Card Issuers. As discussed in the section-by-section analysis of § 1026.52(b)(1)(ii)(D), the data the CFPB uses to compare collections costs to changes in the CPI relate to certain Larger Card Issuers (namely, the Y–14 issuers).

The CFPB recognizes that the new $8 safe harbor amount will apply to about one dozen issuers for which the CFPB does not have total collections data and late fee revenue data. Based on the CFPB's market expertise and analysis of comment letters, the CFPB has determined that it is appropriate to apply this new safe harbor amount to those issuers because they have substantial credit card portfolios and, therefore, the CFPB expects they will have economies of scale similar to the Y–14+ issuers in collecting late payments and the resources to use the cost analysis provisions in § 1026.52(b)(1)(i) to determine the late fee if the $8 safe harbor threshold amount fails to cover pre-charge off collections costs.

The CFPB has determined that basing the limitation on the number of open credit card accounts, rather than total asset size for the institution or bank holding company (such as the $100 billion threshold for inclusion in the Y–14 data), or on the amount of credit card outstanding balances held by the issuer, better captures card issuers with larger credit card portfolios that may have similar economies of scale to the Y–14 issuers but may not meet a threshold based on total asset size or outstanding balances. The CFPB recognizes that some banks or credit unions with smaller total assets than Y–14 issuers, nonetheless, still may have significant credit card portfolios and would benefit from economies of scales of larger card operations with the resources to reasonably use the cost analysis provisions in § 1026.52(b)(1)(i) to determine the late fee if the $8 safe harbor threshold amount fails to cover pre-charge off collections costs, even without other lines of business that could provide additional assets. The CFPB also notes that its focus on the number of open credit card accounts as opposed to total asset size or the amount of credit card outstanding balances for purposes of this final rule is consistent with the CFPB's focus on an issuers' number of open credit card accounts for purposes of an exception to obligations of issuers to submit credit card agreements to the CFPB under § 1026.58.[109]

## VII. Section-by-Section Analysis

### *Section 1026.7 Periodic Statement*

### *7(b) Rules Affecting Open-End (Not Home-Secured) Plans*

### *7(b)(11) Due Date; Late Payment Costs*

Section 1026.7(b) sets forth the disclosure requirements for periodic statements that apply to open-end (not home-secured) plans. Section 1026.7(b)(11) generally requires that for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement: (1) the due date for a payment and the due date must be the same day of the month for each billing cycle; and (2) the amount of any late payment fee and any increased periodic rate(s) (expressed as APRs) that may be imposed on the account as a result of a late payment.

Currently, comment 7(b)(11)–4 provides that for purposes of disclosing the amount of any late payment fee and any increased APR that may be imposed on the account as a result of a late payment under § 1026.7(b)(11), a card issuer that imposes a range of late payment fees or rates on a credit card account under an open-end (not home-secured) consumer credit plan may state the highest fee or rate along with an indication lower fees or rates could be imposed. Current comment 7(b)(11)–4 also provides an example to illustrate how a card issuer may meet the

[106] For Y–14+ issuers, the average APR was 22.7 percent for general purpose cards at the end of 2022, while Federal credit unions are limited to charging an APR of 18 percent. *See supra* note 104; 2023 Report, at 53.

[107] 2023 Report, at 19.

[108] *See supra* note 5.

[109] *See* § 1026.58(c)(5).

standard set forth above, stating that a phrase indicating the late payment fee could be ''up to $29'' complies with this standard.

The CFPB's Proposal

The 2023 Proposal would have amended comment 7(b)(11)–4 to read ''up to $8'' so that the late fee amount in the example would be consistent with the proposed $8 late fee safe harbor amount set forth in proposed § 1026.52(b)(1)(ii).

Comments Received and the Final Rule

The CFPB received no comments on the proposed revisions to comment 7(b)(11)–4. This final rule adopts comment 7(b)(11)–4 as proposed. Even though Smaller Card Issuers as defined in new § 1026.52(b)(3) are not subject to the new $8 late fee safe harbor threshold amount adopted in § 1026.52(b)(1)(ii) in this final rule, the CFPB has determined it is useful to revise the late fee amount in the example to be $8, consistent with the new $8 late fee safe harbor threshold amount that applies to Larger Card Issuers.

*Section 1026.52 Limitations on Fees*

*52(a) Limitations During First Year After Account Opening*

*52(a)(1) General Rule*

Section 1026.52(a)(1) generally provides that the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. Section 1026.52(a)(2) provides that late payment fees, over-the-limit fees, and returned-payment fees; or other fees that the consumer is not required to pay with respect to the account are excluded from the fee limitation set forth in § 1026.52(a)(1).

Current comment 52(a)(1)–1 provides that the 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account to the card issuer or from another credit account provided by the card issuer). Current comment 52(a)(1)–1 also provides four examples to illustrate the provision set forth above. The two examples in current comment 52(a)(1)–1.i and iv contain late fee amounts of $15.

The CFPB's Proposal

The 2023 Proposal would have amended the two examples in comment 52(a)(1)–1.i and iv to use a late fee amount of $8, so that the late fee amounts in the examples would be consistent with the proposed $8 late fee safe harbor amount set forth in proposed § 1026.52(b)(1)(ii).

Comments Received and the Final Rule

The CFPB received no comments on the proposed revisions to comment 52(a)(1)–1.i and iv. This final rule adopts comment 52(a)(1)–1.i and iv substantially as proposed, with minor changes to make clear that the card issuer in the examples is not a Smaller Card Issuer as defined in § 1026.52(b)(3). Even though Smaller Card Issuers as defined in new § 1026.52(b)(3) are not subject to the new $8 late fee safe harbor threshold adopted in § 1026.52(b)(1)(ii) in this final rule, the CFPB has determined it is useful to revise the late fee amounts in the examples to be $8, consistent with the new $8 late fee safe harbor threshold amount that applies to Larger Card Issuers. This final rule also makes technical changes to cross references in comments 52(a)(1)–2 and 52(a)(1)–4.ii.C to conform to OFR style requirements.

*52(b) Limitations on Penalty Fees*

*52(b)(1) General Rule*

Section 1026.52(b) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the issuer for that type of violation as set forth in the cost analysis provisions in § 1026.52(b)(1)(i) or complies with the safe harbor provisions set forth in § 1026.52(b)(1)(ii). It further provides that a card issuer must not impose such a fee unless the fee is consistent with certain prohibitions set forth in § 1026.52(b)(2), including a prohibition in § 1026.52(b)(2)(i)(A) on imposing a penalty fee that exceeds the dollar amount associated with the violation, which currently prohibits late fees that exceed 100 percent of the required minimum payment.[110] The commentary to § 1026.52(b) explains that penalty fees subject to its provisions include late fees, returned-payment fees, and fees for over-the-limit transactions, among others.[111]

The CFPB's Proposal

In the 2023 Proposal, the CFPB proposed to amend § 1026.52(b)(1)(ii) to lower the safe harbor dollar amount for late fees to $8 (currently set at $30) and to provide that the higher safe harbor dollar amount for subsequent violations of the same type that occur during the same billing cycle or in one of the next six billing cycles (currently set at $41) does not apply to late fees.[112]

In addition, as discussed in more detail below, the CFPB proposed to provide that the current provision in § 1026.52(b)(1)(ii)(D) that provides for annual adjustments for the safe harbor dollar amounts to reflect changes in the CPI would not apply to the safe harbor amount for late fees. Also, as discussed in the section-by-section analysis of § 1026.52(b)(2)(i) below, the CFPB proposed to amend § 1026.52(b)(2)(i)(A) to provide that late fee amounts may not exceed 25 percent of the required minimum payment.

The CFPB also proposed one clarification that would apply to penalty fees generally. Specifically, the CFPB proposed to amend comment 52(b)(1)(i)–2.i to make it explicitly clear that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions.

The CFPB did not propose to amend the lead-in text of § 1026.52(b)(1). However, for consistency with the proposed amendments to other provisions in § 1026.52(b) and for clarity, the CFPB proposed certain amendments to the commentary to § 1026.52(b) introductory text and (b)(1). Specifically, the CFPB proposed to amend comment 52(b)–1.i.A to make it explicitly clear that a late payment fee or late fee is any fee imposed for a late payment and to include a cross-reference to § 1026.60(b)(9) and accompanying commentary for further guidance. The CFPB also proposed to amend comment 52(b)–2, which provides an illustrative example of how to round a penalty fee to the nearest whole dollar in compliance with the rule. The proposed amendments would have reduced the dollar amounts of late fees in the example to reflect amounts that would be permissible under the CFPB's proposals to lower the late fee safe harbor amount to $8 and to cap late

[110] *See* comment 52(b)(2)(i)–1.

[111] *See* comment 52(b)–1.

[112] As discussed in the section-by-section analysis of § 1026.52(b)(1)(ii)(C) below, the CFPB did not propose to lower or otherwise change the safe harbor amount of a late fee that card issuers may impose when a charge card account becomes seriously delinquent.

fees at 25 percent of the required minimum payment. In addition, the CFPB proposed to add new comment 52(b)–5 to clarify that any dollar amount examples in the commentary to § 1026.52(b) relating to the safe harbors in § 1026.52(b)(1) are based on the original historical safe-harbor thresholds of $25 and $35 for penalty fees other than late fees, and on the proposed threshold of $8 for late fees. This proposed clarification would have helped to explain why the dollar amounts for penalty fees other than late fees in the examples in the commentary are different from the ones set forth in the regulatory text in § 1026.52(b)(1)(ii)(A) and (B).

The CFPB also proposed to amend comments 52(b)(1)–1.i.B and C, which illustrate the relationship between the cost analysis provisions in § 1026.52(b)(1)(i) and the safe harbor provisions in § 1026.52(b)(1)(ii). Specifically, the CFPB proposed to amend the illustrative example in comment 52(b)(1)–1.i.B to reflect a late fee amount consistent with the proposal. In addition, because the CFPB proposed to substantially amend the safe harbor provisions for late fees, the CFPB proposed to remove references to late fees from the illustrative examples in comment 52(b)(1)–1.i.C and replace them with references to over-the-limit fees.

In addition, the CFPB proposed to amend comment 52(b)(1)–1.ii, which illustrates the relationship between the penalty fee limitations in § 1026.52(b)(1) and the prohibitions in § 1026.52(b)(2). The proposed amendments would have reduced the dollar amount of a late fee in the example to reflect an amount that would be consistent with the CFPB's proposal to lower the late fee safe harbor amount.

The CFPB solicited comment on all aspects of these proposed amendments to the commentary to § 1026.52(b) introductory text and (b)(1), including comment on what additional amendments may be needed to help ensure clarity and compliance certainty.

Comments Received and the Final Rule

The CFPB received no comments on the proposed clarifications of the commentary to § 1026.52(b) introductory text and (b)(1). For purposes of clarity and compliance certainty, this final rule adopts amendments to the commentary to § 1026.52(b) introductory text and (b)(1) substantially as proposed, with minor changes reflecting the CFPB's decision not to finalize the new $8 late fee safe harbor amount for Smaller Card Issuers as defined in new § 1026.52(b)(3) or to restrict late fee amounts to 25 percent of the required minimum payment. Accordingly, consistent with the proposal, comment 52(b)–1.i.A is revised to clarify that a late payment fee or late fee is any fee imposed for a late payment and to include a cross-reference to § 1026.60(b)(9) and accompanying commentary for further guidance. The CFPB finds this clarification necessary given the slight variations in terms used to describe late fees in Regulation Z. Also, consistent with the proposal, the illustrative example of rounding the amount of a penalty fee to the nearest dollar in comment 52(b)–2 is revised to lower the late fee amounts to be consistent with the new $8 late fee safe harbor amount for Larger Card Issuers. The CFPB finds that this revision and similar revisions to the commentary discussed below are helpful to facilitate compliance with the new $8 late safe harbor amount for card issuers to which it applies.

Consistent with the proposal, this final rule also adds new comment 52(b)–5 to clarify that any dollar amount examples in the commentary to § 1026.52(b) relating to the safe harbors in § 1026.52(b)(1) are based on the original historical safe-harbor thresholds of $25 and $35 for penalty fees other than late fees, and on the threshold of $8 for late fees. In a minor change from the proposal, the comment also clarifies that the $8 threshold is applicable to card issuers other than Smaller Card Issuers as defined in § 1026.52(b)(3) (namely, Larger Card Issuers as that term is used in this document). This new comment helps to explain why the dollar amounts for penalty fees set forth in the examples in the commentary are different from the ones set forth in the regulatory text in § 1026.52(b)(1)(ii)(A) and (B).

In addition, this final rule amends the illustrative example in comment 52(b)(1)–1.i.B to reflect a late fee amount consistent with the $8 late fee safe harbor amount for Larger Card Issuers. In addition, because the CFPB in this final rule is substantially amending the safe harbor provisions for late fees with respect to Larger Card Issuers, this final rule removes references to late fees from the illustrative examples in comment 52(b)(1)–1.i.C and replaces them with references to over-the-limit fees, the amounts of which remain the same in this final rule for all card issuers. In addition, this final rule reduces the amount of the late fee in the illustrative example in comment 52(b)(1)–1.ii for consistency with the lower $8 late fee safe harbor amount for Larger Card Issuers.

*52(b)(1)(i) Fees Based on Costs*

As noted above, under the cost analysis provisions in § 1026.52(b)(1)(i), a card issuer may impose a fee for violating the terms or other requirements of an account consistent with the general rule in § 1026.52(b)(1) if the card issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation. Section 1026.52(b)(1)(i) further provides that a card issuer must reevaluate that determination at least once every 12 months and sets forth certain other requirements and conditions that apply if, as a result of the reevaluation, the card issuer determines that either a lower or higher fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation.

The CFPB's Proposal

The CFPB did not propose to amend the text of § 1026.52(b)(1)(i). However, for purposes of clarity and compliance certainty, the CFPB proposed to amend comment 52(b)(1)(i)–2.i to make it explicitly clear that the costs that card issuers can consider for purposes of determining the amount of a penalty fee under the cost analysis provisions in § 1026.52(b)(1)(i) do not include collection costs that are incurred after an account is charged off in accordance with loan-loss provisions.

Comment 52(b)(1)(i)–1 currently provides that card issuers may include in the costs for determining the amount of a penalty fee ''the costs incurred . . . as a result of [the] violation.'' Comment 52(b)(1)(i)–2 addresses amounts not considered costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of § 1026.52(b)(1)(i). Comment 52(b)(1)(i)–2.i provides that one such amount that cannot be considered as costs incurred for purposes of § 1026.52(b)(1)(i) are losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts).

The CFPB proposed to amend comment 52(b)(1)(i)–2.i to make it explicitly clear that the ''losses and associated costs'' that card issuers may not consider as costs incurred for purposes of § 1026.52(b)(1)(i) include any collection costs that are incurred after an account is charged off in accordance with loan-loss provisions. The CFPB's proposal, therefore, would have made it explicit that for any collection costs that a card issuer incurs

after an account has been charged off are not considered costs incurred for purposes of § 1026.52(b)(1)(i). The CFPB understood that when an account has been charged off, the card issuer has written the account off as a loss; therefore, any cost in collecting amounts owed to a card issuer that are incurred post-charge-off is related to mitigating a loss as opposed to the cost of a violation of the account terms. As the Board noted in its 2010 Final Rule, ''it would be inconsistent with the purpose of the [CARD Act] to permit card issuers to begin recovering losses and associated costs through penalty fees rather than through upfront rates.'' [113]

The CFPB solicited comment on this proposed clarification of the commentary to § 1026.52(b)(1)(i), including comment on whether any additional clarification may be needed. The CFPB also solicited comment on whether there are other specific clarifications that should be made to the provisions of the commentary providing guidance on how to perform a cost analysis under the rule.

Comments Received

Many consumer groups in a joint letter, a credit union, and a credit union trade association expressed support for the CFPB's proposal that comment 52(b)(1)(i)–2.i be amended to clarify that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions. The consumer groups indicated that card issuers consider charged off accounts to be a loss, therefore, such accounts should be considered a loan loss. The consumer groups also indicated that card issuers build loss rates into the price of credit (*e.g.,* interest, including any penalty interest rate). The credit union trade association noted that credit unions' late fees cover pre-charge off collection costs.

As discussed below, many industry commenters, including several trade associations, and a few individual commenters expressed concerns with the CFPB's proposal that comment 52(b)(1)(i)–2.i be amended to clarify that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions.

*Relationship to late fees.* Several credit unions and banks, a few individual commenters, one law firm representing several card issuers, and a few industry trade associations indicated that post-charge-off costs, including collection costs, are related to late fees and should not be distinguished from pre-charge-off costs. A trade association and a credit union indicated that card issuers consider costs across the entire span of a cardholder's account and charge-off recoveries are accounted for in the overall profitability of a portfolio. Another industry trade association commenter specifically indicated that including the risk of some account missing payments, which ultimately lead to losses for card issuers, in pricing a late fee is appropriate under card issuers' risk-based pricing function and is consistent with the CARD Act's statutory factors. A credit union and an industry trade association indicated that costs associated with contacting the cardholder, be it before or after an account is charged off, are substantially related to the late payment and should be factored into the late fee. Several banks and credit unions, a law firm representing several card issuers, and an industry trade association further expanded what costs card issuers' face post-charge-off which collectively included internal and supplier expenses; court costs and vendor commissions associated with the recovery of unpaid balances; technology expenses; and people-related expenses for recoveries including the usage of third-party debt collectors.

An individual commenter, a law firm representing several card issuers, and an industry trade association characterized charge-off as an accounting concept. These commentors collectively noted that charge-off as an accounting entry is mandated by regulators; this accounting concept was unrelated to collection costs and designed to ensure appropriate financial reporting of credit losses; and has no impact on the collectability or obligation of the debt and the only difference between pre-charge-off and post-charge-off delinquencies is the amount of time the debt has been in delinquent status. Similarly, an individual commenter noted that card issuers do not relinquish its contract rights to collect payment when accounts are charged-off.

A law firm representing several card issuers indicated that costs associated with post-charge-off collection activities are actually more like pre-charge-off collection costs, as opposed to losses, because card issuers cannot recoup those costs from consumers.

A law firm representing several card issuers, an industry trade association and a regulatory advocacy group characterized the distinction between pre-and-post-charge-off collection expenses as arbitrary or arbitrary and capricious. The law firm noted that the CFPB's proposal is arbitrary and capricious because it did not explain why a card issuer writing off costs for its own accounting purposes means that the card issuer has not incurred the cost of collecting these payments.

An industry trade association indicated that the provision the CFPB proposed to amend is currently consistent with the statutory factor that the CFPB be guided by the cost incurred by the creditor from an omission or violation. This commenter explained that in the commentary to Regulation Z, the Board excluded the costs of reserves held against potential losses and costs of funding delinquent amounts from what may be recovered through late fees. This commenter expressed concerns that the CFPB did not explain why the Board appropriately excluded these costs from losses when statutorily guided by the cost incurred by the creditor from an omission or violation.

*Credit reporting related costs.* An individual commenter highlighted that while reporting to credit bureaus is not a direct collection expense, credit bureau disputes are directly related to collections. The individual commenter noted that disputes only originate on reports of charge-off or delinquency and, in general, the level of monthly disputes ranges from 0.3 percent to 0.5 percent of all accounts reported in the last seven years. The commenter indicated these dispute reasons are evidence that credit bureau disputes are directly related to collections. Further, the individual commenter noted that working on these disputes is costly and card issuers that lend more frequently to credit challenged consumers will likely incur these costs more frequently.

*Relationship to funds for other products and services.* A few credit unions and an industry trade association indicated that excluding post-charge-off collection costs would reduce the funds available for other products and services. One of the credit unions noted that reduced funds for other products and services may lead to reduced access to and higher costs to other members utilizing these services. Another credit union specifically noted that excluding post-charge-off collection costs would also hinder innovation to offer improved mobile and online platforms.

*Certain pre-charge-off costs.* An industry trade association indicated that there are pre-charge-off costs beyond collections-related expenses including costs associated with pre-charge-off

[113] 75 FR 37526 at 37538.

customer service, commissions, grants, program development, and collections strategies.

*Relationship to CARD Act.* Several industry trade associations, a regulatory advocacy group, and a law firm representing several card issuers indicated that the CFPB's proposal to clarify that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions is not supported by the CARD Act. One of those industry trade associations specified that the CARD Act requires a broader consideration of the costs to issuers, namely the cost incurred by the creditor from such violation or omissions. Several other trade associations went a step further and indicated that this clarification is not supported in statute or regulation, and that the statute or regulation would have expressly limited the costs analysis provision to pre-charge-off collection costs if that was the intent. Similarly, the law firm representing several card issuers noted that the proposal ignores the express language of the CARD Act regarding what constitutes a permissible late fee. This law firm specified that the CFPB conflated two concepts within the CARD Act—the requirement that late fees be reasonable and proportional to the omission or violation to which the fee relates and that the CFPB be guided by the cost incurred by the creditor from an omission or violation. This commenter indicated that by interchanging the two concepts the CFPB creates a new and narrower standard to facilitate the reduction of late fees. This commenter further indicated that the proposal also contradicts this narrower standard because it seeks to impose a standard that makes late fees equal to pre-charge-off collection costs and not late fees that are reasonable and proportional to those costs.

Another industry trade association indicated that, in addition to the proposal running afoul of the CARD Act, it may also come into conflict with the Due Process and Takings Clauses of the Fifth Amendment as it may deprive card issuers their property rights to return on capital invested.

Another industry trade association suggested that the CFPB should reopen the existing regulation to address conflicts with the CARD Act to the extent that card issuers start using the cost analysis provisions. This commenter specifically suggested that the current regulation is in error because it permits the recovery of a fee that represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, but those limitations are not found in the statute.

*Specific data provided.* An individual commenter and a credit union provided the CFPB with relevant data to its proposal that comment 52(b)(1)(i)–2.i be amended to clarify that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions. The individual commenter submitted publicly available financials of two FDIC-insured institutions. The individual indicated that these data show that non-interest income like annual fees and late fees are not enough to cover charge-offs. The credit union estimated that costs associated with servicing a delinquent credit card account (including costs related to salaries, vendor costs, notifications, and alerts) to be $53 per credit card and $105,442 per year, and noted these costs exceed the current safe harbor amounts. This commenter also indicated that credit cards consist of 10 percent of its loan portfolio but 27 percent of the accounts it collects.

*Additional issue.* In addition to the comments on the proposed clarifications of the commentary to § 1026.52(b)(1)(i), consumer groups recommended in a joint letter that the CFPB revise the examples in comment 52(b)(1)(i)–6.ii to lower the late fee amounts closer to the proposed $8 safe harbor amount, because otherwise, the commentary could be read to provide that significantly higher late fees based on the cost analysis provisions would be reasonable and proportional.

The Final Rule

For the reasons stated herein, the CFPB is adopting the amendment to clarify comment 52(b)(1)(i)–2.i as proposed and therefore this amendment applies to both Larger Card Issuers and Smaller Card Issuers. This final rule also makes technical changes to cross references in comments 52(b)(1)(i)–6.ii.B and C, 52(b)(1)(i)–7.ii.B and C, and 52(b)(1)(i)–8.iii.B and C to conform to OFR style requirements.

With respect to the comments that post-charge-off costs are related to the cost of a late fee violation and should not be distinguished from pre-charge-off costs, comment 52(b)(1)(i)–2.i explains that card issuers may not consider ''losses and associated costs'' as costs incurred for purposes of the cost analysis provisions found in § 1026.52(b)(1)(i) and provides examples of what constitutes losses including the cost of holding reserves against potential losses and the cost of funding delinquent accounts. The Board's 2010 Final Rule does not characterize these specific examples as to what constitutes a ''loss'' as exhaustive. Instead, these examples were added into comment 52(b)(1)(i)–2.i to address specific comments received in its rulemaking process.[114] The amendment adopted here, like the examples implemented in the Board's 2010 Final Rule, provides further clarification on what constitutes a ''loss.''

As discussed in the 2023 Proposal, even if ''loss'' is an accounting term, the purpose of excluding post-charge off costs is to exclude those costs that are not directly linked to the violation of the late payment, and indeed, where in the vast majority of instances, the consumer who pays late may never be subject to post-charge off collection or written off as a loss. As the CFPB explained in the proposal, the costs in collecting amounts owed to a card issuer that are incurred post-charge-off are substantially related to mitigating a loss as opposed to the cost of a violation of the account terms.

With respect to comments that the amendment is not supported by the CARD Act, the Board in its 2010 Final Rule received similar comments including that '' 'costs incurred by the creditor from [an] omission or violation' does not expressly exclude losses and that definitions of 'cost' typically include 'loss.' ''[115] The CFPB agrees with the Board when it noted that ''Section 149(c)(1) refers to 'costs incurred by the creditor from [an] omission or violation,' which could be construed to mean that it is appropriate to exclude losses where—as here—card issuers do not incur losses as a result of the overwhelming majority of violations.''[116] If losses and post-charge off costs were included in the late fee amount calculation, the majority of consumers who pay late fees—whose accounts were merely delinquent and not written off—would be compensating issuers for losses that have nothing to do with their own late payment violations, but rather result from the small minority of delinquent accounts that might be written off. The Board explained, and the CFPB agrees, that this is contrary to the statutory requirement that late fees be related to the cost of the omission or violation, here the cost of paying late,

[114] 75 FR 37526 at 37538–9.

[115] *Id.* at 37538.

[116] *Id.*

rather than the cost of writing off certain accounts.

Further, the Board noted in its 2010 Final Rule that, if losses were included, it could result in obscuring the cost of credit, which was contrary to an express purpose of the CARD Act. As explained in the 2010 Final Rule, ''it would be inconsistent with the purpose of the [CARD Act] to permit card issuers to begin recovering losses and associated costs through penalty fees rather than through upfront rates.'' [117] The CARD Act was enacted to ''establish fair and transparent practices relating to the extension of credit.'' [118] The Board recognized in its 2010 Final Rule that ''if card issuers were permitted to begin recovering losses and associated costs through penalty fees rather than upfront rates'' then ''transparency in credit card pricing would be reduced because some consumers overestimate their ability to avoid violations and therefore may discount upfront penalty fee disclosures.'' [119]

The CFPB notes that issuers have other mechanisms to recover costs associated with post-charge off accounts, like the APR. To that extent, the CFPB acknowledges commenters who provided specific data on financial institutions whose non-interest income like annual fees and late fees are not enough to cover charge-offs. However, as noted above, card issuers use periodic rates to account for losses, and in fact, this is the justification for risk-based pricing that is the norm in the market. Permitting issuers to recover losses, like post-charge-off costs, through late fees is not the intent of the CARD Act; issuers have other means to recover such costs such as through upfront rates.

With respect to comments that certain costs associated with pre-charge-off customer service, commissions, grants, program development, collection strategies, and credit bureau disputes should be considered as collection costs, the purpose of this amendment is not to create an exhaustive list of what card issuers can consider as collection costs but to clarify what is already in the text of the commentary. The CFPB here has determined that there is a need to clarify that for card issuers using the cost analysis provisions in § 1026.52(b)(1)(i) to determine penalty fees post-charge-off collection costs are losses and therefore cannot be used in the analysis.

With respect to comments that excluding post-charge-off collection costs would reduce the funds available for other products and services and that it would hinder the ability to improve mobile and online platforms, the CFPB notes that pursuant to the CARD Act, the amount of any penalty fee, including any late payment fee, must be ''reasonable and proportional'' to any omission with respect to, or violation of, the cardholder agreement.[120] Therefore, in considering which costs should be considered for purposes of setting an amount for penalty fees pursuant to the cost analysis provisions, it would be inappropriate to consider penalty fees' subsidization of other products and services that card issuers may offer.

In adopting the amendment to comment 52(b)(1)(i)–2.i, the CFPB also rejects the notion raised by commenters that it is in violation of the Due Process and Takings Clauses of the Fifth Amendment. There is no public taking, and further, the discretionary $8 safe harbor is set at a threshold that will likely enable the average Larger Card Issuer to continue to recover pre-charge-off collection costs, and Larger Card Issuers can elect to use the cost analysis provisions if the safe harbor amount is insufficient for recovery of their pre-charge-off collection costs. In addition, as described above, Larger Card Issuers generally can adjust other fees or interest rates in order to recover any lost revenue.

Additionally, the CFPB declines to revise the examples in comment 52(b)(1)(i)–6 to lower the late fee amounts closer to the $8 safe harbor amount, as recommended. The CFPB views the revision as unnecessary and notes that an illustrative example is neither representative nor determinative of a reasonable and proportional late fee amount determined pursuant to the cost analysis provisions.

*52(b)(1)(ii) Safe Harbors*

The Board's Implementing Rule and Findings

In the 2010 Final Rule implementing TILA section 149, the Board established penalty fee safe harbor amounts of $25 for the first violation and $35 for any additional violations of the same type that occur during the same billing cycle or in one of the next six billing cycles. In doing so, the Board indicated that it ''believes that these amounts are generally consistent with the statutory factors of cost, deterrence, and consumer conduct.'' [121] In interpreting TILA section 149(a), the Board found that ''it appears that Congress intended the words 'reasonable and proportional' . . . to require that there be a reasonable and generally consistent relationship between the dollar amounts of credit card penalty fees and the violations for which those fees are imposed, while providing the Board with substantial discretion in implementing that requirement.'' [122]

*The Board's Consideration of Costs.* The cost-related data on which the Board relied were limited. Although the Board received more than 22,000 comments on its proposed rule, the Board noted that ''relatively few provided any data'' supporting a particular safe harbor amount.[123] While one commenter suggested the average cost of collecting late payments for credit card accounts issued by the largest issuers was $28, the Board noted the comment ''significantly overstates the fee amounts necessary to cover the costs incurred by large issuers as a result of violations,'' as it included costs not incurred as a result of violations, such as the cost of funding balances that would have been charged off regardless of fees.[124]

Given these limitations, instead of relying on data related to the costs of collecting late payments in setting the safe harbor dollar amounts in its Regulation Z, § 226.52(b)(1)(ii)(A) and (B), the Board primarily considered the following information in setting the safe harbor dollar amounts: (1) the dollar amounts of late fees currently charged by credit card issuers; (2) the dollar amounts of late fees charged with respect to deposit accounts and consumer credit accounts other than credit cards; (3) State and local laws regulating late fees; (4) the safe harbor threshold for credit card default charges established by the United Kingdom's Office of Fair Trading (OFT) in 2006; (5) data related to deterrence that provide evidence on whether the experience of incurring a late payment fee makes consumers less likely to pay late for a period of time; and (6) data submitted by a large credit card issuer that indicated that consumers who pay late multiple times over a six-month period generally present a significantly greater credit risk to issuers than consumers who pay late a single time.[125]

In establishing the safe harbor amounts, the Board concluded that ''it is not possible based on the available information to set safe harbor amounts that precisely reflect the costs incurred by a widely diverse group of card

[117] *Id.*

[118] Pub. L. 111–24, 123 Stat. 1734 (2009).

[119] 75 FR 37526 at 37538.

[120] CARD Act section 102, 123 Stat. 1740 (15 U.S.C. 1665d(a)).

[121] 75 FR 37526 at 37527.

[122] *Id.* at 37532.

[123] *Id.* at 37541.

[124] *Id.*

[125] *Id.* at 37540–43.

issuers and that deter the optimal number of consumers from future violations,'' [126] and stated its belief that the safe harbor amounts established in the rule were ''generally sufficient to cover issuers' costs and to deter future violations.'' [127] The Board further concluded that, based on the comments received in response to its proposal, the $25 safe harbor in § 226.52(b)(1)(ii)(A) for the first violation was sufficient to cover the costs incurred by most small issuers as a result of violations.[128]

With respect to late payments, the Board stated its belief that large issuers generally incur fewer collection and other costs on accounts that experience a single late payment and then pay on time for the next six billing cycles than on accounts that experience multiple late payments during that period.[129] The Board further reasoned that even if $25 is not sufficient to offset all of the costs incurred by some large issuers as a result of a single late payment, those issuers will be able to recoup any unrecovered costs through upfront APRs and other pricing strategies.[130]

With respect to the higher safe harbor amount in § 226.52(b)(1)(ii)(B), the Board explained its belief that when an account experiences additional violations that occur during the same billing cycle or in one of the six billing cycles following the initial violation, $35 would generally be sufficient to cover any increase in the costs incurred by the card issuer.[131] As discussed in more detail below, the Board also explained its belief that the $35 safe harbor amount would have a reasonable deterrent effect on additional violations [132] and was consistent with the consumer's conduct in engaging in multiple violations of the same type within six billing cycles.[133]

*The Board's Consideration of Deterrence.* The Board did not expressly discuss how it took deterrence into account in setting the initial $25 penalty fee amount; instead, the Board limited its discussion of that factor to the role it played in the Board's decision to set a higher safe harbor amount for any additional violation of the same type that occurred during the same billing cycle or in one of the next six billing cycles. While the Board noted that it considered deterrence in setting a higher amount generally, the Board did not have specific data justifying the $35 amount. The Board noted that one commenter on the proposal submitted the results of applying two deterrence modeling methods to data gathered from all leading credit card issuers in the U.S. According to the commenter, these models estimated that fees of $28 or less have relatively little deterrent effect on late payments but that higher fees are a statistically significant contributor to sustaining lower levels of delinquent behavior. While the Board questioned the assumptions used to arrive at the results in these modeling methods, the Board did accept that increases in the amount of penalty fees can affect the frequency of violations.[134]

With respect to the higher $35 fee for repeat penalty fees that occur during the same billing cycle or in one of the next six billing cycles, the Board explained its belief that a higher penalty fee amount is consistent with the deterrence factor set forth in TILA section 149(c)(2) insofar as—after a violation has occurred—the amount of the fee increases to deter additional violations of the same type that occur during the same billing cycle or in one of the next six billing cycles.[135] The Board also explained its belief that although upfront disclosure of a penalty fee may be sufficient to deter some consumers from engaging in certain conduct, other consumers may be deterred by the imposition of the fee itself. For these consumers, the Board explained its belief ''that imposition of a higher fee when multiple violations occur will have a significant deterrent effect on future violations.'' [136] The Board specifically pointed to one study of four million credit card statements, which found that a consumer who incurs a late payment fee is 40 percent less likely to incur a late payment fee during the next month compared to a consumer who was not late, although this effect depreciates approximately 10 percent each month.[137] Although this study indicated that the imposition of a penalty fee may cease to have a deterrent effect on future violations after four months, the Board concluded that imposing an increased fee for additional violations of the same type that occur during the same billing cycle or in one of the next six billing cycles is consistent with the intent of the CARD Act. The Board pointed to this study as evidence indicating that, as a general matter, penalty fees may deter future violations of the account terms.[138]

The Board's Consideration of Consumer Conduct. The Board also took consumer conduct into account in adopting the higher $35 fee for repeat penalty fees that occur during the same billing cycle or in one of the next six billing cycles.[139] The Board explained its belief that ''multiple violations during a relatively short period can be associated with increased costs and credit risk and reflect a more serious form of consumer conduct than a single violation.'' [140] The Board noted that, based on data submitted by a large credit card issuer, consumers who pay late multiple times over a six-month period generally present a significantly greater credit risk than consumers who pay late a single time. The Board acknowledged that these data also indicate that consumers who pay late two or more times over longer periods (such as 12 or 24 months) are significantly riskier than consumers who pay late a single time. However, the Board did not explain how adding additional costs to these consumers would make them less of a credit risk or consider whether adding costs to consumers who are unable to pay could increase that risk.

The Board stated its belief that, when evaluating the conduct of consumers who have violated the terms or other requirements of an account, it is consistent with other provisions of the CARD Act to distinguish between those who repeat that conduct during the same billing cycle or in one of the next six billing cycles and those who do not.[141] Specifically, the Board noted that (1) TILA section 171(b)(4) provides that, if the APR that applies to a consumer's existing balance is increased because the account is more than 60 days delinquent, the increase must be terminated if the consumer makes the next six payments on time; and (2) TILA section 148 provides that, when an APR is increased based on the credit risk of the consumer or other factors, the card issuer must review the account at least once every six months to assess whether those factors have changed (including whether the consumer's credit risk has declined).[142] The Board did not, however, explain why this is relevant to the question of penalty fees.

[126] *Id.* at 37544.

[127] *Id.*

[128] *Id.* at 37542.

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *Id.* at 37543.

[134] *Id.* at 37541.

[135] *Id.* at 37533.

[136] *Id.*

[137] Sumit Agarwal *et al., Learning in the Credit Card Market* (April 24, 2013), *https://ssrn.com/abstract=1091623* or *http://dx.doi.org/10.2139/ssrn.1091623.* The Board reviewed a 2008 version of the paper.

[138] 75 FR 37526 at 37533 n.24.

[139] The Board did not refer to consumer conduct in setting the $25 safe harbor amount. *See id.* at 37527.

[140] *Id.*

[141] *Id.* at 37534.

[142] *Id.*

The CFPB's Proposal

The safe harbor provisions in § 1026.52(b)(1)(ii) currently provide that a card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed $30, as set forth in § 1026.52(b)(1)(ii)(A), or $41 for a violation of the same type that occurs during the same billing cycle or one of the next six billing cycles, as set forth in § 1026.52(b)(1)(ii)(B). In addition, § 1026.52(b)(1)(ii)(C) provides a special safe harbor that applies when a charge card account becomes seriously delinquent. Under that provision, when a card issuer has not received the required payment for two or more consecutive billing cycles on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle, the issuer may impose a late payment fee that does not exceed 3 percent of the delinquent balance.

The CFPB proposed to amend § 1026.52(b)(1)(ii) to provide that a card issuer may impose a fee for a late payment on an account under the safe harbor if the dollar amount of the fee does not exceed $8.[143] The CFPB further proposed to amend § 1026.52(b)(1)(ii) to provide that other than a fee for a late payment, a card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed the safe harbor amounts in § 1026.52(b)(1)(ii)(A) or (B), as applicable. As such, the proposed $8 safe harbor amount for late fees would have been a single fee amount; it would have applied regardless of whether the fee is imposed for a first or subsequent violation. However, for all other penalty fees, card issuers could still charge amounts not exceeding the amounts in § 1026.52(b)(1)(ii)(A) and (B).

In addition, under the proposal, charge card issuers could still impose a fee pursuant to § 1026.52(b)(1)(ii)(C) when a charge card account becomes seriously delinquent as defined in the rule. The CFPB stated its recognition that the fee described in § 1026.52(b)(1)(ii)(C) is a form of late fee but, for the reasons discussed below, did not propose to lower the safe harbor amount under this special provision for charge cards. However, as discussed in the section-by-section analysis of § 1026.52(b)(1)(ii)(C) below, the CFPB proposed to revise this provision for clarity to provide that a card issuer may impose a fee not exceeding 3 percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles, notwithstanding the safe harbor late fee amount in proposed § 1026.52(b)(1)(ii). The CFPB emphasized that the proposed $8 safe harbor late fee amount in proposed § 1026.52(b)(1)(ii) would still apply to fees imposed on a charge card account for late payments not meeting the description in § 1026.52(b)(1)(ii)(C).

In addition to the proposed amendments to the late fee safe harbor amounts in § 1026.52(b)(1)(ii), the CFPB proposed amendments to the provision's commentary. The CFPB proposed these amendments for purposes of clarity and consistency with the proposal to lower the late fee safe harbor amount to a fee amount of $8 for the first and subsequent violations.

Existing comment 52(b)(1)(ii)–1 explains the circumstances in which a card issuer may impose a higher penalty fee amount under § 1026.52(b)(1)(ii)(B) for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles. Because § 1026.52(b)(1)(ii)(B) would have no longer applied under the CFPB's proposal to limit the late fee safe harbor amounts to a fee amount of $8 for the first and subsequent violations, the CFPB proposed to amend comment 52(b)(1)(ii)–1.i to explain additionally that a card issuer cannot impose a late fee in excess of $8, as provided in proposed § 1026.52(b)(1)(ii), regardless of whether the card issuer has imposed a late fee within the six previous billing cycles. The CFPB also proposed to amend the illustrative examples in comment 52(b)(1)(ii)–1.iii.A to remove references to late fees and replace them with references to over-the-limit fees, as § 1026.52(b)(1)(ii)(B) would still apply to such fees under the CFPB's proposed amendments to § 1026.52(b)(1)(ii). In addition, the CFPB proposed to amend the illustrative examples in comments 52(b)(1)(ii)–1.iii.B and C to reflect a late fee amount of $8, consistent with the proposed amendments to § 1026.52(b)(1)(ii), and to make minor technical changes for consistency with the proposal.

In considering all statutory factors, the CFPB preliminarily found that an $8 late fee for the first and subsequent late payments better represents a balance of issuer costs, deterrent effects, consumer conduct, as well as the benefits to issuers that result from relying on a safe harbor amount, like reduced administrative costs, and the possible beneficial effects of lower late fees on subprime cardholders' repayment behavior. Further, the CFPB preliminarily found that this amount is supported by analysis of the Y–14 data. Finally, the CFPB noted that it took into consideration changes in the market, like automatic payment, that facilitate billing and payment, thus making it easier for card issuers to collect timely payments. For these reasons, the CFPB preliminarily determined that a late fee amount of $8 for the first and subsequent violations is presumed to be reasonable and proportional to the late payment violation to which the fee relates.

The CFPB sought comment on all aspects of its proposal to lower the late fee safe harbor dollar amounts in § 1026.52(b)(1)(ii) to a fee amount of $8 for the first and subsequent violations and provide that a higher safe harbor dollar amount for penalty fees occurring within the same billing cycle or the next six billing cycles does not apply to late fees. In particular, the CFPB sought comment on whether to set a different amount and, if so, what amount and why, including any relevant data or other information. The CFPB also sought comment on whether to retain the higher safe harbor amount and, if so, what amount and why, including any data and other information related to the deterrent effects of the higher amount or its effects on consumer conduct. Further, the CFPB sought comment on whether and why to set a staggered late fee amount with a cap on the maximum dollar amount, such that card issuers could impose a fee of a small dollar amount every certain number of days until the cap is hit. The CFPB sought comment on what small dollar amount and maximum dollar amount cap may be appropriate and why, including any relevant data or other information. The CFPB also sought comment on whether the safe harbor threshold for late fees should be structured as a percentage of the minimum payment amount, and if so, what percentage should be used. In addition, the CFPB sought comment on what other revisions may be appropriate to ensure that credit card late fees imposed pursuant to the safe harbor provisions are reasonable and proportional. In particular, the CFPB sought comment on whether, as a condition of using the safe harbor for late fees, it may be appropriate to require card issuers to offer automatic payment options (such as for the minimum payment amount), or to provide notification of the payment due

[143] As discussed in more detail below, there was one proposed exception related to charge card accounts as described in current § 1026.52(b)(1)(ii)(C).

date within a certain number of days prior to the due date, or both.

The CFPB also invited comment on all aspects on the proposed amendments to the commentary to § 1026.52(b)(1)(ii), including comment on what additional amendments may be needed to help ensure clarity and compliance certainty.

In addition, the CFPB also sought comment on whether to eliminate the safe harbor provisions for late fees, rather than lowering the safe harbor amounts to a fee amount of $8 for the first and subsequent violations as proposed.

The CFPB further sought comment on whether and why to lower the safe harbor amounts in § 1026.52(b)(1)(ii)(A) and (B) (including whether and why to eliminate the higher safe harbor amount for subsequent violations that occur during the same billing cycle or in one of the next six billing cycles) for all other credit card penalty fees, including fees for returned payments, over-the-limit transactions, and when payment on a check that accesses a credit card account is declined. In particular, the CFPB sought comment on what the safe harbor amounts for such fees should be, including any relevant data and information on the costs of such violations to card issuers. In the alternative, the CFPB sought comment on whether to finalize the proposed safe harbor for late fees and eliminate the safe harbors for other penalty fees.

Comments Received

*General.* The CFPB received approximately 100 comment letters from industry participants. These industry commenters generally opposed the proposal to lower the late fee safe harbor amount to $8 amount for the first and subsequent late payments, including the proposal to eliminate the higher safe harbor amount, irrespective of the specific dollar amount. A substantial number of consumers, including approximately 53,600 who submitted comments as part of letter-writing campaign, expressed support for the proposed $8 safe harbor amount. A large but significantly lower number of consumers, including approximately 170 who identified themselves as ''bankers'' and submitted comments as part of a letter-writing campaign, opposed the proposed $8 safe harbor amount. Consumer groups generally supported the proposed amount.

The comments on the proposed $8 safe harbor amount are discussed in further detail below, first in relation to the statutory factors of costs, deterrence, and consumer conduct, then in relation to other issues and concerns addressed by commenters.

*Costs.* As noted, most industry commenters opposed the proposed $8 safe harbor amount partly on the grounds that it would not cover card issuer's costs associated with late payments. These commenters generally took issue with what they viewed as flaws in the CFPB's analysis of issuers' costs, as discussed in the proposal.

As discussed in more detail in part V, larger issuers and their trade associations criticized the CFPB's analysis of the Y–14 data to determine the proposed $8 amount. These commenters argued, among other things, that the Y–14 data are underinclusive of the actual costs that card issuers incur as a result of late payments. For the reasons discussed in part V, the CFPB has determined that it is appropriate to consider and rely upon the Y–14 data for the Larger Card Issuers that are covered by the changes to Regulation Z contained in this final rule.

As noted in part V, one trade association commenter provided specific data related to costs of late payments. While the commenter did not provide data for the costs associated with all late payments, the commenter did provide data for accounts that were late for 60 days or more and estimated that these 60-day plus delinquent accounts cost issuers $46.30, including $33.00 in direct expenses, $9.00 in attributable expenses, and $4.30 in funding costs.

As discussed in more detail in part VI, many smaller issuers, industry trade associations, and individual consumers on behalf of credit unions, one Member of Congress, and the Office of Advocacy, an independent office within the SBA, expressed concern that the CFPB's estimated pre-charge-off collection costs for Y–14 issuers that the CFPB used in its analysis to support the proposed $8 do not accurately represent the pre-charge-off collection costs for late payments of smaller issuers. These comments are discussed in more detail in part VI.

In support of the proposal, several consumer groups noted that it is important to recognize that the $8 amount is a discretionary safe harbor, and if $8 does not adequately compensate an issuer for its costs in dealing with late payments, the issuer can charge more if they can justify the amount under the cost analysis provisions in § 1026.52(b)(1)(i). These commenters also recommended that card issuers be required to publicly disclose the data to support any late fee amounts they impose pursuant to the cost analysis provisions that are greater than the safe harbor.

For the reasons discussed below, the CFPB is adopting the proposed $8 safe harbor for late fee amounts for Larger Card Issuers. Nonetheless, the CFPB is not requiring in this final rule that card issuers that use the cost analysis provisions in § 1026.52(b)(1)(i) to set the late fee amount to publicly disclose the data to support any late fee amounts they impose pursuant to the cost analysis provisions that are greater than the safe harbor. The CFPB is concerned that card issuers may consider some of the supporting data that would be required to be released publicly under such a requirement to be confidential. The CFPB also notes that the CARD Act does not specifically require card issuers to disclose to the public their underlying costs data. A card issuer that chooses to base its penalty fees on its own determination (rather than on the safe harbors) must be able to demonstrate to the regulator responsible for enforcing compliance with TILA and Regulation Z that its determination is consistent with § 1026.52(b)(1)(i).

*Deterrence.* Many industry commenters expressed concern that the proposed $8 safe harbor amount was too low to deter late payments and would thus result in an increase in late payments and cause harm to consumers and the credit card market. Several individual consumer commenters expressed similar concerns. In a representative comment, a credit union averred that late fees, when set fairly and appropriately, encourage consumers to pay on time, which protects their credit score and helps them develop positive financial habits. If late fees are too low, the commenter stated, consumers are more likely to pay the fee without considering the long-term consequence of lowering their credit scores, higher borrowing costs, reduced ability to access credit, and ultimately less disposable income. A substantial number of other industry commenters also cited lower credit scores and reduced access to credit as likely outcomes of the proposed safe harbor amount. Some of these commenters noted that if the safe harbor is reduced to only $8, consumers may end up paying more late fees over time than they otherwise would. A credit union posited that because $8 is roughly comparable to the price of common items such as a cup of coffee or movie ticket, more consumers may view the amount as a reasonable price to pay in exchange for postponing making their credit card payments. Similarly, an academic commenter asserted that the ability to pay late can be viewed as a typical product, the quantity demanded

of which increases when its price decreases. If the price of paying late becomes cheaper, this commenter reasoned, more borrowers will opt to pay late. One bank criticized the CFPB for positing that even if the proposed amount leads to more late payments, some borrowers may benefit in terms of greater ability to pay revolving debt. Potential consumer benefit, the commenter asserted, is irrelevant to the CFPB's statutorily mandated consideration of whether a penalty fee has a deterrent effect.

Several industry commenters asserted that the CFPB lacked sufficient evidence that the reduced safe harbor amount would have a deterrent effect. Some industry commenters criticized what they viewed as flaws in the CFPB's deterrence analysis, including misreading or failing to give proper weight to existing literature on the deterrence effect of late fees. In particular, one credit union trade association noted that the CFPB failed to present an analysis of the tradeoff between late fees and late payments. This commenter asserted that a consumer is deterred from being late on a payment if the late fee is greater than the net benefit of missing the payment. This commenter also asserted that the CFPB failed to consider in its analysis a study that the Board relied on in its 2010 Final Rule—Agarwal *et al.*—that found that fees cause a reduction in the probability of a late fee the following month. In addition, this commenter cities another study—Grodzicki (2023)—that equally concludes that late payment would be more likely when the fees are less costly. This commenter stated that the CFPB's rationale for rejecting this conclusion—the time period the study covers—is unsatisfactory. Another industry trade association noted that the CFPB's analysis did not adequately weigh the increase in servicing costs as a result of the decreased deterrent effect of late fees.

Furthermore, one bank commenter suggested that the CFPB use reasonable proxies to determine the deterrence effect on the amount of a late fee. Such proxies suggested by the commenter include return check penalties as determined by States, late fees charged on utility bills and student loan late fees. The commenter asserted that these proxies could have been used by the CFPB to determine whether the proposed late fee penalty is reasonable, proportional and would have a deterrent effect.

In addition, one academic commenter and one law firm representing several card issuers asserted that empirical evidence indicates that paying a late fee encourages borrowers to opt for automatic payments, helping borrowers avoid the higher cost of borrowing by avoiding late fees and decreasing the probability of ultimately defaulting. These commenters further noted that John Gathergood *et al.,* using U.K. data, found that late payment fees are front-loaded, peaking in the first month of card life and declining sharply over the following months. Specifically, one of these commenters noted the study's finding that the share of credit card accounts incurring late payment fees in the study's sample fells from 6 percent in the first month to 2.5 percent by the 23rd month, mainly because the payment of an initial late fee prompted consumers to set up automatic payments.

One trade association commenter, as another example, criticized the CFPB for suggesting—by comparing the effective APR a consumer might incur as a result of late payments in a series of hypothetical situations—that the deterrent effect of an $8 late fee would be similar to the deterrent effect of the current rate structure. The commenter asserted that high APRs may not adequately deter borrowers for ultra-short-term borrowing periods—such as the 10–30 days in the CFPB's hypotheticals—where the absolute dollar amounts are relatively small. This commenter also stated that the CFPB offered no analysis as to whether those APRs would have the presumed deterrent effect and noted that effective APRs may not have the meaningful deterrent effect of late fees because they are a more complicated, nebulous concept for consumers to understand.

Some industry commenters asserted that the proposed $8 safe harbor amount, due to its lack of a deterrence effect, would make it difficult for card issuers to identify riskier consumers and manage for that risk. In this vein, one industry trade association noted that when a consumer pays late, the issuer can incur unanticipated additional interest expense on that balance. This commenter further noted that during the underwriting process for a new consumer, an issuer cannot determine with complete certainty whether the consumer may become chronically delinquent, occasionally delinquent, or always current, and that the consumer's subsequent behavior in using the card determines if they are riskier than average for the cohort. According to this commenter, the late fee is an automatic ''stabilizer'' that adjusts pricing for riskier consumers based on their actual post-account opening behavior (*i.e.,* a form of implicit risk-based pricing). This commenter expressed concern that without this stabilizer, a credit card company may need to raise the price of credit to all consumers to cover the additional, unacceptable risk.

A few industry commenters submitted their own data on the purported deterrence effect of late payments in response to the CFPB's request. Those comments along with the data provided are discussed in the deterrence analysis below.

Several industry commenters noted that the CFPB failed to use studies cited by the Board in their 2010 Final Rule. One credit union trade association commenter asserted that the CFPB cherry picked studies that supported its position, rejected older data as no longer relevant when they did not support their position, but accepted even older data when the conclusion was favorable to the CFPB's position. Furthermore, this commenter asserted that the CFPB failed to appropriately consider the role of risk in finance but rather relied on theories of behavioral biases that cannot be applied generally. This commenter also asserted that the CFPB's analysis was not conducted in a transparent and consistent manner.

*Consumer conduct.* Several industry commenters expressed concern that the proposed $8 safe harbor amount would have a negative impact on consumer conduct and result in harm to consumers and the credit card market. Several of these commenters stated that the proposal to eliminate the higher safe harbor amount for subsequent violations would exacerbate these harms, including shifting the costs of late payments from late payers to timely payers. One industry trade association, for example, asserted that the CFPB disregarded differences in consumer behavior that would warrant a higher safe harbor amount and a higher fee for subsequent missed payments—an approach, the commenter reasoned, that would avoid shifting costs to consumers who pay on time. In addition, several of these commenters asserted that the CFPB did not adequately consider the statutory factor of consumer conduct or criticized the CFPB for basing the proposed amount on insufficient evidence of its potential effects on consumer conduct.

In criticizing the CFPB's consideration of consumer conduct in the context of proposing to eliminate the higher safe harbor amount, a bank commenter sought to distinguish the factor from the deterrence effect of late fees. Whereas deterrence requires consideration of what size and type of late fee would deter late payment, the commenter averred, consumer conduct

focuses on the increased risk presented to the issuer by a cardholder who has already paid late at least once. The commenter asserted that because such a cardholder is demonstrably more apt than others to default, a reasonable consideration of the consumer conduct factor would counsel the issuer to appropriately price the cardholder's augmented risk. In addition, this commenter stated that the CFPB's analysis downplays the linkage between incurring a late fee and the increased risk of default by attempting to explain away certain delinquent account behavior as a product of consumer cash flow issues. This commenter further noted that the credit risk posed by consumers who incur a late fee is particularly high for private label-focused issuers due to the higher likelihood of late payment and default occurrences for such portfolios.

In a similar vein, a law firm representing several card issuers asserted that the CFPB's analysis of when consumers make late payments is inapposite to the specific issue of cardholder conduct. The commenter noted that if the problem is with consumer cash flow timing, as the CFPB hypothesizes, most major credit card issuers have mechanisms in place to allow customers to change the due date on their account in order to account for their own paycheck or earning schedules. This commenter further stated that the CFPB's analysis does nothing to address the reality that multiple late payments demonstrate an increased credit risk and reflect a more serious violation of the account terms—even if those payments occur before the account would be reported as late under credit reporting guidelines. In addition, this commenter noted that the existence of an adequate late fee creates an incentive for customers who may experience financial difficulties to call in and discuss the availability of hardship and other programs with their lender.

A bank commenter also noted that late fees prompt numerous consumers to call to discuss the delinquency after billing, giving card issuers the ability to assist consumers. This commenter expressed concern that if the fee is only $8, consumers may not bother to call, and the card issuer will lose an opportunity to provide financial assistance. According to data submitted by the commenter, its contact rate for outbound collection calls is 2 percent to 4 percent, whereas the inbound call rate (the percentage of delinquent accounts who call the bank) for collections is 13 percent to 14 percent. Of the commenter's inbound calls, 27 percent to 28 percent received one or more late fee credits. This commenter further noted virtually all such calls had a payment or other payment arrangements made.

A financial regulatory advocacy group commented specifically on consumer conduct. In supporting the proposed $8 safe harbor amount, the commenter considered the effects of late fees on consumer conduct in conjunction with their effects on consumers' financial health. The commenter noted that because payments are applied first to cover finance charges and fees, when late fees are tacked on, less of a consumer's payment goes towards reducing the principal balance, thereby adding to the duration and cost of revolving. Viewed from this lens, this commenter asserted, it would seem almost self-evident that reducing the size of late fees would have a positive impact on the financial health of those bearing those fees.

*Other factors cited by commenters.* In addition to addressing the statutory factors, numerous industry commenters expressed concern that the loss of late fee revenue that would result from the proposed $8 late fee safe harbor amount would adversely affect card issuers and consumers. Credit union commenters in particular expressed this concern. As a representative example, around 20 credit unions and 20 individuals noted, as part of a letter-writing campaign, that when credit unions do charge late fees, the revenue from the fees covers pre-charge off collection costs but also subsidizes products and services that members demand and need, including programs targeted toward consumers with thin credit files. Many credit union and individual commenters cautioned that the loss in late fee revenue would require credit unions and other card issuers to tighten credit standards and consider harmful tradeoffs involving the very consumers who are most at risk of paying late fees. Specifically, these commenters asserted that credit unions will need to recoup lost late fee revenue through higher interest rates (while still complying with the Federal Credit Union Act's interest rate cap, a consideration banks do not face) [144] or broad-based fees, such as maintenance fees, on other credit card services.

In the same vein, many credit union commenters asserted that additional fees and higher rates would have a negative impact on all credit union members and potential members, including those unbanked and underbanked communities where credit unions are seeking to expand access to financial services. Some noted that credit unions may need to balance reduced fee revenue by cutting spending on branch expansion and staff to serve their membership. Other commenters noted that these losses, and thus the adverse consequences, would be magnified in the current inflationary environment. A State credit union trade association stated that banks and other financial institutions that generally are not subject to statutory rate caps will simply keep raising their interest rates to make up for lost fee revenue and thus the rule, if finalized, would have little to no effect on protecting consumers from high-cost rate or fee practices.

In discussing the potential consequences resulting from lost late fee revenue, some industry commenters expressed concerns related to risk management and safety and soundness. For example, one bank commenter asserted that the CFPB's proposed late fee safe harbor amount fails to take into account that card issuers set fees, including late fees, on a risk-adjusted basis, whereby fees applied to cardholders who do not pay in a timely manner are set so as to compensate for additional financing cost, cost of collection, funding cost, and—most of all—higher rates of loss on amounts borrowed so that, together, interest plus fees minus losses and costs make for a viable business. This commenter further asserted that setting fees on a risk-adjusted basis is essential to running a safe and sound credit card business, and to providing credit to customers who would not otherwise get it. A State bank trade association commenter noted that when its member banks establish terms and conditions for their credit plans, the late fee safe harbor weighs heavily in assuring that the bank's cost of credit match the higher costs of delinquency to targeted revenue and asking those who create such higher costs to bear those costs directly is necessary to maintain safety and soundness in the sub-prime space. In addition, a credit union commenter noted that the disruption of cash flows resulting from a higher frequency of late payments under the proposal could necessitate the acquisition of replacement dollars to meet the credit union's cash obligations, such as by accessing its lines of credit or issuing a certificate of deposit (CD) to members. This commenter further noted that such efforts to ensure that its cash flow obligations are met would impose additional administrative and finance costs on the institution.

The Final Rule

For card issuers that are not Smaller Card Issuers (namely, Larger Card

[144] *See supra* note 104.

Issuers as that term is used in this document), this final rule revises § 1026.52(b)(1)(ii) to (1) repeal the current safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B), (2) adopt in § 1026.52(b)(1)(ii) a late fee safe harbor dollar amount of $8, and eliminate for late fees a higher safe harbor dollar amount for subsequent violations of the same type that occur during the same billing cycle or in one of the next six billing cycles [145] and (3) provide that the current provision in § 1026.52(b)(1)(ii)(D) that provides for annual adjustments for the safe harbor dollar amounts to reflect changes in the CPI will not apply to the $8 safe harbor amount for those late fees, as discussed in more detail in the section-by-section analysis of § 1026.52(b)(1)(ii)(D).

For the reasons discussed in part VI, the CFPB is not adopting at this time the changes discussed above for Smaller Card Issuers that are defined in § 1026.52(b)(3) to mean a card issuer that together with its affiliates had fewer than one million ''open credit card accounts'' as defined in § 1026.58(b)(6) for the entire preceding calendar year.[146] For Smaller Card Issuers, the safe harbor thresholds set forth in § 1026.52(b)(1)(ii)(A) through (C) still will apply to late fees charged by Smaller Card Issuers.[147] In addition, the annual adjustments for the safe harbor thresholds to reflect changes in the CPI in § 1026.52(b)(1)(ii)(D) still will continue to apply to late fees imposed by Smaller Card Issuers.

Pursuant to the annual adjustments for safe harbor dollar amounts to reflect changes in the CPI in § 1026.52(b)(1)(ii)(D), this final rule revises the safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) to $32, except that it sets forth a safe harbor of $43 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles. As discussed in more detail in the section-by-section analysis of § 1026.52(b)(1)(ii)(A) and (B), these revised safe harbor threshold amounts of $32 and $43 apply to penalty fees other than late fees for all card issuers (*i.e.,* Smaller Card Issuers and Larger Card Issuers) as well as late fees imposed by Smaller Card Issuers, as noted above.

Repeal of Current Late Fee Safe Harbor Threshold Amounts and Adoption of $8 Late Fee Safe Harbor Threshold for Larger Card Issuers

In adopting this final rule, the CFPB has determined that the existing safe harbors in § 1026.52(b)(1)(ii), as applicable to late fees charged by Larger Card Issuers, are too high to be ''reasonable and proportional'' to a consumer's late payment. The CFPB therefore is repealing the existing safe harbors in § 1026.52(b)(1)(ii)(A) and (B) with respect to late fees charged by Larger Card Issuers.

In the 2023 Proposal, the CFPB proposed to replace the existing safe harbors of $30 for the first violation and $41 for subsequent violations, but it also requested comment on whether to eliminate the safe harbor provisions.[148] The CFPB proposed a replacement safe harbor of $8 based on a conservative estimate that $8 would, on average, be at or higher than a late fee amount calculated by the average card issuer using the cost analysis provisions in existing § 1026.52(b)(1)(i), which the CFPB did not propose to change.

This final rule adopts the $8 safe harbor threshold for late fees charged by Larger Card Issuers, in part, based on the Y–14 data collected from certain Larger Card Issuers from 2013 up to September 2022 which show that late fee revenue is at least five times higher than relevant costs since August 2021. The $8 late fee safe harbor threshold for Larger Card Issuers is conservative because, instead of dividing the average late fee per incident for Y–14+ issuers ($31 in 2020) by five or dividing the current lower regulatory threshold ($30) by five, it divides the highest safe harbor late fee of $41 by five to reach the $8 safe harbor threshold amount.[149]

In other words, in adopting this final rule, the CFPB has determined that the existing safe harbors of $30 and $41 are too high with respect to late fees charged by Larger Card Issuers and should be replaced with respect to late fees charged by those issuers. As discussed above, the Board set the original safe harbors based on very limited cost-related data as compared to what the CFPB has available to it now.[150] Because the Board had no data directly related to issuers' costs of collecting late payments, it set the safe harbor dollar amounts based on indirect considerations of costs, including the following: (1) dollar amount of late fees charged on credit cards at the time; (2) dollar amount of late fees on other products, (3) State and local laws regulating late fees; (4) safe harbor thresholds used in the United Kingdom; (5) data relating to deterrence; and (6) data submitted by one card issuer.[151] The Board admitted that ''it is not possible based on the available information to set safe harbor amounts that precisely reflect the costs incurred by a widely diverse group of card issuers and that deter the optimal number of consumers from future violations.'' [152]

The CFPB now has an extensive dataset, which relates to collection costs of certain Larger Card Issuers, that allows it to judge whether the original safe harbors are adequately tailored to reflect the average outcome of the cost analysis provisions in § 1026.52(b)(1)(i) with respect to late fees charged by Larger Card Issuers. As discussed in part V and below, the CFPB has data from the 16 largest card issuers, in the Y–14 dataset, showing that the total late fee income from the first three quarters in 2022 was $4.46 billion, while estimated pre-charge off collection costs amounted to only $896 million.[153] As discussed below, this ratio has been five or above from August 2021 through March 2022 (based on data used in the 2023 Proposal) and has increased considerably since the preparation of the 2023 Proposal.

In addition, as noted in part II.E, the CFPB has observed in its 2022 survey of credit card agreements that it appears there are no Larger Card Issuers who set their late fees based on the cost analysis provisions in § 1026.52(b)(1)(i), suggesting that the safe harbor is set so high that there is no issuer, even outlier

[145] This final rule does not amend the safe harbor set forth in § 1026.52(b)(1)(ii)(C) applicable to charge card accounts.

[146] *See supra* note 5. Also, as discussed in the section-by-section analysis of § 1026.52(b)(2)(i), the proposed provisions to restrict late fee amounts to 25 percent of the required minimum payment are not being finalized at this time with respect to any card issuers, including Smaller Card Issuers. Nonetheless, the clarification in comment 52(b)(1)(i)–2.i that the collection costs for calculating the late fee amount under the cost analysis provisions in § 1026.52(b)(1)(i) do not include post-charge-off collection costs is being adopted for all card issuers, including Smaller Card Issuers.

[147] This final rule revises the safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) as discussed in more detail below in the section-by-section of § 1026.52(b)(1)(ii)(A) and (B).

[148] *See* 88 FR 18906 at 18924.

[149] Were the CFPB to take the less conservative approach, it would divide the average late fee per incident for Y–14+ issuers ($31 in 2020) by five, to reach a final rule of roughly $6, which is likely closer to the market average cost-per-late-payment incident for Larger Card Issuers. This conclusion is also consistent with subsequent data collected by the CFPB after issuance of the 2023 Proposal, which showed that the average late fee per incident for Y–14+ issuers in 2022 was $32.

[150] 75 FR 37526 at 37541.

[151] *Id.* at 37540–43.

[152] *Id.* at 37542.

[153] Based on data collected after the 2023 Proposal was issued, the CFPB has data from the 20 card issuers in the Y–14+, showing that the total late fee income between October 2021 and September 2022 was $11 billion, while estimated pre-charge off collection costs amounted to only $2.16 billion.

issuers with higher than average costs for Larger Card Issuers, who would generate more revenue through that method.[154] This suggests that the discretionary safe harbor, which protects issuers from needing to show that fees are reasonable and proportional, is set at a level that is too high for Larger Card Issuers and may, therefore, allow them to charge late fees that are not consistent with the statutory protections.

Furthermore, the safe harbor thresholds have increased by $5–6 due to annual adjustments to reflect changes in the CPI made pursuant to § 1026.52(b)(1)(ii)(D) since the thresholds were first adopted in 2010, and thus, for this reason, the threshold amounts warranted independent reconsideration. As the CFPB notes in the section-by-section analysis of § 1026.52(b)(1)(ii)(D), collection costs observed in Y–14 data from certain Larger Card Issuers do not appear to be rising lockstep with inflation particularly when considering the month-to-month changes in inflation versus those costs.

Additionally, the Board's conclusion with regard to the original safe harbor threshold amounts did not appear to consider whether it could have been too high, only that it was ''generally sufficient to cover issuer's costs and to deter future violations.'' [155] The Board did not appear to consider whether the safe harbor was so high as to do *more* than just cover costs and deter future violations. In other words, the Board failed to consider whether the discretionary safe harbor might be set at an amount that permitted issuers to recover late fees that were too high, and thus, were not reasonable and proportional to the violation and, therefore, were inconsistent with the statute. The Board's failure to consider both whether the safe harbor was high enough *and* whether it was too high is an independent reason to repeal the existing late fee safe harbor threshold amount in § 1026.52(b)(1)(ii)(A) and (B) with respect to late fees charged by Larger Card Issuers.

And lastly, much of the evidence used originally by the Board was not relevant to the question of whether the safe harbor was set at an appropriate level. For example, evidence of State, local, or international government approaches reflects the policy decisions of those legislative bodies. Such evidence is not determinative of whether the safe harbor appropriately meets the applicable standards in the CARD Act. In addition, setting the thresholds based on then existing late fee amounts, set by issuers before the CARD Act passed, assumes that Congress merely intended to curtail further increases, rather than lower late fees from the then-existing baseline. The CFPB sees no evidence in the legislative history to justify this assumption, and rather, concludes that the safe harbor threshold amount should be set based on the cost-analysis provisions.[156] The safe harbor is a discretionary option, and therefore, it should not be so high that it allows fees that are contrary to the statutory standard. Without the safe harbor, card issuers can rely on the cost analysis provisions to ensure they are charging individually calculated fees that comply with the statute.

In addition, the CFPB received around 56,800 comments letters from consumers that generally supported the proposed $8 late fee safe harbor threshold. Many consumers indicated that they thought the current late fees charged by issuers are too high, and some consumers indicated they had limited income and that even a small late fee can impact consumers on a tight budget.

Thus, for the reasons discussed above including the CFPB's analysis of the Y–14 data, in this final rule, the CFPB repeals the existing safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) with respect to late fees charged by Larger Card Issuers.[157]

As a result, the CFPB has determined that, at this time and based on current data and commenter feedback, it is appropriate to revisit and amend the safe harbor as applied to Larger Card Issuers. Establishing a safe harbor is an exercise of discretionary rulemaking authority, and thus, a safe harbor need not exist.[158] Moreover, the existence of a safe harbor means that card issuers are deemed to be presumptively in compliance with the CARD Act. As a result, a safe harbor has the potential to enable card issuers to charge amounts that would otherwise not be in compliance with the Act.

Given this, the CFPB has determined that, in light of its data and analysis, it is appropriate to repeal the existing safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) with respect to late fees charged by Larger Card Issuers, and then to amend the safe harbor to the lower $8 amount. The decision to repeal of the safe harbor is independent of, and severable from, the decision below that $8 is an appropriate safe harbor threshold amount with respect to late fees charged by Larger Card Issuers. Accordingly, if the $8 safe harbor for Larger Card Issuers were stayed or determined to be invalid, the remainder of the regulation shall continue in effect without a safe harbor for late fees charged by Larger Card Issuers.

The CFPB's Analysis of Data and Consideration of Statutory Factors Related to the $8 Late Fee Safe Harbor Threshold for Larger Card Issuers

As an initial matter, the CFPB is not statutorily required to consider the statutory factors of costs, deterrence, and consumer conduct in setting the discretionary safe harbor amounts under TILA section 149(e). Instead, in setting discretionary safe harbor amounts, TILA section 149(e) specifies that the CFPB may issue rules to provide an amount for any penalty fee or charge that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates. As discussed below, the CFPB analyzed whether the current safe harbor threshold amounts for late fees should be presumed to be reasonable and proportional to a cardholder's omission or violation. In considering whether and what is the appropriate amount for the safe harbor, the CFPB looked to whether the threshold is a reasonable proxy for the definition of a ''reasonable and proportional'' fee such that any fee under the threshold should be presumed to have met that standard.

In implementing this standard, the CFPB primarily focused on whether a particular late safe harbor amount would cover the pre-charge-off collection costs of the average Larger Card Issuer. The CFPB has determined that it is appropriate to focus on the pre-charge-off collection costs of the average Larger Card Issuer to determine a reasonable proxy for the definition of a ''reasonable and proportional'' because this allows the average Larger Card Issuer to obtain the benefits of relying on the safe harbor without having to incur the compliance burden of conducting the cost analysis set forth in

[154] This conclusion also is consistent with the review of credit card agreements that the CFPB conducted in 2023, as discussed in more detail in part II.E.

[155] 75 FR 37526 at 37542.

[156] In fact, the legislative history suggests that Congress intended to lower late fees. 155 Cong. Rec. 5314, 5315, 5319 (2009).

[157] The CFPB recognizes that it is repealing the existing safe harbor solely as to late fees charged by Larger Card Issuers. As described in detail in part VI, the CFPB has determined it is appropriate to limit this repeal with respect to late fees charged by Larger Card Issuers.

[158] *See* 15 U.S.C. 1665d(e) (unlike a required rulemaking to define ''reasonable and proportional'' as prescribed in 15 U.S.C. 1665d(b), Congress indicated that the CFPB ''may'' issue a safe harbor and is merely ''authorized'' to issue a safe harbor but is not required to do so).

§ 1026.52(b)(1)(i) but does not allow these Larger Card Issuers to charge an amount that exceeds the costs for most Larger Card Issuers.

*Costs.* As discussed below, the CFPB analyzed the Y–14 data and other information in considering the pre-charge-off collection costs of a late payment violation to Larger Card Issuers.[159] Based on that analysis, the CFPB has determined that for Larger Card Issuers a late fee safe harbor amount of $8 for the first and subsequent violations would cover the average Larger Card Issuers' costs from late payments while providing those card issuers with compliance certainty and administrative simplicity and, therefore, reduce their compliance costs and burden.

In considering the costs of late payments to Larger Card Issuers, the CFPB considered only those (estimated) pre-charge-off collection costs that card issuers are permitted to consider for purposes of determining the amount of a late fee under the cost analysis provisions in § 1026.52(b)(1)(i) and related commentary. As provided in the commentary to § 1026.52(b)(1)(i), such costs for late fees (1) include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements); and (2) exclude losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts). As discussed in the section-by-section analysis of § 1026.52(b)(1)(i), consistent with the Board's 2010 Final Rule, the CFPB in this final rule makes it explicitly clear that costs for purposes of the cost analysis provisions in § 1026.52(b)(1)(i) for determining penalty fee amounts do not include any collection costs that are incurred after an account is charged off pursuant to loan loss provisions. The CFPB has determined that considering pre-charge-off collection costs as the ''costs'' of a late payment is consistent with Congress' intent to: (1) allow card issuers generally to use late fees to pass on to consumers the costs issuers incur to collect late payments or missed payments; (2) ensure that those costs are spread among consumers and that no individual consumer bears an unreasonable or disproportionate share; and (3) prevent card issuers from recovering losses and associated costs through late fees rather than through upfront rates.

As discussed in part V, the reported collection costs in the Y–14 data include costs incurred to collect problem credits that includes the total collection cost of delinquent, recovery, and bankrupt accounts. The CFPB concludes that the collection costs data in the Y–14 are consistent with the costs included for the cost analysis provisions in § 1026.52(b)(1)(i) except that the collection costs in the Y–14 data include post-charge-off collection costs. As discussed in part V, in the 2023 Proposal, the CFPB estimated that approximately 75 percent of collection costs incurred by card issuers are incurred pre-charge-off. Thus, the CFPB's estimate of pre-charge-off collection costs is based on only 75 percent of the collection costs in the Y–14 data for purposes of its analysis related to the final changes to the safe harbor thresholds in § 1026.52(b)(1)(ii), as discussed in more detail below. However, as discussed below, the conclusions are similar even if the CFPB assumes that pre-charged-off collection costs are 80 percent of total collection costs incurred by card issuers, consistent with the estimated post-charge-off commission rates for 2021 and 2022, as discussed in more detail in part V.

In developing the $8 late fee safe harbor amount adopted in this final rule, the CFPB carefully considered several sources of data and other information to determine the amount that would cover the average Larger Card Issuer's pre-charge-off collection costs. As discussed in part V, and described in detail below, the CFPB reviewed and analyzed major issuers' late fee income, collection costs, late fee amounts, and required payment information contained in the Y–14 data, a source that was not available when the Board set the initial safe harbor amounts in 2010. That analysis indicates that late fees generally generate revenue that is multiple times higher than the Y–14 issuers' collection costs. As discussed in more detail in part II.E, in 2022, the CFPB also reviewed issuers' stated late fee amounts in card agreements that issuers are required by the CARD Act to submit quarterly to the CFPB. Based on these data, the CFPB expects that even if late fees were reduced to one-fifth of current levels (implying late fees of $8 or less), most Y–14 issuers would recover pre-charge-off collection costs.

Using this one-fifth estimate, the CFPB calculated the $8 fee by dividing $41 by five and rounding to the nearest dollar. The CFPB conservatively chose to use $41, the highest late fee charged in the market, in the interest of caution. A less conservative approach would have used $30 (the safe harbor for the first fee) or $31 (the average late fee per incident for Y–14+ issuers in 2020), resulting in a $6 safe harbor.

To estimate the fee income to collection cost ratio for Larger Card Issuers, the CFPB used the late fee income data and 75 percent of the collection costs contained in the Y–14 data (referred to below as ''estimated pre-charge-off collection costs''). Using the Y–14 data, the CFPB analyzed monthly late fee income and estimated pre-charge-off collection costs for the consumer segments of major issuers' credit card portfolios, namely the consumer general purpose and private label portfolios. For the 16 consumer portfolios with continuous cost data for the first three quarters of 2022 (adding up to about 73 percent of total consumer credit card balances at the end of September 2022), total late fee income in the first three quarters added up to $4.46 billion, while total collection costs added up to $1.19 billion with pre-charge-off collection costs estimated to be $896 million (where the pre-charge off collection costs are estimated to be 75 percent of the total collection costs).[160]

In reviewing the monthly data, the CFPB observed that late payments exhibit seasonal patterns. The CFPB also considered that there may be a delay between when a late fee was assessed and when the issuer incurs substantial collection costs associated with the account. For these reasons, the CFPB compared each month's late fee income for a particular portfolio to the portfolio's average estimated pre-charge-off collection costs for that month, where that estimate was based on estimated pre-charge-off collection costs that occurred two through six months later.[161] Consistent with the data used

[159] See part V for the CFPB's determination that it is appropriate to consider the Y–14 data in adopting the changes to Regulation Z contained in this final rule.

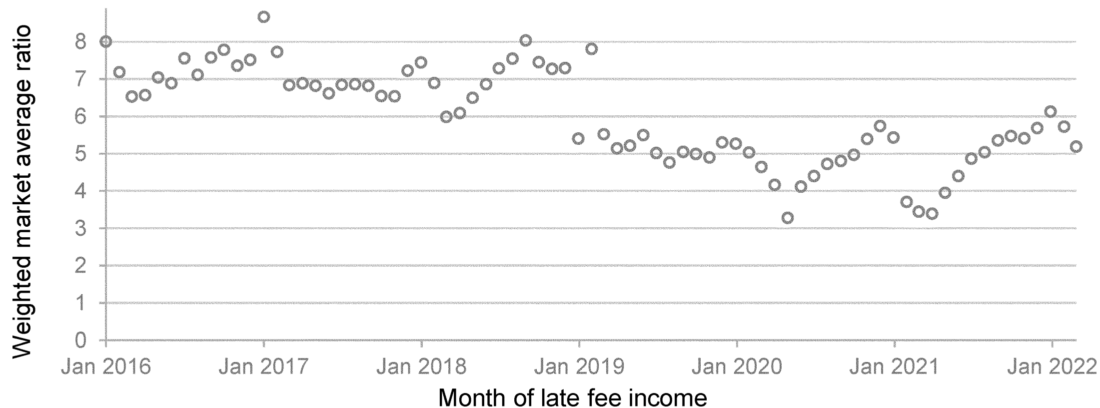
[160] Based on data collected after the 2023 Proposal was issued, the CFPB has data from 20 card issuers in the Y–14+ data. For these Larger Card Issuers, total late fee income added up to $11 billion between October 2021 and September 2022, while total collection costs added up to $2.7 billion with pre-charge-off collection costs estimated to be $2.16 billion (where pre-charge-off collection costs are estimated to be 80 percent of the total collection costs).

[161] For example, if an issuer were to report late fee income of $24 million in January for a portfolio and total collection costs for that portfolio of $25 million in March through July, the CFPB estimated $20 million in pre-charge-off collection costs in March through July and calculated an average monthly collection cost of $4 million for purposes of this analysis—resulting in a ratio of late fee income of $24 million to collection cost of $4 million for this portfolio for the month of January. The CFPB found that its findings based on the

Continued

for the 2023 Proposal, the CFPB developed monthly estimates of this late fee income-to-cost ratio for each year from 2013 up to September 2022. The analysis showed that an average of this ratio across issuers and market segments, weighted by the number of accounts reported in the Y–14 data, has been fairly stable since early 2019 (and was higher before 2019). As shown in Figure 1 below, late fee income has always been higher than three times subsequent estimated pre-charge-off collection costs, and more than four times as high in all but seven pandemic months (April-June 2020 and February-May 2021, coinciding with pandemic stimulus payments, when there was a reduction in late fee income without a corresponding decline in average collection costs in subsequent months). Since August 2021, late fee income has exceeded the relevant estimated pre-charge-off costs more than fivefold, which resembles the period before the pandemic.

**Figure 1:** Ratio of late fee income to future collection costs

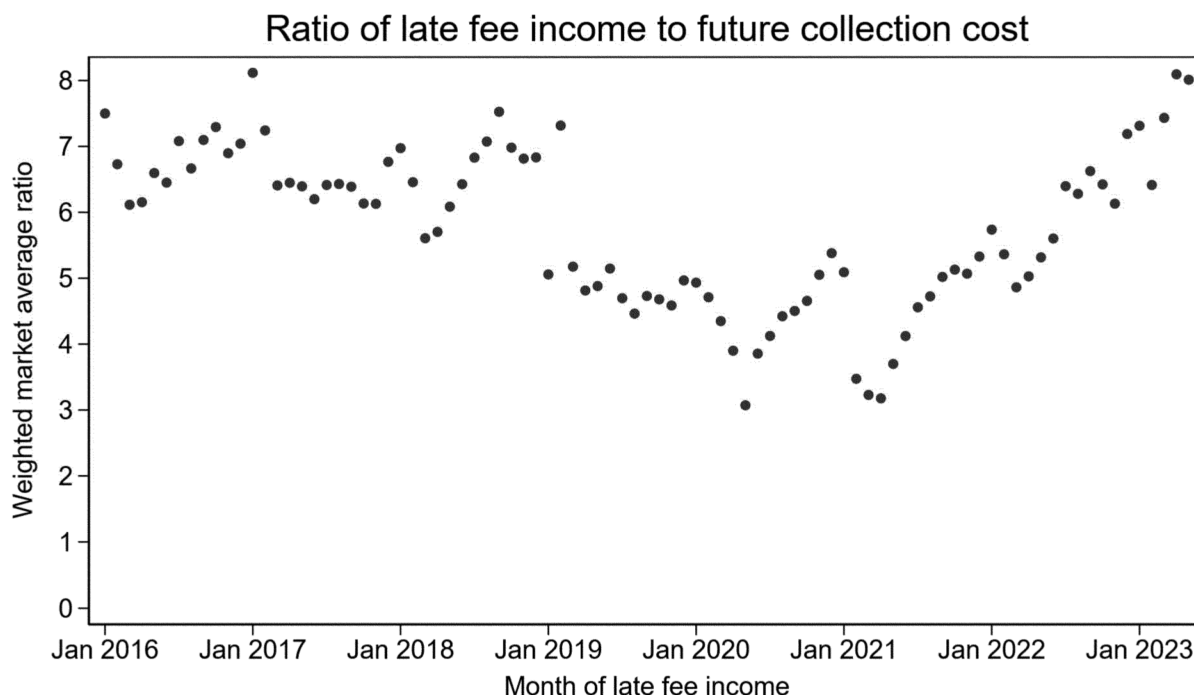



Based on this analysis, the CFPB expects that the average Larger Card Issuer would recover pre-charge-off collection costs even if late fees were reduced to one-fifth of their current level. In the 2022 survey of credit card agreements discussed in part II.E, all but one issuer among those in the Y–14 data (representing the majority of balances in the credit card market) disclosed late fees ''up to'' $40 or $41 (the current maximum safe harbor amount) in their most recent card agreements submitted to the CFPB. Given the finding that, in the most recent data, late fee income is greater than five times estimated pre-charge-off collection costs, the CFPB expects that an $8 late fee would still recover the average Larger Card Issuer's pre-charge-off collection costs, as that fee represents one-fifth of the maximum late fee amount, which is necessarily greater than average fee income per late payment. This conclusion is also consistent with additional information from the CFPB's 2023 survey of credit card agreements in the CFPB's Credit Card Agreement Database, which the CFPB conducted after it issued the 2023 Proposal. As discussed in more detail in part II.E, of the 30–35 submitters the CFPB would expect to be Larger Card Issuers, 13 issuers charged at maximum late fee in their submitted agreements of $40 and 11 charged $41 with the minority charging between $35 and $39 and only two charging a maximum late fee below $35.

As discussed in part V, since issuing the 2023 Proposal, the CFPB obtained Y–14 data for 14 more months than were available for the analysis in the 2023 Proposal. In addition, the CFPB obtained updated data related to post-charge-off commission rates for 2021 and 2022, and based on that data estimated that pre-charged-off collection costs were 80 percent of collection costs incurred by Y–14 issuers for those years. Figure 2a below shows the ratio of fee income to collection cost ratio for Y–14 issuers, using the late fee income data and 80 percent of the collection costs contained in the Y–14 data, including the 14 more months of Y–14 data.

weighted average of this ratio across issuers and market segments as discussed in the analysis below are robust to shifting, expanding, or shortening the time period of delay in collection costs as they relate to late fee income.

**Figure 2a:** Ratio of late fee income to future pre-charge-off collection costs (Y-14)




The CFPB has determined that these updated Y–14 data yield a ratio that is consistent with the determination that a $8 late fee safe harbor threshold would recover the average Larger Card Issuer's pre-charge-off collection costs. As shown in Figure 2a above, the ratio has been above five for those additional 14 months and above six for the last 11 months.

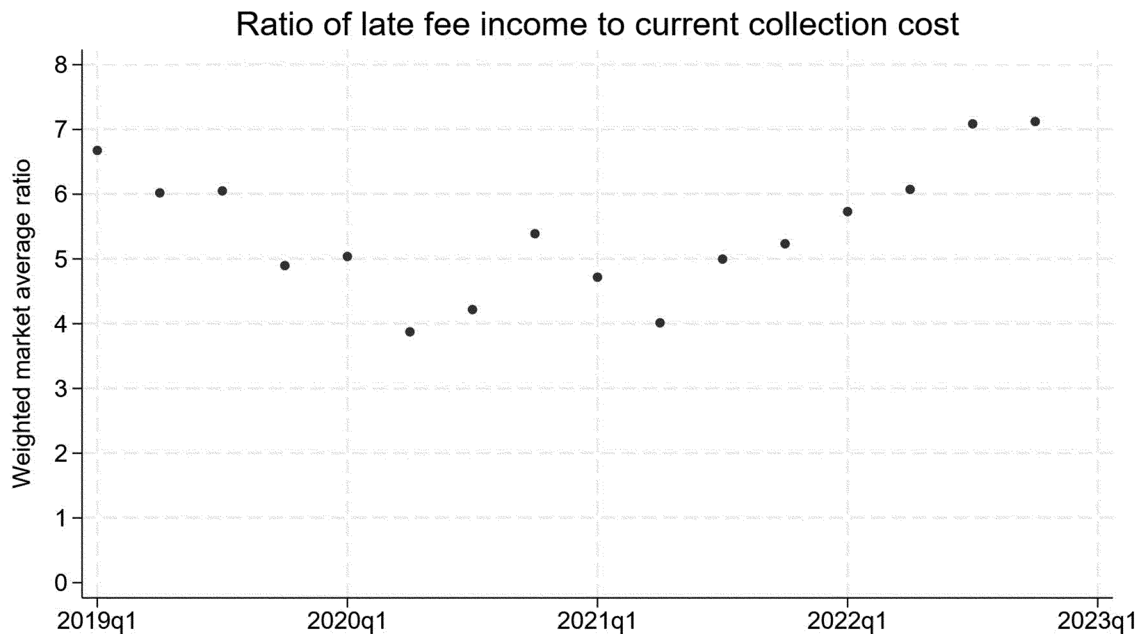
In addition, as discussed in part V, after issuing the 2023 Proposal, the CFPB obtained total collection costs and late fee income data from specialized issuers that are included in the Y–14+ data but do not report under the Y–14. The CFPB collected confidential quarterly data from the five specialized issuers that are included in the Y–14+ data for their consumer cards in all quarters in 2019 through 2022, split by whether the accounts in a given portfolio are general purpose or private label cards, through an information order pursuant to section 1022(c)(4) of the CFPA.[162] Respondents were instructed to provide the amounts of non-interest expense in costs incurred to collect problem credits, defined as total collection cost for delinquent, recovery, and bankrupt accounts, and net late fee income. These definitions are identical to those provided in the Y–14 collection for collections expense and late fee income. Four issuers provided timely and verifiable collections costs and late fee income data, and those four issuers represented over one-third of late fee volume for the Y–14+ in 2022.[163]

As the responses to the information order described above yielded quarterly data, the CFPB is not able to calculate the same ratio of late fee income to estimate pre-charge-off collection costs two-to-six months later for each portfolio as it did for the weighted average in Figure 1 above from the Y–14 data alone. To make use of the most widely available data from certain Larger Card Issuers but treat them consistently, the CFPB calculated a similar ratio but of a quarter's total late fee income to the same quarter's estimated pre-charge-off collection costs (where pre-charge-off costs are estimated to be 80 percent of the total collection costs) for each portfolio in the above information order or in the Y–14 data with three months of non-zero collection costs reported for that quarter. Figure 2b below shows the market-wide weighted average of these ratios from 2019 to 2022, weighted by the number of accounts. This calculation also suggests that late fee incomes recently are so far above pre-charge-off collection costs (using 80 percent of total collection costs) that a five-fold decrease in the safe harbor is reasonable.

[162] See part V for a description of the Y–14+ data.

[163] One specialized issuer's submissions were not provided on the same timeline and did not align with data from previous submissions, as such, those data are not used for the purpose of this analysis using the specialized issuer's submissions.

**Figure 2b:** Ratio of late fee income to pre-charge-off collection costs (Y-14+)




As discussed in part VI, the CFPB recognizes that the new $8 safe harbor amount will apply to approximately a dozen issuers for which the CFPB does not have total collections data and late fee revenue data. The CFPB has determined that it is appropriate to apply this new safe harbor amount to those issuers because they together with their affiliates have at least one million open credit card accounts which result in economies of scale similar to Y–14+issuers. Specifically, and based on the CFPB's expertise and markets research, the CFPB expects that these issuers have similar mechanisms to more efficiently collect late payments and to do so at a lower cost than for Smaller Card Issuers, and thus would have similar pre-charge off collection costs to the Y–14+ issuers. Further, unlike Smaller Card Issuers, these Larger Card Issuers derive substantial revenue from credit card portfolios, and therefore, are more likely to have resources that would allow them to use the cost analysis provisions in § 1026.52(b)(1)(i) to determine the late fee if the $8 safe harbor threshold amount fails to cover pre-charge off collections costs.

Since the issuance of the proposal, the CFPB also obtained some additional data through an information order pursuant to section 1022(c)(4) of the CFPA as part of its statutorily required, bi-annual CARD Markets Report.[164] In gathering the data for this report, one question related to the average monthly *all-in* cost of *pre-charge-off* collections. Based on these data, the average monthly all-in cost of pre-charge off collections related to the ''delinquent inventory'' was $18.61 for eight Larger Card Issuers in 2021 and $14.58 in 2022. These data ranged from a high of over $40 to a low of $2, but most were between $10 and $20. Although these data relate to pre-charge-off collection cost from the ''delinquent inventory'' of the month, the CFPB has determined they are not an accurate representation of pre-charge off collection costs for late payments because the data potentially exclude those consumers who pay almost immediately, and this is a significant number of consumers. In 12 months of account-level Y–14 data (the second half of calendar year 2022 and the first half of 2023), most portfolios have 20–30 percent as many accounts with month-end delinquency noted than how many accounts saw late fees assessed. The CFPB would expect that the average pre-charge off collection costs per month-end delinquent account would be higher than the average pre-charge-off collection costs per late payment because late payments where consumers pay almost immediately are less costly to collect then those accounts with month-end delinquencies.

In addition, as discussed above, an industry trade association commenter also provided information on costs for accounts that are at least 60 days late, which again is a subgroup of all late payment incidents. This trade association asserted that the average costs per delinquent account that is at least 60 days late is $46.30, including $33.00 in direct expenses, $9.00 in attributable expenses, and $4.30 in funding costs. The CFPB has determined that these cost data for delinquent accounts that are at least 60 days late are not as relevant as the Y–14 data in understanding Larger Card Issuers' average pre-charge-off collection costs with respect to all late payments, as opposed to a certain subset of late payments (*i.e.,* at least 60 days late). The CFPB expects that accounts that are more than 60 days late likely represent a minority of late fee incidences but may generate most of the collection costs. In addition, the trade association's cost data includes some costs that are not permitted to be considered under the cost analysis provisions in § 1026.52(b)(1)(i). For example, current comment 52(b)(1)(i)–2.i provides that amounts that cannot be considered as costs incurred for purposes of § 1026.52(b)(1)(i) are losses and associated costs (including the cost of

[164] In 2009, Congress passed the CARD Act. Among the CARD Act's provisions was a requirement that the Board report every two years on the state of the consumer credit card market. With the passage of the CFPA in 2010, that requirement transferred to CFPB alongside broader responsibility for administering most of the CARD Act's provisions.

holding reserves against potential losses and the cost of funding delinquent accounts). The commenter also indicated that the direct expenses include post-charge-off collection costs, which this final rule makes explicitly clear are not included in the costs that are permitted to be considered for purposes of § 1026.52(b)(1)(i). Also, it is unclear whether the attributable expenses would be costs permitted to be considered for purposes of § 1026.52(b)(1)(i) without knowing the facts and circumstances surrounding those expenses.

The CFPB also notes that average late fees for Y–14+ issuers are lower than the disclosed maximum late fees. As discussed in part II.D, in 2020, the average late fee charged by issuers in the Y–14+ data was $31.[165] Reasoning that the average late fees are lower than the current maximum safe harbor of $41 and yet still generate late fee income that is again more than five times the ensuing (estimated) pre-charge-off collection costs since August 2021, the CFPB concludes that $8 is likely to recover the average Larger Card Issuer's pre-charge-off collection costs.[166]

The CFPB acknowledges that not all issuers in the Y–14+ data incur the average pre-charge-off collection costs. By using estimates of pre-charge-off collection costs per paid incident using the Y–14 data from September 2021 to August 2022 (consistent with the data used in the 2023 Proposal), the CFPB estimates that fewer than four of the 12 card issuers in the Y–14 data have estimated pre-charge-off collection costs that are significantly higher than one-fifth of their late fee income. For these issuers, the proposed $8 safe harbor amount may not have been enough to fully recover estimated pre-charge-off collection costs, such that the benefits of using the cost analysis provisions may outweigh the administrative simplicity of using the safe harbor.

This result is also consistent when the CFPB considers the additional data it obtained since the publication of the 2023 Proposal, namely (1) using 14 additional months of Y–14 data; (2) estimating the pre-charge-off costs are 80 percent of the total collections costs in the Y–14 data; and (3) considering data submitted by the specialized card issuers in the Y–14+.

By using estimates of pre-charge-off collection costs (80 percent of total collection costs) per paid incident using the Y–14+ data from calendar year 2022, the CFPB estimates that fewer than six of the 16 issuers with a continuous history of non-zero collection costs had estimated pre-charge-off collection costs that were significantly higher than one-fifth of their late fee income. For the remaining issuers, who represent less than 30 percent of accounts and around a fourth of late fee income in this set, the proposed $8 safe harbor amount may not have been enough to fully recover estimated pre-charge-off collection costs in 2022, such that the benefits of using the cost analysis provisions may outweigh the administrative simplicity of using the safe harbor. While both the data considered for the proposal and this more recent, supplementary data suggest that the $8 late fee safe harbor amount adopted in this final rule would cover pre-charge-off collection costs for most Y–14+ issuers in years resembling 2022, the CFPB acknowledged in the 2023 Proposal and continues to recognize that some Larger Card Issuers may not recover pre-charge off collection costs for all portfolios at all times under the lower safe harbor. The CFPB, however, notes that the safe harbor is discretionary, and these issuers can choose to determine the late fee amount using the cost analysis provisions in § 1026.52(b)(1)(i), rather than using the proposed $8 safe harbor amount, if $8 is insufficient to recover their pre-charge-off collection costs. Larger Card Issuers also may undertake efforts to reduce collection costs or use interest rates or other charges to recover some of the costs of collecting late payments. Building those costs into upfront rates would provide consumers greater understanding regarding the cost of using their credit card accounts.

The CFPB notes that the CARD Act does not require the CFPB to establish a late fee safe harbor amount that covers the costs for all issuers or the entire costs of the omission or violation in all instances. Instead, TILA section 149(e) authorizes the CFPB to issue rules to provide, for any penalty fee or charge, a safe harbor amount that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates. The CFPB is concerned that setting a higher safe harbor amount for late fees in order to cover the pre-charge-off collection costs of all Larger Card Issuers could result in an amount that exceeds the costs for most Larger Card Issuers. As discussed in part II.E the CFPB also is concerned that Larger Card Issuers may have a disincentive to charge a lower fee amount than the safe harbor amount, even if their average collection costs are less than the safe harbor amount, given the industry's reliance on late fees as a source of revenue and that many consumers may not shop for credit cards based on the amount of the late fee.

The CFPB notes that the analysis based on the Y–14 data discussed above does not consider any potential changes in consumer behavior in response to the change in the late fee safe harbor amount in this final rule for Larger Card Issuers. In particular, the discussion does not take into account the possibility that reduced late fees will lead to more late payments at Larger Card Issuers. However, the CFPB also expects that any increase in the frequency of late payments, if any, as a result of the reduced late fee safe harbor amount, would increase both fee income and collection costs at Larger Card Issuers. Even if more consumers pay late at Larger Card Issuers because of the decreased amount, the CFPB concludes that the increased number of late payments are unlikely to be more costly, on average, to administer and collect than the current number of late payments. Therefore, the CFPB expects that collection costs to Larger Card Issuers would not increase by more than fee income. Further, as discussed below, the CFPB's analysis of Y–14 data and other information suggests that the proposed $8 safe harbor amount for the first and subsequent late payments would still have a deterrent effect on late payments.

In addition, the CFPB has determined that the $8 late fee safe harbor provision in § 1026.52(b)(1)(ii) adopted as part of this final rule would continue to save costs for Larger Card Issuers that use the safe harbor. As discussed above, in considering the appropriate safe harbor amount for late fees, the CFPB is guided by the factors in TILA section 149(c), which provides that the CFPB can consider such other factors that the CFPB deems necessary or appropriate. The CFPB finds that it is both necessary and appropriate, when considering the portion of Larger Card Issuers' pre-charge-off costs that a late fee safe

[165] Late Fee Report, at 6. To gain further insights into how the average late fee compares to the disclosed maximum late fee in the agreements, the CFPB analyzed a 40 percent random subsample of tradelines of Y–14 data from 2019 to observe the incidence of late fees and the fee amounts assessed. The CFPB observed that the average late fees have been lower than the amounts in the card agreements for several reasons, including (1) some late fees did not occur within six months of an earlier late fee and thus are set at the lower safe harbor amount; and (2) some late fees reflect the current limitation in § 1026.52(b)(2)(i)(A) and related commentary that prohibits late fees from exceeding the minimum payment amount that is due. The CFPB also observed that some late fees are imposed but later reversed and that some late fees are charged to accounts that never make another payment.

[166] This conclusion is also consistent with subsequent data collected by the CFPB after issuance of the 2023 Proposal, which showed that the average late fee per incident for Y–14+ issuers in 2022 was $32.

harbor amount would cover, to consider the benefits to Larger Card Issuers from use of the safe harbor, including compliance certainty, administrative simplicity, and reduced litigation risk. The CFPB also finds that for Larger Card Issuers, a late fee safe harbor amount of $8 for the first and subsequent late payments would cover the average Larger Card Issuers' costs from late payments while providing those card issuers with compliance certainty and administrative simplicity and, therefore, reduce their compliance costs and burden.

For the foregoing reasons, the CFPB determines that a late fee of $8 for the first and subsequent violations is appropriate to cover pre-charge-off collection costs for Larger Card Issuers on average while providing those issuers compliance certainty and administrative simplicity.

Even if the CFPB were required to consider the statutory factors of costs, deterrence, and consumer conduct in setting the discretionary safe harbor amounts, the CFPB has determined that TILA section 149(e) does not require that the CFPB weigh all of the factors equally in determining what safe harbor amount is a reasonable proxy for the definition of a ''reasonable and proportional'' fee. In this regard, the CFPB has determined that the cost factor deserves the most weight of these factors in setting the precise late fee safe harbor amount because it is most closely correlated to the consequences to the issuer of a consumer's late payment. In other words, costs are the best guide to what constitutes a ''reasonable and proportional'' fee. The CFPB has determined that the data described above allows the CFPB to quantify the pre-charge-off collection costs of Larger Card Issuers and set a late fee safe harbor amount that will allow the average Larger Card Issuer to recover its pre-charge-off collection costs. By contrast, the CFPB has determined that deterrence and consumer conduct—while important—are less determinative than costs in setting a precise late fee safe harbor amount. Not only are deterrence or consumer conduct harder to quantify, but the link between the late fee amount and deterrence or consumer conduct is more tenuous. For instance, as noted by consumer commenters on the 2023 Proposal, consumers indicated that there were various reasons why they incurred a late fee in the past, including (1) their mailed payment was not received by the card issuer by the due date because of slower postal service; (2) they paid on the due date but after the cut off time on the due date; (3) they forgot to pay on time because of vacations, medical issues, or family issues; or (4) they experienced cash flow issues because of unexpected expenses. Thus, while deterrence and consumer conduct can help corroborate a safe harbor amount set based on costs, the CFPB believes that the deterrence and consumer conduct factors could not justify a safe harbor amount that is disproportionate to costs.

Nonetheless, while the CFPB has determined that deterrence or consumer conduct should not be the primary factors in deciding the precise late fee safe harbor amount for Larger Card Issuers, the CFPB has determined based on the analysis discussed below that the $8 late fee safe harbor amount will still have a deterrent effect on late payments, and that the $8 late fee safe harbor amount better reflects a consideration of consumer conduct than do the higher safe harbor amounts set by the Board.

*Deterrence.* After careful consideration of the comments, the CFPB determines that the available evidence for Larger Card Issuers suggests that an $8 safe harbor amount will have a deterrent effect on late payments. The CFPB also determines that some cardholders may benefit from the $8 safe harbor threshold amount in terms of a greater ability to repay revolving debt, including some cardholders who may experience an increase in late payments under the lower safe harbor amount. The CFPB also notes that card issuers have methods other than higher late fees to deter late payment behavior and to facilitate timely payments. For example, card issuers may decrease the cardholder's credit line, limit their earning or redemption of rewards, or impose penalty rates in certain circumstances. Card issuers also may offer automatic payment and provide notification within a certain number of days prior to the payment due date. The CFPB's reasons for making these determinations, including its analysis of available evidence, are discussed below.

As a threshold matter, the CFPB acknowledges, as it acknowledged in the 2023 Proposal, that a late fee of any dollar amount has some deterrent effect that is more than no late fee at all. Some of the comments received, as discussed above, support the CFPB's determination by noting that a safe harbor late fee amount of $8 would have a lesser deterrent effect than the current amounts, rather than no deterrent effect. The CFPB also recognizes, as it recognized in the 2023 Proposal, that generally a lower late fee amount has less theoretical deterrence than a higher amount, though whether that will manifest in lower repayment rates in light of the other salient factors is uncertain. As such, the many comments asserting that a late fee amount of $8 may result in a higher frequency of late payments, as discussed above, are consistent with the assumptions in the CFPB's deterrence analysis. The CFPB rejects the notion, implicit in many comments opposing the $8 late fee amount, that consideration of deterrence necessitates, as a matter of law or policy, setting a safe harbor amount that will have the maximum theoretical deterrence effect. In addition, the CFPB recognizes, as it recognized in the 2023 Proposal, that it does not have direct evidence concerning what consumers would do in response to a fee reduction similar to the one in this final rule. The CFPB notes, however, that the Y–14 data and other information on which its deterrence analysis is based, as discussed below, have become available since the Board issued its 2010 Final Rule and constitute a far richer body of evidence than that on which the Board relied. It should be noted that by the same logic, those commenters expressing concern regarding the potential deterrence effect of a lower late fee likewise had no direct evidence to proffer in support.

As discussed in the 2023 Proposal, for purposes of considering the deterrence effect of the $8 safe harbor amount, the CFPB analyzed available data from certain Larger Card Issuers to consider the extent to which lower late fees for both the first and subsequent late payments could potentially lessen deterrence. Specifically, in making its determination that the $8 safe harbor amount will still have a deterrent effect on late payments, the CFPB considered (1) a comparison of the $8 late payment safe harbor amount to minimum payment amounts on accounts in the Y–14 data; and (2) available empirical evidence on the effects of credit card late fees on the prevalence of late payments. The CFPB notes that whether a consumer is late in making a required payment depends in part on the consequences of paying late, including penalty fees for late payments and other consequences such as increased interest charges and potential credit reporting consequences (as discussed in part II.G and in more detail below). From the point of view of a rational consumer faced with the decision of whether to make a minimum balance payment on time or to put off the payment until later, the decision represents a tradeoff weighing the value to the consumer of retaining the money for longer against the total costs of paying late. For the median minimum payment amount of

approximately $100 for accounts that paid late in the Y–14 data from October 2021 through September 2022, the CFPB's analysis found that the costs of paying late are quite steep both under current late payment fee amounts and under the $8 safe harbor amount.[167] For example, a consumer who effectively borrows a minimum payment amount of $100 until the next due date (that is, who makes a payment one month late) and pays a $8 late fee would be incurring an effective APR of 96 percent, even ignoring other consequences. In addition, a consumer who effectively borrows a minimum payment amount of $40 for 10 days (past due) and pays a $8 late fee would be incurring an effective APR of 730 percent. As the median minimum due was $39 for all cardholders between October 2021 and September 2022 in the Y–14 data,[168] and around half of late payers made a payment in less than 10 days past the due date, the effective APR could be higher than 730 percent for some consumers. Based on that analysis, the CFPB determines that an $8 late fee safe harbor amount for Larger Card Issuers will still serve as a powerful deterrent to those consumers who pay attention to financial penalties.

In addition to the analysis discussed above, the CFPB considered available empirical evidence on the effects of credit card late fees on the prevalence of late payments. In particular, the CFPB considered (1) a 2023 paper analyzing the effect of the reduction of late fee amounts that became effective as a result of the CARD Act in 2010; (2) analysis by the CFPB using Y–14 data of how the prevalence of late payments is affected by increases in late fee amounts during the six months following a violation; and (3) other empirical investigations into the correlates of late fee amounts and late fee incidence as discussed below.

As discussed in the 2023 Proposal, in analyzing the available data, the CFPB notes a 2023 paper by Grodzicki *et al.,* which contains an empirical analysis that concluded that a decrease in the late fee amount stemming from the Board's 2010 Final Rule raised the likelihood of a cardholder paying late.[169] The CFPB rejects the notion, advanced by one commenter, that it cherrypicked evidence to support its deterrence analysis, or even ignored evidence that may be viewed as conflicting with its conclusion. To the contrary, the CFPB recognizes that the 2023 paper suggests that consumers may engage in more late payments when they are less costly to consumers. However, as noted in the 2023 Proposal, the CFPB does not consider this to be robust evidence that the $8 safe harbor late fee amount would not have a deterrent effect. As discussed in the 2023 Proposal, the CFPB also notes that the paper focused on the late fee variations resulting from the limitations on penalty fee amounts in the Board's 2010 Final Rule and thus could be confounded by other market changes coinciding with the rule going into effect. In particular, the late fee provisions in the Board's 2010 Final Rule were implemented in August 2010, as the U.S. economy was still dealing with the aftermath of the Great Recession,[170] and thus it was difficult to attribute consumer finance statistical trends to particular events. Moreover, the Board's 2010 Final Rule affected all consumers and all issuers, so there was no suitable control group of consumers that were charged the same amount of late fees before and after the implementation of the Board's 2010 Final Rule. Thus, the 2023 paper compared consumer behavior in the year before and the year after August 2010, and the causal attribution of an increase in late payments to a reduction of the late fee amount is hard to prove due to the general economic uncertainty around that time. As discussed above, a credit union trade association took issue with the CFPB's questioning the 2023 paper's findings based on the time period studied. The CFPB emphasizes that the chief problem with the study is that its authors could not convincingly distinguish the effects of the financial crisis and other regulatory reforms under the CARD Act from the effects of lowering late fees. The CFPB also notes that the 2023 paper relied on an older and smaller version of the Y–14 data than that on which the CFPB's analysis is based.

In developing the deterrence analysis, the CFPB also analyzed Y–14 data from 2019, where the variation in late fees does not correspond to other big changes or differences that might plausibly affect late payment. As discussed above, the current rule sets a higher late fee safe harbor amount for instances where another late payment occurred over the course of the preceding six billing cycles. The CFPB conducted statistical analysis to investigate whether the lower late fee amount in month seven leads to a distinct rise in late payments (Y–14 seventh-month analysis). Specifically, the CFPB estimated whether there is a discontinuous jump in late payments in the seventh month after the last late payment.[171] This analysis focused on this potential jump to isolate the potential impact that the lower late fee that would apply in month seven might have on late payment rates, given that month seven is generally comparable to month six other than the lower late fee amount. In a random subsample from account-level data available in 2019 from the Y–14 data, this statistical analysis did not support that the lower late fees in month seven have an effect on the late payment rate, at conventional confidence levels. In addition, as a separate observation, the CFPB observed that for consumers that incurred a higher fee for a late payment during the six months after the initial late payment, the payment of that higher late fee did not lead to a discernibly lower chance of late payment for a third time in the future than for those consumers whose second late fee was lower because they paid late seven or more months after their first late payment.

The CFPB acknowledges that the variation in late payments in the Y–14 seventh-month analysis discussed above is not the same as the changes that will result from this final rule. Nonetheless, the CFPB has determined that this evidence suggests the prevalence of late payments is not highly sensitive to the level of late fees at the current order of magnitude.

As discussed in the 2023 Proposal, an advantage of the Y–14 seventh-month analysis is that it avoids confounding factors that often are found in other studies of late fees, including the 2023 paper by Grodzicki *et al.,* discussed above. Studies that compare behaviors of consumers facing higher or lower fees (if late) with consumers in a comparison group are often fraught with multiple confounding factors that may also vary

[167] For more information about the distribution of minimum payment amounts for late accounts in the Y–14 data, *see* Figure 5 and related discussion in the section-by-section analysis of § 1026.52(b)(2)(i).

[168] For purposes of the calculations of the distribution of the minimum payment amounts in the Y–14 data, the calculations do not include account-months where a late fee was charged but the minimum due was reported to be $0.

[169] Daniel Grodzicki, *et al., Consumer Demand for Credit Card Services,* Journal of Financial Services Research 63, 272–311 (2023), *https://doi.org/10.1007/s10693-022-00381-4*.

[170] The Great Recession began in the fourth quarter of 2007 and ended in the second quarter of 2009. *See generally* Nat'l Bureau of Econ. Res., *Business Cycle Dating Committee Announcement* (Sept. 20, 2010), *https://www.nber.org/cycles/sept2010.html*.

[171] The CFPB observed in the Y–14 data that, consistent with the safe harbor provisions of the current rule, consumers who paid late again within the six months after a late payment paid higher late fees during those six months than they paid after the initial late fee.

across time periods, issuers, products, or consumer behavior in each group.

The CFPB notes that the finding from the Y–14 seventh-month analysis described above is still contingent upon the fact that some consumers understand that their issuers charge lower late fees starting the seventh month after an initial violation. The CFPB recognizes that the higher late fees for subsequent late payments within the next six billing cycles might be more of a deterrent if consumers understood them better in 2022 than they did in 2019, but the CFPB has no evidence to indicate that is the case. However, as discussed in the 2023 Proposal, the CFPB's analysis is not dependent on all issuers charging the lower late fee safe harbor amount more than six months after a late payment nor the higher late fee safe harbor amount within the six billing cycles. As long as some card issuers made use of the higher safe harbor, as the analysis described above shows that they did, the CFPB should still have been able to detect an increase in the deterrent effect of their fee structure.

The CFPB also notes that because the Y–14 seventh-month analysis discussed above focused on a potential discrete jump in late payments more than six months after a preceding late payment, it also allowed for late payments to trend down as more time passed after a late payment. As described above, the CFPB did not see the lower late fee amount that could be charged in month seven change this downward trend.

The CFPB also determines that other publicly available studies on late fees suggest that the $8 safe harbor amount will still have a deterrent effect on late payments. As discussed in the 2023 Proposal, empirical investigations into the correlates of late fee amounts [172] and late fee incidence [173] have noted that late fee payment can often be avoided by small and relatively costless changes in behavior. This suggests that the lower $8 late fee safe harbor amount will still be higher than the costs of making a timely payment. Further, the CFPB determines that the triggers that make cardholders avoid the current prevailing late fees—including notices provided by card issuers—also will make cardholders avoid a $8 late fee.

With respect to other publicly available studies, the CFPB notes (as it did in the 2023 Proposal) that the Board—in support of setting higher late fee safe harbor amounts for violations that occur in the following six billing cycles after a late payment—pointed in its 2010 Final Rule to a 2008 study by Agarwal *et al.* of four million credit card statements. That study found that a consumer who incurs a late payment fee is 40 percent less likely to incur a late payment fee during the next month, although this effect depreciates approximately 10 percent each month.[174] As noted above, one credit union trade association commenter criticized the CFPB for not taking the 2008 study into account in its deterrence analysis. However, as discussed in the 2023 Proposal, the CFPB in fact consulted the last available revision of the cited working paper by Agarwal *et al.,* from 2013. Based on that analysis, the CFPB determines that the study is of limited relevance as to whether the late fee amount impacts late payment incidence, for two reasons. First, the study considers the months following any late fee and compares them to months with no recent late payment. That comparison is not the same as comparing to months in which a payment was late, but a lower late fee (or even a $0 late fee) was charged. Second, even if the study had compared to months in which a payment was missed but no late fee was charged, that comparison still would not be relevant to this final rule, in that this final rule reduces the safe harbor amount to $8; it does not completely eliminate the late fee.

In addition, the CFPB notes that the Y–14 seventh-month analysis discussed above shows that in the surrounding months reoffending rates trend down with each month after the last late payment. That seventh-month analysis, however, did not show a jump in late payment rates in month seven after the last late fee, which suggests that the higher late fee amount during the prior six months is not contributing to this downward trend. The CFPB also notes that the 2013 study by Agarwal *et al.* did not separate the effects of the late fee itself from other possible consequences of a late payment, such as additional finance charges, a lost grace period, penalty rates, and reporting of the late payment to a credit bureau, which could affect the consumer's credit score. Given these other consequences of a late payment as discussed in more detail below and in part II.G, it is not clear that the lower late fee safe harbor amount would meaningfully affect the decreased chance that consumers will pay late again after an initial late payment in ways similar to those established in this 2013 study.

As discussed in the 2023 Proposal, in adopting the safe harbor amounts in its 2010 Final Rule, the Board also considered the limitations that the United Kingdom's OFT placed on credit card default charges in 2006. The CFPB notes that it is not aware of evidence suggesting that the £12 ($21 on April 5, 2006, $13.40 in November 2022) limit the OFT imposed on default charges (including late fees) in 2006 meaningfully increased late payments in the United Kingdom (U.K.). The OFT ruled on April 5, 2006, that it would presume default charges higher than £12 unfair and challenge the company unless exceptional business factors drove the decision for the company to charge higher fees. As fees were routinely as high as £25 ($43.75 on April 5, 2006) until that spring, this episode is the closest to what the CFPB would foresee as the outcome to its proposal: a salient reduction in late fees impacting a large portion of the marketplace at once, letting both issuers and cardholders learn and adapt to the lower later fees. As such, the CFPB has taken it into account in its deterrence analysis.

As discussed above, two academic commenters suggested that the CFPB consider for purposes of its deterrence analysis a study by John Gathergood *et al.*[175] The CFPB agrees that the study merits consideration and thus has taken it into account in developing this final rule. Using U.K. data, that study found that the occurrence of late fees incurred by consumers on credit card accounts are front-loaded, peaking in the first month of card life and declining sharply over the following months. Specifically, one of the commenters noted the study's finding that the share of credit card accounts incurring late payment fees in the study's sample fell from 6 percent in the first month to 2.5 percent by the 23rd month, mainly because the payment of an initial late fee prompted consumers to set up automatic payments. The CFPB notes that, arguably, this work proves again that many missed payments are often mistakes that can be easily avoided through a number of means, including autopay. Even if issuers see no cheaper way to effectively promote autopay than through the imposition of late fees, that is no reason for issuers to keep the revenue from late fees above cost or even to cross-subsidize other

[172] Nadia Massoud, *et al., The Cost of Being Late? The Case of Credit Card Penalty Fees,* 7 Journal of Financial Stability, at 49–59 (2011).

[173] Sumit Agarwal, *et al., The Age of Reason: Financial Decisions Over the Life Cycle and Implications for Regulation,* 2 Brookings Papers on Economic Activity, at 51–117 (2009).

[174] *See* Agarwal *et al., supra* note 137.

[175] John Gathergood *et al.,* ''*How Do Consumers Avoid Penalty Fees? Evidence From Credit Cards*'' (Dec. 11, 2019), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2960004.*

cardholders through the imposition of late fees. Considering the fact that U.S. late payment rates are higher than the cited 2.5 percent for cards older than two years in the U.K., the CFPB is not convinced that charging late fees is even an effective way to promote autopay in the current American context.

Some industry commenters submitted additional data on deterrence in response to the CFPB's request for additional data. The CFPB appreciates these submissions but does not find the data persuasive. In particular, one large industry trade association submitted the results from a survey of 2,000 consumers it conducted for the purpose of identifying the fee point at which consumers would likely be deterred from paying their credit card bills late. The commenter reported that, among other things, the survey found that late fees are more effective in motivating consumers to pay bills on time than negative credit score impacts. Almost half of consumers (46 percent) said that avoiding late fees was the most important reason to pay credit card bills on time, and 30 percent said that doing the responsible thing was the most important reason to pay on time. Only 15 percent said that concerns about credit ratings was the most important reason to pay on time. This commenter further reported that the survey found that the CFPB's proposed $8 safe harbor would not motivate many consumers to pay their credit card bills on time. In the survey, more than 4 in 5 consumers (83 percent) said that a $10 late fee would be insufficient to deter them from paying a credit card bill late. Only 6 percent of respondents said that a fee of $10 would have a deterrent effect. For those who have paid a late fee in the past year, the deterrence effect of a $10 fee is even lower: only 4.3 percent said that such a fee would deter them from paying late.

The CFPB notes that the submitted survey asked consumers about the primary reason they avoid a late fee. As such, it is consistent with current fees being excessive that 46 percent of consumers pay on time primarily to avoid late fees, while only 30 percent would do so to do the responsible thing. The posed question does not shed light on whether concerns about a credit rating or the other listed reasons (or other reasons not even listed) in combination with a $8 late fee would be sufficient for most consumers not to breach a contract. It is unclear from the results submitted whether the amount of the hypothetical late fee was meant or understood to be considered in isolation or alongside the other consequences of a missed payment. For example, did respondents say that a $10 fee would not deter them because they thought that the fee would be the only consequence of a missed payment? Would respondents have said something else had they known (and understood) the loss of the grace period or larger interest payments? The survey results leave these questions unanswered.

Although the survey did ask respondents if they would be deterred by a late fee amount below $5, $10, and $15, the reported ''yes'' response rates in the single digits are missing crucial context—specifically, whether the respondents would indeed have said they would be deterred by late fee amounts close to $30 and $41. The survey is hypothetical. In practice, the vast majority of cardholders pay on time in the vast majority of months. The survey results submitted to the CFPB do not show whether respondents, within the hypothetical world posited by the survey, indicated whether $30 is at or near the price point at which they would be deterred from making a late payment. In other words, the results reveal nothing about the extent to which a $30 late fee determines consumers' payment behavior in the real world.

An additional reason why the survey is of limited value is that, based on the results provided to the CFPB, the survey seems to have posited a hypothetical world in which it is assumed that respondents had the money to pay the bill and were aware of the due date. In practice, consumer commenters indicated that they pay late for a variety of reasons, including (1) their mailed payment was not received by the card issuer by the due date because of slower postal service; (2) they paid on the due date but after the cut off time on the due date; (3) they forgot to pay on time because of vacations, medical issues, or family issues; or (4) they experienced cash flow issues because of unexpected expenses, such as an illness. To the extent consumers are late in paying because of mail delivery issues, they are inattentive to their account, or they are so cash-constrained that they are unable to make a minimum payment, the amount of the late fee may have little effect on whether they pay late.

Further, the appendix to the comment letter mentions that the contractor used the Van Westendorp's Price Sensitivity Meter [176] to ''identify the fee point at which consumers would likely be deterred from paying their credit card bills late,'' indicating the commenter gathered much more data about purported demand for late fees than the data related to just three price points that it chose to share. That type of data might be useful, given that a careful consideration of deterrence needs to trade off additional deterrence against other cost and benefits of higher fees. It is crucial to know whether deterrence would be meaningfully higher at $20, or maybe $50, in order to consider whether that higher deterrence is indeed worth the harm to consumers from those higher fee amounts. The survey responses that the commenter chose to share prove that there is not meaningfully more deterrence at $15 than at $5, but nothing about the comparative deterrent effect of $30 or $41. This final rule maintains the stance of the 2023 Proposal that late fee amounts can have some deterrent effect, and higher amounts have more, but a $30 or $40 late fee amount would not be sufficiently more of a deterrent than an $8 late fee amount to justify late fees far above cost, especially given the other negative consequences of a late payment. The final rule further maintains the stance, as supported by consumer commenters, that many late payments are due to reasons that would not be responsive to any level of deterrent.

A regulatory advocacy group commenter submitted data from its recent poll of approximately 1,100 consumers regarding credit card late fees. The commenter reported the poll shows that by a 21-point margin, respondents believe that a decrease in the penalty will result in more people making late payments. Further, 53 percent of those surveyed believe they will be more likely to make late payments on their credit cards if the late payment penalty is reduced from $30 to $8. A large trade association commenter cited the same poll results as direct evidence of what consumers would do in response to a reduction in late fee amounts similar to the one proposed.

The CFPB acknowledges that the direction of the response to a fee change in these results seems correct, and that such a reaction has never really been in doubt in the CFPB's development of this final rule. Lower fee amounts would be less deterrent than higher fee amounts, but this observation provides scant evidence to help the CFPB ensure that

[176] The Van Westendorp Price Sensitivity Meter is a comprehensive, multi-question survey model that indirectly measures potential buyers' willingness to pay. Instead of asking potential buyers to identify a single price point, the Van Westendorp model helps assess willingness across a range of prices. *See* Rebecca Shaddix, *How To Price Your Product: A Guide To The Van Westendorp Pricing Model, Forbes* (June 22, 2020), at: *https://www.forbes.com/sites/rebeccasadwick/2020/06/22/how-to-price-products/?sh=4cbfd2055c75*.

late fees are reasonable and proportional, as guided by the factors of deterrence, cost, and consumer conduct. The CFPB also finds that responses to questions posed to consumers about hypothetical late payment amounts are less informative than are the effects of late payment fees that consumers actually incur, such as those studied in the seventh-month analysis of certain Larger Card Issuers' Y–14 data discussed above.

In addition, a bank commenter asserted that it has consistently found that late fee assessments under the current safe harbor amounts reduce the incidents of recurring delinquencies and submitted its own data in support of the statement. According to the commenter, between 2019 and 2021, 43 percent of its 30-day delinquent cardholders did not subsequently enter a 60-day delinquency after incurring a late fee. Furthermore, over the same time period, 48 percent of 60-day its delinquent cardholders who were assessed two late fees did not enter a 90-day delinquency status.

The CFPB notes that the disclosed information does not show the effects of charging a late fee, let alone the effects of charging the $41 current safe harbor amount, against the counterfactual of charging an $8 safe harbor amount. The fact that a decreasing share of late payers are delinquent for one, two, or three months is fully consistent with the CFPB's understanding of consumer behavior in this market and with the CFPB's analysis of the effects of late fee charges and other consequences of late payments, as discussed herein. The commenter did not formulate how many more cardholders would be delinquent for 30, 60, and 90 days or more if no late fee were charged or if a $8 late fee were assessed after a late payment.

As discussed above, one credit union trade association asserted that the CFPB failed to present in the 2023 Proposal an analysis of the tradeoff between late fees and late payments. This commenter asserted that a consumer is deterred from being late on a payment if the late fee is greater than the net benefit of missing the payment. Similarly, one credit union commenter expressed concern that if the late fee amount is set too low, consumers are more likely to pay the fee without considering the long-term consequence of lowering their credit scores, higher borrowing costs, reduced ability to access credit, and ultimately less disposable income. Many other industry commenters expressed similar concerns. In response, the CFPB notes that calculating consumers would trade off the total costs of a missed payment against the full array of benefits of missing the deadline on minimum payments. The CFPB notes, however, that the total costs of a late payment are higher than just the late fee, as the 2023 Proposal and this final rule have enumerated.[177] In addition, in practice, many late payments are due to circumstances beyond consumers' control.

Also, as discussed above, several commenters posited that because $8 is roughly comparable to the price of common items such as a cup of coffee or movie ticket, more consumers may view that amount as a reasonable price to pay in exchange for postponing making their credit card payments. The CFPB reiterates that some late payments are the result of circumstances beyond consumers' control.[178] Moreover, the CFPB notes that some consumers pay late simply because they do not have enough funds to pay the minimum payment. As noted in part III.B, some consumer commenters indicated that they have limited income and that even a small late fee can impact their tight budget. For consumers in these circumstances, a $30 late fee is simply adding to the unpayable debt amount.

For the reasons discussed above, the CFPB finds that the available evidence and the CFPB's study of the Y–14 data of certain Larger Card Issuers indicate that the $8 safe harbor amount for the first and subsequent late payments will still have a deterrent effect on late payments, although that effect may be lessened to some extent, and other factors may be more relevant (or may become more relevant) toward creating deterrence.

In addition, for the reasons discussed herein, the CFPB determines that some consumers may benefit from the $8 safe harbor threshold amount, including some consumers who may experience an increase in late payments under the lower safe harbor amount. With respect to those consumers, the CFPB notes, as it did in the 2023 Proposal, that for the more constrained cardholders, like subprime borrowers, who pay a disproportionate proportion of late fees, the current, higher late fee may be impacting cardholder repayment conduct—*i.e.,* the higher late fee amount could have gone toward a payment on the account. As discussed in part IX, the CFPB estimates that reducing the safe harbor for late fees to $8 for Larger Card Issuers will likely reduce late fee revenue by billions of dollars. This expected savings will benefit consumers. The money saved by cardholders on late fees may go toward repayment. As discussed in the 2023 Proposal, the 2023 paper by Grodzicki *et al.,*[179] described above, with all the caveats noted there, found such a pattern for subprime cardholders: A decrease in late fees after the implementation of the CARD Act increased borrowing for prime borrowers but triggered repayment for subprime cardholders.[180] If this prediction holds true for the late fee safe harbor amount in this final rule, it would imply that lowering late fees may provide some benefits to subprime consumers in terms of a greater ability to repay revolving debt.[181] This effect might also lower issuers' losses from delinquencies, as it could subsequently reduce the likelihood and the severity of default in the population most prone to default.[182]

The CFPB rejects the notion, as one commenter asserted, that potential benefits to the vast majority of consumers (including subprime consumers) who obtain credit cards through larger issuers are irrelevant to the analysis because those benefits are not among the specific statutory factors

[177] The CFPB also notes that the benefits need not be restricted to the alternative use of funds, such as the opportunity cost of investing the minimum payment due for a short time. Rather, they also include the cognitive and other costs of initiating other transactions in advance of the due date in such a way as to ensure that the consumer has available funds at the last possible moment at which they can initiate a payment that the issuer would accept as timely.

[178] As discussed in part III.B, some consumers commenting on the 2023 Proposal stated that they had incurred late fees because (1) their mailed payment was not received by the card issuer by the due date because of slower postal service; (2) they paid on the due date but after the cut off time on the due date; or (3) they forgot to pay on time because of vacations, medical issues, or family issues.

[179] *Supra* note 169.

[180] Although the paper found that lower late fees may cause subprime cardholders to pay late more often, it also found that lower late fees may cause subprime cardholders to make a larger payment when they ultimately make the payment. This paper explained that this latter effect on subprime cardholders might result from the lower late fee amount lessening the need for subprime cardholders to focus on avoiding late fees and instead allowing some subprime cardholders to start to pay more attention to the high cost of their revolving debt.

[181] As discussed in part V, the Y–14+ data that the CFPB considered in developing the proposal and this final rule include data from specialized card issuers. Those issuers make up a majority of subprime credit card balances.

[182] Even if lower late fees would decrease losses from delinquencies, issuers may still prefer higher late fees to maximize profits. As current late fee levels generally produce profits to issuers on the average late payment, the CFPB does not take the prevalence of high fees as strong evidence that lower fees would raise issuers' losses from delinquency. Even if lowering late fee amounts reduced delinquency, doing so might not be in issuers' interest: A $1 reduction in the late fee amount might decrease delinquency losses by less than $1 per incident, and thus lower profits.

for determining an appropriate safe harbor amount for penalty fees. As discussed above, while the factors in TILA section 149(c) are not strictly controlling, that statutory provision includes such other factors that the CFPB deems necessary or appropriate. In its analysis of the Y–14 data, the CFPB finds that the combined beneficial effects for consumers are an appropriate consideration for this rulemaking. The CFPB also finds that a late fee safe harbor amount of $8 for the first and subsequent late payments strikes the appropriate balance of deterrence considerations and considerations of those beneficial effects.

In addition, as discussed in the 2023 Proposal, the CFPB notes that card issuers have available methods and tools other than charging higher late fees to deter late payment behavior, and thereby minimize the potential frequency and cost to card issuers of late payments. In particular, as discussed in part II.G, for cardholders who typically pay their balance in full every month (so-called transactors), a late fee is in addition to new interest incurred for carrying or revolving a balance. For these consumers, who do not roll over a balance in the month before or after a late fee is assessed, the loss of a grace period and coinciding interest charges may pose a similar or even greater deterrent effect than the late fee itself. For some consumers, card issuers may also report the late payment to a credit bureau, which could affect the consumers' credit scores. The CFPB notes that since the Board's 2010 Final Rule went into effect, many credit card issuers, financial institutions, and third parties have begun providing free credit scores to consumers.[183] Access to real-time changes in consumers' credit scores have likely increased their awareness of any decline related to late payments, contrary to some commenters' assertions that consumers do not think about such things. Thus, the deterrent effect of any negative credit score impact is likely greater than in 2011—and the potential impact encourages payment within one billing cycle of the due date without the imposition of additional financial penalties.

Further, as noted, card issuers may decrease the consumer's credit line, limit the cardholder's earning or redemption of rewards, or impose penalty rates in certain circumstances—all of which can have a deterrent effect. For example, if a consumer does not make the required payment by the due date, § 1026.55(b)(3) permits a card issuer to take actions to reprice new transactions on the account according to a penalty rate in certain circumstances. After 60 days, § 1026.55(b)(4) permits issuers to take steps to reprice the entire outstanding balance on the account according to a penalty rate in certain circumstances.

As discussed above, several commenters expressed concerns about the negative consequences that consumers may incur—including higher APRs and lower credit scores—if a lower late fee safe harbor amount results in an increase in late payments. Further, as noted in the 2023 Proposal, card issuers have non-punitive methods to facilitate timely payments, including, for example, automatic payment and notification within a certain number of days (*e.g.,* five days) prior to the due date that the payment is coming due. Both the availability and adoption of these methods have increased since the Board issued its 2010 Final Rule. In 2013, issuers tracking the number of consumers making payments online reported that an average of 38 percent of consumers made at least one non-automatic payment online or through automatic payment;[184] in 2022, 61 percent of active accounts made at least one non-automatic online payment online in the last cycle of the year, and 20 percent of accounts made at least one automatic payment in the last cycle of the year.[185] Even in the past few years, digital enrollment has grown, with 76 percent of active accounts enrolled in an issuer's online portal in 2022 (a 3 percentage point increase from 2017), 76 percent enrolled in a mobile app (a 25 percentage point increase from 2017), and 67 percent receiving only e-statements (a 23 percentage point increase from 2017).[186]

The CFPB expects that these other methods, and the negative consequences resulting from missed payments, will decrease the likelihood of late payments not only in cases where card issuers consider the deterrent effects of lower late fees to be insufficient, but for other reasons as well. As discussed above, Larger Card Issuers also may offset lost revenue from lower late fees by increasing interest rates, which would indirectly make late payments more costly than without this response. Also, issuers may have less ability to charge consumers higher late fees to maximize profits and thus may be more inclined to take other, more efficient steps to deter late payments, including providing timely reminders of an upcoming due date, well-chosen due dates aligned with cardholders' cash flow, and encouraging automatic payments.

Some industry commenters, as discussed above, expressed concern that a late fee safe harbor amount of $8, due to its diminished deterrence effect, would make it difficult for card issuers to identify riskier consumers and manage for that risk, and thus result in higher costs to card issuers. The CFPB finds these concerns unwarranted. As discussed above, the CFPB determines that the $8 safe harbor will cover pre-charge-off collection costs for the average Larger Card Issuer. As also discussed above, the CFPB determines that this result is the approach most consistent with the CARD Act's requirements and purpose. To manage credit risk and post-charge-off collection costs resulting therefrom, card issuers can continue to customize rates using risk based-pricing, and to adjust those rates and apply penalty rates—consistent with limitations in the CARD Act as implemented in Regulation Z—if they indeed learn something from consumers' delinquency.

The CFPB also declines to look to proxies, as one commenter suggested, such as returned-check penalties under State laws, late fees charged on utility bills, and student loan late fees. The CFPB notes that those violations do not trigger financial consequences, such as a missed grace period or a month's worth of interest on the balance and new purchases that otherwise would not have applied. As such, the penalty fees for those violations are inapt proxies for purposes of the CFPB's deterrence analysis.

*Consumer conduct.* Based on the available evidence and careful consideration of the comments, with respect to the late fee safe harbor threshold amount for Larger Card Issuers, the CFPB determines that an $8 late fee safe harbor amount for the first and subsequent late payments for Larger Card Issuers better reflects a consideration of the Y–14 data related to consumer conduct than do the higher amounts set by the Board. The CFPB is aware that the Board noted in the 2010 Final Rule noted that ''consumers who pay late multiple times over a six-month period generally present a significantly greater credit risk than consumers who pay late a single time.'' [187] The CFPB is

[183] CFPB, *The Consumer Credit Card Market,* at 174–176 (Dec. 2017) (2017 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf.*

[184] 2013 Report, at 68.

[185] These categories are not mutually exclusive. 2023 Report, at 131–132.

[186] *Id.* at 131.

[187] 75 FR 37526 at 37534.

also aware that the Board further noted that ''when evaluating the conduct of consumers . . . it is consistent with other provisions of the Credit Card Act to distinguish between those who repeat that conduct during the next six billing cycles and those who do not.'' [188] However, as discussed in the 2023 Proposal, the CFPB's analysis of the Y–14 data and other relevant information indicates that it not clear that multiple violations during a relatively short period are associated with increased credit risk and thus reflect a more serious consumer violation. Based on the account-level Y–14 data from October 2021 to September 2022 from certain Larger Card Issuers, the CFPB estimates that only 13.6 percent of accounts incurred a late fee and then no additional payments were made on that account. In addition, based on Y–14 data, for accounts that incurred a late fee, the CFPB estimates that a third of accounts paid the amount due within five days of the payment due date, half the accounts paid the amount due within 15 days of the payment due date, and three out of five accounts paid the amount due within 30 days of the payment due date.

In addition, as discussed in the 2023 Proposal, the CFPB understands that the Metro 2 reporting format used by the industry for reporting information to credit bureaus does not consider a payment to be late if it is made within 30 days of the due date. Thus, for risk management purposes, the industry itself does not appear to consider the consumer's conduct in paying late to be a serious form of consumer conduct until the consumer is 30 or more days late. As discussed above, the CFPB estimates that a majority of accounts become current before card issuers even consider the consumer late for credit reporting purposes.

An academic commenter, as discussed above, stated that the CFPB's analysis does nothing to address the reality that multiple late payments demonstrate an increased credit risk and reflect a more serious violation of the account terms—even if those payments occur before the account would be reported as late under credit reporting guidelines. The CFPB does not accept the notion that a late fee safe harbor amount should reflect a more expansive idea of what constitutes an increased credit risk or serious violation than does the credit reporting format that the credit card industry has adopted. The CFPB further notes that, for the subset of consumers who do make their credit card payment 30 or more days late, the consequences of being reported to a credit bureau are potentially quite costly. In this respect, reporting late payments to the credit bureaus is just one of the several other tools and methods that card issuers can employ to address the conduct of late-paying consumers.

Further, the CFPB has determined that permitting risk-based pricing in setting the amount of a late fee is generally inconsistent with the CARD Act's requirement that late fees be reasonable and proportional to the cost of the omission or violation. This type of pricing would enable issuers to set late fee amounts based on estimation of risk among groups of consumers, as compared with the statutory requirement that late fees be based on the actual violation, rather than the potential risk of consumers. Moreover, the safe harbor is a discretionary amount that is presumptively reasonable and proportional, and use of risk-based pricing could result in a higher late fee amount than the cost of the omission or violation for many Larger Card Issuers. Further, the CFPB disagrees that this pricing is necessary to manage the risk presented by consumers who pay late more than once within the next six billing cycles. As a basic matter, bona fide late fees are excluded from the definition of finance charge in Regulation Z and thus are not reflected in TILA's cost of credit. It is difficult to square why a fee that is not considered a price component for all other purposes under TILA and Regulation Z should be treated as one for purposes of risk management. Indeed, as discussed in the 2023 Proposal, increasing the APR is among the methods other than late fees that card issuers have to address credit risk. Specifically, card issuers that charge an interest rate are permitted by § 1026.55(b)(3) to reprice new transactions on the account according to a penalty rate in certain circumstances. In addition, after 60 days, § 1026.55(b)(4) permits these issuers to take actions to reprice the entire outstanding balance on the account according to a penalty rate in certain circumstances. In addition, card issuers may take steps to reduce a cardholder's credit line.

The CFPB recognizes that a special rule in § 1026.52(b)(1)(ii)(C), as discussed below in the section-by-section analysis of that provision, permits card issuers to impose a late fee that does not exceed 3 percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle, when a charge card issuer has not received the required payment for two or more consecutive billing cycles. As the Board noted in the 2010 Final Rule, this provision is intended to provide charge card issuers with more flexibility to charge higher late fees and thereby manage credit risk when an account becomes seriously delinquent, because charge card issuers do not apply an APR to the account balance and therefore cannot respond to serious delinquencies by increasing that rate. Thus, the Board acknowledged in its rationale for adopting this special rule that for most card issuers, increasing the rate is an appropriate tool for managing the risk resulting from seriously delinquent accounts. As discussed below, the CFPB is not substantively amending the current safe harbor set forth in § 1026.52(b)(1)(ii)(C). The CFPB recognizes that card issuers do not charge interest on charge card accounts, and thus would not be able to use the interest rate charged on the account to manage credit risk.

As discussed in the 2023 Proposal, in considering consumer conduct, the CFPB also recognizes that some consumers may pay late chronically but otherwise make a payment within 30 days for a number of reasons, including cash flow issues, that do not necessarily indicate that they are at significant risk of defaulting on the credit. For example, consumers may make a credit card payment after the due date from the next paycheck to smooth out expenses and avoid paying overdraft fees. As discussed above, some commenters asserted that the CFPB placed too much emphasis on cash flow issues in its analysis, with one commenter noting that if the problem is with consumer cash flow timing, as the CFPB hypothesizes, most major credit card issuers have mechanisms in place to allow customers to change the due date on their account in order to account for their own paycheck or earning schedules. The CFPB encourages the use of such mechanisms. However, even with the availability of those mechanisms, the CFPB notes, as it did in the 2023 Proposal, that a 2021 study suggests that some consumers who are paid on a bi-weekly basis may not make the required payment by the due date but will make the required payment within 30 days after the due date from their next paycheck. In addition, as discussed in part III.B, some consumer commenters who supported the proposal indicated that they had been charged a late fee because they experienced cash flow issues due to unexpected expenses, such as an illness,

[188] *Id.*

and in some cases were not able to change the due date for their payments.

As discussed above, a bank commenter expressed concern that if a late fee is only $8, consumers may not bother to call, and the card issuer will lose an opportunity to provide financial assistance. The CFPB notes that $8 is a significant sum for many consumers, particularly deep subprime consumers who pay a disproportionately large share of credit card late fees. Indeed, as discussed part III.B, some consumers who supported the proposal indicated they had limited income and that even a small late fee can impact consumers on a tight budget. The CFPB also notes that card issuers have other options for offering financial assistance besides waiting for delinquent cardholders to call. These include proactively contacting such cardholders through email, letters, and web and mobile notifications. The CFPB encourages card issuers to use nonintrusive methods of reaching out to cardholders. The CFPB also notes, as a financial regulatory advocacy group commented, that because credit card payments are applied first to cover finance charges and fees, when late fees are tacked on, less of a consumer's payment goes toward reducing the principal balance. For consumers, this in turn adds to the duration and cost of revolving an outstanding balance. The CFPB anticipates, as the commenter asserted, that the lower safe harbor amount may have a positive impact on the financial health of consumers who bear late fees, and that it is necessary and appropriate to take that effect into consideration in conjunction with safe harbor amount's effects on consumer conduct.

*Other factors cited by commenters.* As discussed above, many industry commenters recommended that the CFPB consider certain additional factors in establishing a safe fee late harbor amount. Specifically, several industry commenters cited lost late fee revenue and the resultant negative impacts on card issuers as factors meriting establishing a safe harbor amount significantly higher than $8 or leaving the current safe harbor amounts intact. Several credit union commenters, for example, stated that revenue from late fees covers pre-charge off collection costs but also subsidizes products and services that members demand and need, including programs targeted toward consumers with thin credit files. A dramatic cut in that revenue, these commenters cautioned, would necessitate cutting or eliminating those programs. Other commenters expressed concern that it would necessitate raising rates.

The CFPB notes that to the extent that industry commenters raising these concerns are Smaller Card Issuers as defined in § 1026.52(b)(3) (*i.e.,* card issuers that together with their affiliates have fewer than one million open credit card accounts for the entire preceding calendar year),[189] they will still be permitted under this final rule to impose late fees pursuant to the safe harbor provisions in § 1026.52(b)(1)(ii)(A) and (B) (as revised by this final rule) for the reasons discussed in part V. However, the CFPB emphasizes, for all card issuers, that the CARD Act as implemented by Regulation Z permits card issuers to recover through late fee revenue only pre-charge-off costs associated with late payments; it does not provide that card issuers may also fund other programs and services through excess late fee revenue. Thus, as discussed above, in setting the $8 late fee safe harbor amount, the CFPB has indeed considered late fee revenue resulting from the imposition of late fees in that amount, but only in evaluating the extent to which an $8 late fee would cover card issuers' pre-charge off collection costs. As discussed above, the CFPB expects that an $8 late fee is sufficient to cover the pre-charge-off collection costs of the average Larger Card Issuer. Those whose pre-charge-off collection costs are not fully covered may impose late fees pursuant to the cost analysis provisions in § 1026.52(b)(1)(i).

As discussed above, one bank and one State bank trade association cited safety and soundness concerns as another factor that the CFPB should consider. One of these commenters asserted that setting fees on a risk-adjusted basis is essential to running a safe and sound credit card business, as well as to providing credit to customers who would not otherwise get it. A State bank trade association commenter noted that when its member banks establish terms and conditions for their credit plans, the late fee safe harbor weighs heavily in assuring that the bank's cost of credit match the higher costs of delinquency to targeted revenue and asking those who create such higher costs to bear those costs directly is necessary to maintain safety and soundness in the sub-prime space. The CFPB notes that, if these banks are Smaller Card Issuers, they are not covered by the $8 safe harbor threshold amount adopted in this final rule because it is limited to the Larger Card Issuers (as that term is used in this document), for the reasons discussed in part VI.

[189] *See supra* note 5.

The CFPB also notes, however, that even if these banks are covered by this final rule the available evidence does not support the suggestion that late fees imposed pursuant to the current safe harbor amounts are adjusted or priced according to risk. In the 2022 survey of agreements as discussed in part II.E, most of the top 20 card issuers based on outstanding balances impose late fees at or near the safe harbor amounts—little to no adjusting or pricing is done at all. Moreover, none of these top issuers appear to be charging late fee amounts above the current late fees safe harbor amounts to adjust for particularly risky consumers. This conclusion also is supported by the data the CFPB collected through its 2023 survey of agreements discussed in part II.E, showing that most Larger Card Issuers charged a maximum late fee at or near the higher safe harbor amount of $41 in 2023 but did not go beyond that level. Further, as discussed in the analysis of consumer conduct above, the CFPB notes that card issuers have many other tools at their disposal for managing the higher risks posed by cardholders who chronically pay late. These include raising the rates on those cardholders' accounts, consistent with certain limitations in the CARD Act. The CFPB also notes that none of the prudential regulators with which it consulted on this final rule, as discussed in part III.C, raised safety and soundness concerns.

Additional Issues

As discussed above, the CFPB requested comment on a number of different issues related to its proposal to lower the late fee safe harbor amount to $8 for first and subsequent violations, including eliminating the late fee safe harbor, alternative approaches to determining the late fee safe harbor amount, or whether to impose certain conditions on the use of the safe harbor or on assessing late fees generally. The CFPB also request for comment on a number of issues related to penalty fees generally, including whether to extend the $8 safe harbor amount to all penalty fees, such as over-the-limit fees, returned-payment fees, and declined access check fees. The CFPB is not finalizing any of these alternative approaches or conditions for the reasons discussed below.

*Eliminate the safe harbor for late fees and adopt no replacement safe harbor.* The CFPB received some comments on whether to eliminate the safe harbor for late fees altogether, *i.e.,* eliminate the existing safe harbor without adopting a new one. An individual commenter noted that for simplicity, eliminating the safe harbor altogether might better

serve the CFPB's aims. This commenter also noted, however, that the 2023 Proposal would still accomplish the CFPB's goals and would be more in line with the intent of the law. A few industry commenters responded in opposition to entirely eliminating the safe harbor for late fees. A bank, for example, asserted that doing so would lead, among other things, to a drastic uptick in operational complexity for issuers, complexity in the CFPB's oversight, and consumer uncertainty. An industry trade association stated that the CFPB had not provided any evidence or support for why the late fees safe harbor should be eliminated altogether. For the reasons discussed above, the CFPB has made an independent determination to repeal the existing safe harbor for late fees charged by Larger Card Issuers. Nonetheless, for the reasons discussed above, the CFPB is also adopting a new $8 safe harbor for Larger Card Issuers.

The CFPB restates its conclusion, as discussed above, that establishing a safe harbor amount is an exercise of discretionary rulemaking authority, and thus, a safe harbor need not exist. The CFPB also reiterates its expectation that some Larger Card Issuers will opt to use the cost analysis provisions in § 1026.52(b)(1)(i) to set the amount of their late fees. The CFPB disagrees that the cost analysis will be an operational challenge for Larger Card Issuers with sophisticated businesses. These institutions should be able to track their pre-charge off collection costs and perform the mathematics necessary to calculate a cost-basis fee.

*Establish a different safe harbor amount for late fees.* Although many commenters implicitly recommended that the CFPB establish a late fee safe harbor amount higher than $8, only a few commenters responded to the CFPB's specific request for comment on whether it should establish a different amount for late fees and, if so, what that amount would be. A credit union trade association recommended that if the CFPB determines that current late fee amounts are too high for consumers, it should reinstate the late fee amount of $25 initially established by the Board pursuant to the CARD Act. Another credit union commenter, through its trade association, suggested that the CFPB consider providing a different safe harbor amount for variable rate credit cards vs. fixed rate cards. The commenter noted that an $8 late fee may be appropriate for variable rate cards, given that in the current rising interest rate environment, minimum payment amounts would continue to increase, thus offsetting a reduction in late fee amounts for such cards. A consumer commenter recommended that the CFPB set a minimum late fee safe harbor amount of $8 and a maximum one of $30, reasoning that this would help to avoid a high fee for a small balance while still leaving allowance for the higher fee on large balances. Another consumer commenter recommended that the late fee safe harbor amount be set at 8 percent of the balance.

A few commenters responded to the CFPB's request for comment on whether to adopt a staggered late fee safe harbor amount with a cap on the maximum dollar amount, such that card issuers could impose a fee of a small dollar amount every certain number of days until a cap is hit. All opposed the idea, asserting that it would add needless complexity, be expensive to implement, or would confuse consumers.

For the reasons discussed in detail above, this final rule for Larger Card Issuers repeals the current safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) as they apply to late fees and sets late fee safe harbor threshold amount of $8. The CFPB determines that this approach better ensures that late fees imposed by Larger Card Issuers for the first and subsequent violations are reasonable and proportional than do any of the other approaches suggested by commenters, many of which would result in late fee amounts that are too high or would add unnecessary complexity to the rule.

*Conditions on using safe harbor or on assessing late fees generally.* Several commenters responded to the CFPB's request for comment on whether to impose certain conditions on using the late fee safe harbor or on assessing late fees generally, such as requiring card issuers to offer autopay or provide additional notices to consumers. Several consumer groups expressed support for imposing both conditions for late fees generally. These commenters noted that the vast majority of card issuers, including smaller ones, currently provide an autopay option. With respect to offering additional notices, these commenters urged the CFPB to require issuers to provide a notice by postal mail before imposing a late fee on cardholders who only receive statements online. They suggested that such notice should include a warning that a late fee will be imposed if the cardholder does not make a payment within seven days and should also inform cardholders of their right to receive paper statements and provide an easy way to exercise this right. These commenters expressed concern that card issuers' aggressive pushing of online-only statements has resulted in some consumers paying late because they have missed an email or other electronic notification that a statement is available.

Industry commenters generally opposed imposing either condition, with the exception of at least two card issuers that expressed support for requiring issuers to offer an autopay option. In opposing both conditions, one large industry trade association stated its belief that because the two ideas, along with a 15-day courtesy period, are only briefly referenced in the proposal, the CFPB cannot move forward on the matters absent (1) more work on the CFPB's part to understand the benefits and burdens of this approach; and (2) far more opportunity for the public to understand the specifics of any proposed approach with an opportunity to meaningfully comment. Accordingly, the commenter concluded, a new proposed rule would be required if the CFPB sought to pursue these ideas. Another industry trade association commenter stated that TILA does not authorize the CFPB to make the safe harbor subject to prerequisites or conditions, reasoning that if Congress intended to so limit card issuers' ability to use the safe harbor, it would have made any such prerequisites or conditions explicit in the statute or expressly granted the CFPB the authority to adopt such prerequisites or conditions. This commenter also expressed concern that a regulatory requirement that card issuers provide one or both of these options in order to rely on the safe harbor would limit issuer flexibility and increase compliance costs.

With respect to autopay, industry commenters noted that most card issuers already offer an autopay option, as well as the option for mail-in payments, online payments, and phone payments. Some noted that many consumers prefer to pay by other means even when autopay is an option and may be concerned about maintaining control over the timing and amount of their payments in order to avoid nonsufficient funds (NSF) or overdraft fees. A credit union commenter expressed concern that requiring issuers to offer an autopay option could be especially burdensome for smaller credit unions. This commenter noted that because some smaller financial institutions must outsource an autopay service for members who opt in for automatic payments, requiring all credit unions to employ this service would be an added expense, which would ultimately force the smaller credit unions to pass these costs on to their

members. A card issuer commenter also noted that complying with such a requirement might well be beyond the capabilities and means of smaller issuers.

With respect to additional notices, one industry trade association noted that issuers currently often send multiple proactive payment reminders prior to the payment due date across multiple channels, including through email, push notifications in an app, and prompting users when they log into their online account. Additionally, this commenter noted that email alerts may be sent each month when a credit card statement is generated, which includes the statement balance, minimum payment amount, due date, and links to other resources to answer questions customers may have related to the credit card program. This commenter further noted that consumers can also often set their own alerts, including payment due and credit card past due notices. While acknowledging that these alerts have had a positive impact on consumer behavior, this commenter asserted that the CFPB provided no data or evidence suggesting the effectiveness or ineffectiveness of these notifications and services; nor did it provide any evidence that additional notifications or services would reduce late payments or suggest alternative notifications or services that issuers should be employing.

A card issuer commenter noted the relatively low take-up rate for the expanded alert registration system that it rolled out a part of the online account opening process a few years ago, whereby consumers are prompted to enroll and select which types of alerts they want to receive, if any. This commenter reported that even with all of those processes, reminders and ease of registration, the percentage of accounts that have selected payment alerts by type are 14.9 percent by text, 13.4 percent by email, and 1.5 percent by push notification (through mobile app). This commenter further stated that as it does not want to harass or create dissatisfaction for its customers, it is incredibly important to engage them when and how they want to be engaged. In addition, this commenter noted that each alert delivery method has its own legal implications as a result of Federal laws—such as the Telephone Consumer Protection Act (TCPA)—designed to protect consumers from unwanted communications. This commenter suggested that if the CFPB has determined that additional notifications are warranted, it should seek Congressional exceptions to the TCPA and other applicable laws, as well as the preemption of any applicable State laws.

The CFPB declines to impose conditions on using the late fee safe harbor or on assessing late fees generally. The CFPB will continue to consider whether these additional regulatory requirements are appropriate.

*Extend $8 safe harbor amount to all penalty fees.* Five industry commenters responded to the CFPB's request for comment on whether to extend the $8 safe harbor amount to all penalty fees, such as over-the-limit fees, returned-payment fees, and declined access check fees. All opposed such an extension. None provided data on other penalty fees in response to the CFPB's request. In opposing the idea, industry commenters generally asserted that the 2023 Proposal lacked sufficient empirical evidence or legal justification for lowering the safe harbor amounts of all penalty fees. An industry trade association, for example, asserted that because the CFPB had not provided any reasoned justification for adjusting any other penalty fees, changes to other fees related to a credit card account would not be a logical outgrowth of the proposal and thus could not be finalized without notice and comment.

Several consumer groups in a joint letter supported lowering the safe harbor amount for all penalty fees, expressing particular concern that card issuers will try to push cardholders into over-the-limit transactions. These commenters posited that while over-the-limit fees virtually disappeared because of the CARD Act's requirement that issuers must obtain the consumer's consent or opt in for over-the-limit transactions, that might not be a permanent condition. These commenters further noted that as can be seen from the experience for overdrafts in the early 2010s, banks are very good at overcoming the stickiness of defaults and getting consumers to opt in to a harmful product.

The CFPB declines to extend the $8 safe harbor amount to all penalty fees or otherwise lower the safe harbor amounts of those fees. As discussed in part II.D, late fees are by far the most prevalent penalty fees charged by card issuers and as such pose the greatest consumer protection concerns at this time. Moreover, the CFPB's current data and other evidence primarily relate to late fees charged by Larger Card Issuers. For these reasons, the CFPB is not adopting the $8 late fee safe harbor amount to all penalty fees or otherwise lower the safe harbor amounts of those fees. As discussed in more details in the section-by-section analysis of § 1026.52(b)(1)(ii)(A) and (B), this final rule adjusts the safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) for penalty fees other than late fees imposed by Larger Card Issuers pursuant to the annual adjustment provisions in § 1026.52(b)(1)(ii)(D). The CFPB will monitor the market for any notable increases in the prevalence of other types of penalty fees, including over-the-limit fees.

*52(b)(1)(ii)(A) and (B)*

The CFPB did not include in its 2023 Proposal the annually adjusted amounts for 2023 (effective for the year 2024) for § 1026.52(b)(1)(ii)(A) and (B) pursuant to § 1026.52(b)(1)(ii)(D). The APA does not require notice and opportunity for public comment if an agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[190] Pursuant to this final rule, as discussed in more detail below, § 1026.52(b)(1)(ii)(A) and (B) and comment 52(b)(1)(ii)–2.i.J is added to update the threshold amounts. The amendments in this final rule adjusting the amounts in § 1026.52(b)(1)(ii)(A) and (B) are technical and non-discretionary, as they merely apply the method previously established in Regulation Z for determining adjustments to the thresholds. For these reasons, the CFPB has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. The amendments adjusting the amounts in § 1026.52(b)(1)(ii)(A) and (B), discussed in more detail below, are adopted in final form.

The Final Rule

Section 1026.52(b)(1)(ii)(D) provides that amounts in § 1026.52(b)(1)(ii)(A) and (B) will be re-calculated annually using the CPI that was in effect on the preceding June 1; the CFPB uses the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) for this adjustment. If the cumulative change in the adjusted value derived from applying the annual CPI–W to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has risen by a whole dollar, those amounts will be increased by $1.00. Similarly, if the cumulative change in the adjusted value derived from applying the annual CPI–W level to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has decreased by a whole dollar, those amounts will be decreased by $1.00.[191]

The CFPB did not issue a final rule adjusting the amounts in § 1026.52(b)(1)(ii)(A) and (B) in 2022 for

[190] 5 U.S.C. 553(b)(B).

[191] *See* comment 52(b)(1)(ii)–2.

adjustments with an effective date of January 1, 2023. This adjustment analysis therefore considers both the percentage change from April 2021 to April 2022 and from April 2022 to April 2023 as reflected in the CPI–W index, which was reported by the Bureau of Labor Statistics on May 11, 2022, and May 10, 2023, respectively. The adjustment to the permissible fee thresholds of $32 for a first violation penalty fee and $43 for a subsequent violation being adopted in this final rule reflects an 8.9 percent increase in the CPI–W from April 2021 to April 2022 and a 4.6 percent increase in the CPI–W from April 2022 to April 2023. Accordingly, the CFPB is revising § 1026.52(b)(1)(ii)(A) and (B) to state that the fee imposed for violating the terms or other requirements of an account shall not exceed $32 and $43, respectively. The CFPB is also amending comment 52(b)(1)(ii)–2.i to preserve a list of the historical thresholds for this provision. This final rule also makes technical changes to cross references in the heading for and lead-in paragraph in comment 52(b)(1)(ii)–2 to conform to OFR style requirements.

*52(b)(1)(ii)(C)*

As noted above, the CFPB did not propose to lower the safe harbor amount of a late fee that card issuers may impose under the special rule in § 1026.52(b)(1)(ii)(C) when a charge card account becomes seriously delinquent. For the reasons discussed below, the CFPB is not finalizing any substantive changes to the special rule, but it is finalizing certain technical changes to the provision and its commentary.

The CFPB's Proposal

Under the special rule § 1026.52(b)(1)(ii)(C), a card issuer may impose a fee of 3 percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles. This safe harbor provision, as discussed above, is intended to provide charge card issuers with more flexibility to charge higher late fees and thereby manage credit risk when an account becomes seriously delinquent, because charge card issuers do not apply an APR to the account balance and therefore cannot respond to serious delinquencies by increasing that rate, as other card issuers can. For clarity, the CFPB proposed to amend the special rule to provide that card issuers may impose a fee on a charge card account in those circumstances notwithstanding the limitation on the amount of a late payment fee in proposed § 1026.52(b)(1)(ii). In addition, the CFPB proposed to amend comment 52(b)(1)(ii)–3, which provides illustrative examples of the application of § 1026.52(b)(1)(ii)(C). The 2023 Proposal would have amended these examples to use a $8 late fee amount, consistent with the proposed changes to the late fee safe harbor amount in proposed § 1026.52(b)(1)(ii). The 2023 Proposal also would have amended a cross reference contained in comment 52(b)(1)(ii)–3.iii so that it would correctly reference paragraph i.

Comments Received

The CFPB received one comment on its preliminary decision not to propose lowering the safe harbor amount of a late fee that card issuers may impose under the special rule in § 1026.52(b)(1)(ii)(C). In that comment, several consumer groups jointly urged the CFPB to revise the special rule to explicitly state that it is only applicable if there is no possibility of interest being charged on a balance for the account, given that the lack of interest rate applied to charge card balances is the rationale for the special rule. The commenters noted that there appear to be no traditional charge cards left on the market that do not charge interest at all. The commenters further noted their concern that without the suggested revision, issuers will start offering a ''charge card balance'' feature on credit cards in order to take advantage of the ability to impose late fees of three percent of the balance. The CFPB declines to adopt the recommended clarification because it is unnecessary. Section 1026.2(a)(15)(iii) defines a charge card as a credit card on an account for which not periodic rate (*i.e.,* interest) is used to compute a finance charge. Thus, a credit card that charges interest on balances is not a charge card by definition—and therefore does not qualify for the special rule in § 1026.52(b)(1)(ii)(C)—regardless of how the card issuer labels or markets that card.

The Final Rule

For the reasons discussed above and below, the CFPB is adopting as proposed revisions to the special rule § 1026.52(b)(1)(ii)(C) regarding the safe harbor amount that card issuers may impose when a charge card account becomes seriously delinquent. Accordingly, the CFPB has determined not to lower that particular late fee amount. Specifically, the revisions clarify that card issuers may impose a fee on a seriously delinquent charge card account notwithstanding the limitation on the amount of a late payment fee in § 1026.52(b)(1)(ii). This clarification is necessary because, as discussed above, the CFPB is finalizing amendments to § 1026.52(b)(1)(ii) for Larger Card Issuers that repeal the current safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) as they apply to late fees charged by Larger Card Issuers and set a late fee safe harbor threshold amount of $8 for the first and subsequent violations for Larger Card Issuers. As noted in the proposal, charge card issuers do not apply an APR to the account balance and therefore cannot respond to serious delinquencies by increasing that rate, as other card issuers can. The CFPB determines that preserving the special rule's current safe harbor amounts is necessary and appropriate to provide charge card issuers with more flexibility to charge higher late fees and thereby manage credit risk resulting from seriously delinquent accounts.

The CFPB also is adopting amendments to comment 52(b)(1)(ii)–3, which provides illustrative examples of the application of § 1026.52(b)(1)(ii)(C), substantially as proposed. Specifically, an amendment to comment 52(b)(1)(ii)–3 clarifies that the card issuer in the examples is not a Smaller Card Issuer as defined in § 1026.52(b)(3). This final rule also amends the examples to use a $8 late fee amount, consistent with the changes to the late fee safe harbor amount in § 1026.52(b)(1)(ii). In addition, this final rule amends the cross reference in comment 52(b)(1)(ii)–3.iii so that it correctly references paragraph i. This final rule also makes a technical change to a cross reference in comment 52(b)(1)(ii)–3.ii to conform to OFR style requirements.

*52(b)(1)(ii)(D)*

Section 1026.52(b)(1)(ii)(D) provides that the dollar safe harbor amounts for penalty fees set forth in § 1026.52(b)(1)(ii)(A) and (B) will be adjusted annually by the CFPB to reflect the changes in the CPI. The Board included this provision in its Regulation Z, § 226.52(b)(1)(ii)(D) as part of its 2010 Final Rule where it determined that changes in the CPI, while not a perfect substitute, would be ''sufficiently similar to changes in issuers' costs and the deterrent effect of the safe harbor amounts.'' [192] In reaching this determination, the Board rejected commentators' arguments that the Board should adjust the safe harbor amounts as appropriate through rulemaking

[192] 75 FR 37526 at 37543.

because the Board believed that this approach would be inefficient.[193]

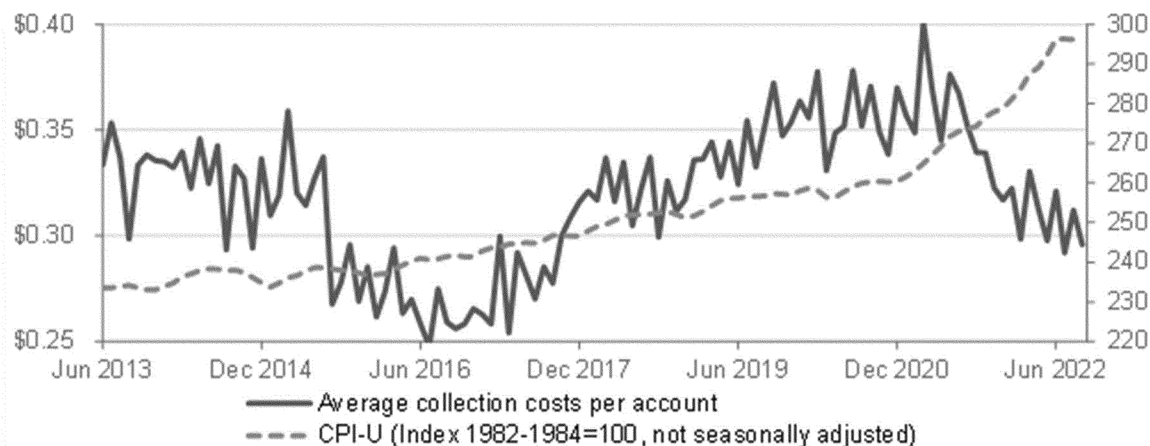
The CFPB's Proposal

The CFPB proposed to no longer apply the annual adjustments to the safe harbor amount for late fees. The 2023 Proposal would have accomplished this by including the $8 proposed late fee safe harbor amount in the lead in text to § 1026.52(b)(1)(ii), instead of including it in § 1026.52(b)(1)(ii)(A) or (B). Thus, § 1026.52(b)(1)(ii)(D), which only applies the annual adjustments to the dollar safe harbor amounts in § 1026.52(b)(1)(ii)(A) and (B), would have no longer applied to the late fee safe harbor amount. The CFPB proposed one technical change to the cross reference to § 1026.52(b)(1)(ii)(A) and (B) used in § 1026.52(b)(1)(ii)(D) to conform to OFR style requirements. In addition, for clarity, the 2023 Proposal would have amended the lead-in paragraph in comment 52(b)(1)(ii)–2 to indicate that the annual adjustments in § 1026.52(b)(1)(ii)(D) do not apply to late fees. Under the proposal, § 1026.52(b)(1)(ii)(D) would have continued to apply to the dollar amount safe harbor amounts that apply to other penalty fees, such as over-the-limit fees, and returned-payment fees. With respect to the dollar amount of the late fee safe harbor, the CFPB would have then monitored the safe harbor amount for late fees for potential adjustments as necessary.

The CFPB noted that to reflect changes in the CPI, annual or otherwise, are not statutorily required. TILA section 149, however, does statutorily require that any late payment fee or any other penalty fee or charge, must be ''reasonable and proportional'' to such omission or violation. When the Board determined that the dollar safe harbor amounts for penalty fees should be subjected to annual adjustments, it did not expressly consider the effect such adjustments may have on the reasonableness and proportionality of the late payment fee (or any other penalty fee). The Board also did not provide any other data or evidence to support these adjustments as necessary. Instead, the Board summarily stated that annual adjustments would be ''sufficiently similar to changes in issuers' costs and the deterrent effect of the safe harbor amounts'' [194] and also considered efficiency, which is not statutorily required. The Board did not go into further details on why annual adjustments would be similar to changes in issuers' costs and the deterrent effect of the safe harbor amounts.

In the proposal, the CFPB analyzed relevant data from certain Larger Card Issuers that were not available to the Board to take into consideration the statutorily mandated reasonable and proportional standard by considering the costs incurred as a result of the violation in determining whether a fee amount is reasonable and proportional. The CFPB, based on these data, preliminarily determined that annual adjustments based on the CPI are not necessarily reflective of how the cost of late payment to issuers changes over time and, therefore, may not reflect the ''reasonable and proportional'' standard in the statute. The proposal stated that while Larger Card Issuers' costs do appear to be trending up, it does not appear that they are doing so lockstep with inflation particularly when considering the month-to-month changes in inflation versus costs. Additionally, there are factors outside of inflation that may impact when issuers' cost goes up and by how much. Figure 3 below shows monthly per-account collection costs in the Y–14 collection (for all consumer portfolios with positive costs that month, solid line) and the Consumer Price Index for all Urban Consumers (CPI–U) price index since 2013 (dashed). Given that the costs fluctuate more than the price level, the CFPB preliminarily determined that any overarching trend in costs is better dealt with through ad hoc adjustments when the safe harbor amounts are revisited.

**Figure 3:** Collection Cost and Price Index Trends (Y-14)




Thus, in the 2023 Proposal, the CFPB considered the cost incurred as a result of a late payment violation and preliminarily determined that the proposal was more aligned with Congress' intent for late fees to be reasonable and proportional than the current provision which requires the CFPB to adjust the safe harbor amounts to reflect changes in the CPI regardless of what the exact changes are, if any, in actual costs incurred by the card issuer.

As noted above, the Board also briefly considered deterrence and efficiency when making the determination to implement annual adjustments to reflect changes in the CPI. In the 2023 Proposal, the CFPB preliminarily determined that deterrence should not be the driving factor in whether the late fee safe harbor amount should be adjusted annually according to the CPI, nor should it outweigh considerations of issuers' costs. The CFPB noted while it

[193] *Id.*

[194] *Id.*

is possible for the deterrent effect of the safe harbor amount to be eroded year-to-year with inflation, there are three overriding considerations as to why that does not necessarily mean there should be annual adjustments to reflect changes in the CPI. First, the CFPB preliminarily determined that it does not intend to tightly peg the deterrent effect to a specific value and recognizes there may be a range of values under which the deterrent effect would be suitable. The CFPB preliminarily determined that the deterrence of the proposed safe harbor amount was sufficiently high so that the CFPB was not concerned by the lesser deterrence of a potentially eroded real value under realistic trajectories for medium-term inflation before any potential readjustment could be put in effect. Second, similar to the analysis of collection costs above, the CFPB preliminarily found that the deterrent effect does not move in lockstep with the CPI. Third, the CFPB preliminarily determined that the CFPB monitors the market so, under the proposal, the CFPB would have been able to adjust the safe harbor amount on an ad hoc basis based on this monitoring, at which point the CFPB would have again considered the deterrent effect when promulgating a new safe harbor amount. While TILA section 149 authorizes the CFPB to consider other factors that the CFPB deems necessary and appropriate in issuing rules to establish standards for assessing whether the amount of any penalty fee is reasonable and proportional, the CFPB preliminarily determined that consideration of costs incurred, and the deterrent effect, outweigh consideration of efficiency to help ensure that late fee amounts are reasonable and proportional.

The CFPB solicited comment on the proposal to eliminate the annual adjustments to reflect changes in the CPI for the late fee safe harbor amount, including data and evidence as to why the adjustment may or may not reflect the reasonable and proportional standard. The CFPB also sought comment on potential future monitoring or other approaches to ensure that the late fee amount is consistent with the reasonable and proportional standard. The CFPB also solicited comments on whether annual adjustments to reflect changes in the CPI should be eliminated for all other penalty fees subject to § 1026.52(b), including over-the-limit fees, returned-payment fees, and declined access check fees.

Comments Received

A few individual commenters, a credit union, and two financial regulatory advocacy groups expressed support for the CFPB's proposal to no longer apply the annual adjustments to the safe harbor amount for late fees. Both the regulatory advocacy groups along with one individual supported the CFPB's analysis that collection costs do not increase in lockstep with the cost of living. One of the regulatory advocacy groups did, however, urge the CFPB to consider that reducing the safe harbor amount to $8 and eliminating future annual adjustments for late fees could cause card issuers to reduce their minimum payment formula or maintain minimum payments at a lower amount than would otherwise be expected.

As discussed in more detail below, many banks and credit unions, a few industry trade associations, and a few individuals expressed concerns with the CFPB's proposal to no longer apply the annual adjustments to the safe harbor amount for late fees.

*Relationship to costs incurred by financial institutions.* Several banks and credit unions and industry trade associations, and a few individual commenters, expressed concerns that elimination of annual adjustments to reflect changes in the CPI for late fees would eventually cause card issuers' costs to outpace the safe harbor amount. One industry trade association explained that this in turn would effectively reduce the safe harbor amount over time and, as a few commenters indicated, ''quickly'' reduce the real value of the safe harbor amount to $0. A credit union and several industry trade associations specifically indicated that costs associated with collection (*e.g.,* wage and utility increases and postage costs) will rise due to inflation and if the safe harbor is not annually adjusted for inflation, then the safe harbor amount will no longer be reasonable and proportional to costs incurred by card issuers from consumers paying late.

A bank and two trade associations argued that if the late fee is no longer reasonable and proportional to costs due to the elimination of annual adjustments then card issuers would experience financial strain which could lead to increased consumer fees and reductions in customer service, technology, and access to credit for lower income consumers.

*Inflation adjustments used in other financial regulations.* A few banks and credit unions and several industry trade associations highlighted that annual inflation adjustments are commonly used in other financial regulations under the authority of the CFPB. For example, a few of the trade associations pointed out that the Federal Civil Penalties Inflation Adjustment Act of 1990 requires the CFPB to adjust for inflation the maximum amount of each civil penalty within the CFPB's jurisdiction. One trade association also specifically highlighted the CFPB's recent regulation implementing section 1071 of the Dodd-Frank Act contained an inflation adjustment, which will occur every five years, for the revenue threshold for covered small businesses.

*Monitoring for adjustments.* A few individual commenters and trade associations cautioned the CFPB against manually monitoring the market for adjustments as it would be time-consuming for the CFPB, burdensome for both the CFPB and the financial industry, create uncertainty, and provides little consolation for eliminating the annual adjustments.

*Alternative suggestions.* A bank and a few industry trade associations provided the CFPB with alternative suggestions to eliminating the annual adjustment. One bank commenter urged the CFPB to consider providing for an inflation adjustment that takes place every few years, instead of annually, similar to Regulation CC, 12 CFR part 229. A credit union trade association requested that the CFPB consider a required reevaluation of the safe harbor amounts every two years to determine whether an increase is appropriate. Finally, another industry trade association further urged, if the final rule included the elimination of the annual adjustment, that the CFPB consider clarifying how it would address adjustments and provide a date by which the annual adjustments would no longer be in effect, preferably two years after the implementation of the final rule.

*Specific data provided.* Two individuals and a law firm representing several card issuers provided the CFPB with specific data related to the CFPB's proposal to no longer apply the annual adjustments to the safe harbor amount for late fees. The law firm adjusted the proposed $8 to reflect the amount it would have been in 2010 and states that the late fee would be approximately $5.74 which is substantially less than what consumer groups were proposing to the Board in its 2010 rulemaking. One individual commenter provided the CFPB with a chart showing that the real value of the CFPB's $8 proposed late fee amount would be cut in half in 10 years at the current inflation rate. The other individual commenter indicated that holding safe harbor steady would have resulted in the safe harbor declining by 15 percent in real terms since the beginning of 2020.

Two bank commenters and an industry trade association commenter

expressed concerns in response to the CFPB's solicitation of comments on whether the CFPB's proposal to no longer apply the annual adjustments to the safe harbor amount for late fees should apply to all other credit card penalty fees. One bank and one industry trade association were generally concerned that extending the proposal to other penalty fees was not adequately addressed or analyzed in the CFPB's 2023 Proposal and therefore should not be considered as a part of the final rule. Another bank commenter indicated that, just like late fees, the elimination of annual adjustments to reflect changes in the CPI should not apply to other credit card penalty fees because the cost of everything goes up with time.

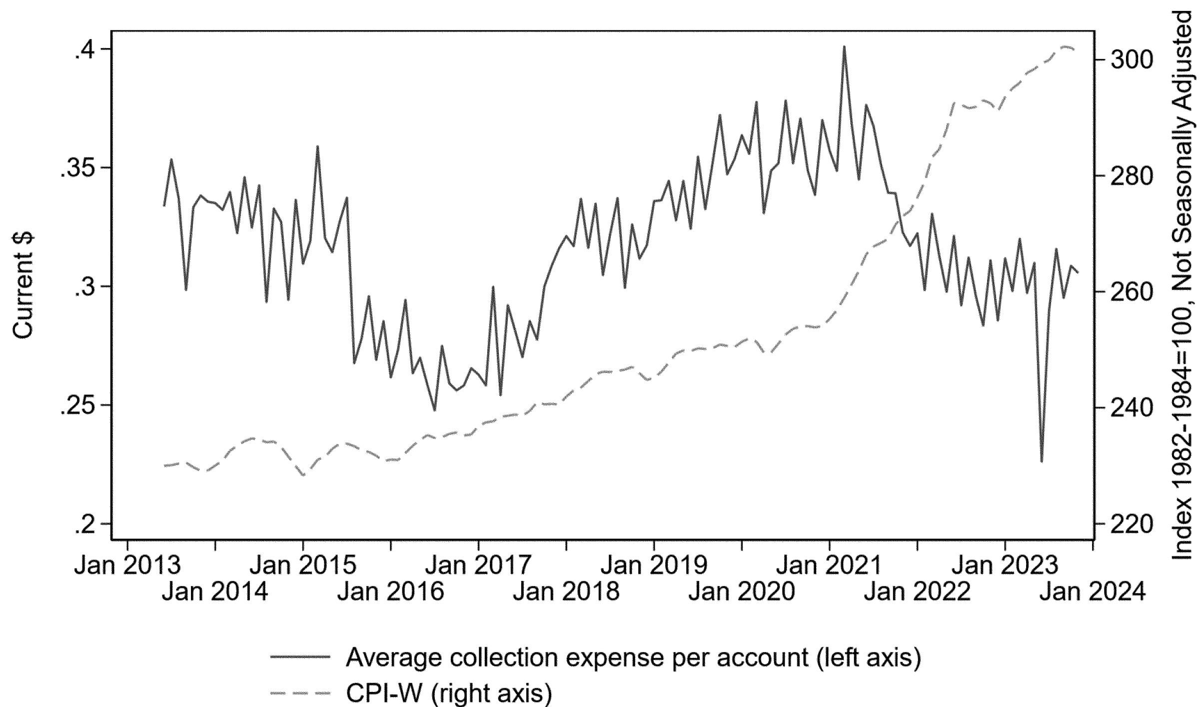
The Final Rule

For reasons set forth herein, the CFPB is adopting the amendment as proposed for Larger Card Issuers as that term is used in this document (*i.e.,* card issuers except Smaller Card Issuers as defined in § 1026.52(b)(3)). The CFPB is effectuating this in this final rule by including the $8 late fee safe harbor amount in the lead in text to § 1026.52(b)(1)(ii), instead of including it in § 1026.52(b)(1)(ii)(A) or (B). With respect to Smaller Card Issuers, this final rule is adding § 1026.52(b)(1)(ii)(E) to provide that a Smaller Card Issuer, as defined in § 1026.52(b)(3), may impose a fee for a late payment on an account if the dollar amount of the fee does not exceed the amount in § 1026.52(b)(1)(ii)(A) or (B), as applicable, notwithstanding the limitation on the amount of a late payment fee in the lead-in text to § 1026.52(b)(1)(ii). The CFPB is retaining § 1026.52(b)(1)(ii)(D), with one technical change to the cross reference to § 1026.52(b)(1)(ii)(A) and (B) used in § 1026.52(b)(1)(ii)(D) to conform to OFR style requirements. As such, it still provides that the amounts in § 1026.52(b)(1)(ii)(A) and (B) will be adjusted annually by the CFPB to reflect changes in the CPI. Therefore, with regard to late fees, the amounts in § 1026.52(b)(1)(ii)(A) and (B), which are subject to the annual adjustments found in § 1026.52(b)(1)(ii)(D), apply only to Smaller Card Issuers. The CFPB is not adopting the proposed amendment to the lead-in paragraph in comment 52(b)(1)(ii)–2 to indicate that the annual adjustments in § 1026.52(b)(1)(ii)(D) do not apply to late fees because under this final rule annual adjustments in § 1026.52(b)(1)(ii)(D) are still applicable to late fees for Smaller Card Issuers.

In eliminating the annual adjustments for Larger Card Issuers, the CFPB is not persuaded by the commenters who expressed concerns that by doing so card issuer costs would outpace the safe harbor amount and late fees assessed at the safe harbor would not be reasonable and proportional to card issuers' costs. The CFPB understands that Larger Card Issuers' costs do not appear to be rising lockstep with inflation particularly when considering the month-to-month changes in inflation versus costs based on the Y–14 data. Figure 3 above, which was also provided in the 2023 Proposal, illustrates that monthly per-account collection costs in the Y–14 collection (for all consumer portfolios with positive costs that month) and the CPI–U price index since at least 2013 have not fluctuated at the same rate. The CFPB has also included Figure 4 below demonstrating that, like the CPI–U, monthly per-account collection costs in the Y–14 collection (for all consumer portfolios with positive costs that month) and the CPI–W price index since at least 2013 have not fluctuated at the same rate.[195] The CFPB is also not persuaded by commenters who suggested alternatives to the 2023 Proposal including that the CFPB adjust the safe harbor amounts in different increments of time such as every 2 or 5 years. The CFPB has determined that just like annual adjustments, issuers' costs do not trend up in lockstep with inflation even if the adjustments occurred in different increments of time.

[195] In the 2023 Proposal, the CFPB incorrectly compared monthly per-account collection costs in the Y–14 collection to the CPI–U price index. The CFPB adjust the amounts in § 1026.52(b)(1)(ii)(A) and (B) to the CPI–W not the CPI–U. However, the discrepancy does not impact the CFPB's overall analysis because, as shown in Figure 4, like Figure 3, the monthly per-account collection costs do not move in lockstep with the CPI–W price index.

**Figure 4:** Collection Cost and Price Index Trends (Y-14 and CPI-W)




The CFPB has further considered and determined that deterrence is not a driving factor in whether the late fee safe harbor amount should be annually adjusted according to the CPI, nor should it outweigh considerations of issuers' costs. The CFPB acknowledges that it is possible for the deterrent effect of the safe harbor amount to be eroded year-to-year with inflation. However, the CFPB has determined that (1) it does not intend to tightly peg the deterrent effect to a specific value and recognizes there may be a range of values under which the deterrent effect would be suitable; further, the deterrence of the $8 safe harbor amount is sufficiently high so that the CFPB is not concerned by the lesser deterrence of a potentially eroded real value under realistic trajectories for medium-term inflation before any potential readjustment could be put in effect; (2) the deterrent effect does not move in lockstep with the CPI; and (3) the CFPB monitors this market and will continue to do so in order to, among other things, consider the deterrent effect when promulgating a new safe harbor amount when making adjustments to the safe harbor amount on an ad hoc basis. The CFPB acknowledges commenters who highlighted that the CFPB adjusts for inflation in other regulations, but here, the CFPB is not statutorily required to make annual adjustments like it is in certain other statutes such as the Federal Civil Penalties Inflation Adjustment Act of 1990 and the Fair Credit Reporting Act. Instead, when considering the appropriate safe harbor amount the CFPB is guided by certain statutory factors it has considered here such as costs to issuers and deterrence.

Given that the costs fluctuate more than the price level and any erosion in deterrence should not outweigh consideration of issuers' costs, that CFPB has determined that any overarching trend in costs and other factors that affect whether the late fee safe harbor amount is reasonable and proportional for Larger Card Issuers is better dealt with through ad hoc adjustments when the safe harbor amounts are revisited.

The CFPB also acknowledges commenters who provided concerns and specific data about the effect eliminating the annual adjustments could have on the real value of the safe harbor amount. For example, some industry commenters expressed concerns that the real value of the safe harbor amount would "quickly" be reduced to $0. A law firm representing several card issuers adjusted the $8 safe harbor to reflect the amount it would have been in 2010 which would have been approximately $5.74. An individual commenter showed that the $8 amount would be cut in half in 10 years at the current inflation rate. A different individual commenter indicated that holding the safe harbor steady would have resulted in the safe-harbor cap declining by 15 percent in real terms since the beginning of 2020. Although the CFPB acknowledges the real value of the safe harbor could decline with time (1) it would not happen as quickly as commenters suggested; for example, it would have taken 53 years to erode a nominal $8 set over the summer of 1970 to $1 and (2) because erosion would not occur quickly, the CFPB maintains that monitoring the market for any such erosion and making ad hoc adjustments as needed is appropriate.

The CFPB further acknowledges comments that expressed concerns that manually monitoring the market and making ad hoc adjustments would be burdensome to the CFPB and card issuers. The CFPB is obligated to monitor [196] and report [197] on the credit card market and any ad hoc adjustments would necessarily be implemented in a way that provide notice to card issuers of any changes.

As discussed in more detail in part VI, the CFPB acknowledges commenters that expressed concerns surrounding the impact eliminating the annual adjustments may have on credit unions and small card issuers. Also as discussed in more detail in part VI, the CFPB is not amending § 1026.52(b) in this final rule to eliminate annual adjustments to the safe harbor threshold

[196] 12 U.S.C. 5512(c).

[197] 15 U.S.C. 1616(a).

amounts available to Smaller Card Issuers.

The CFPB received only a few responses to its request for comment on whether the elimination of the annual adjustments should be applied to all penalty fees covered by § 1026.52(b). The few commenters that did express concern highlighted that they were generally concerned extending the proposal to other penalty fees was not adequately addressed or analyzed in the CFPB's 2023 Proposal and that, just like late fees, the elimination of annual adjustments to reflect changes in the CPI should not apply to other credit card penalty fees because the cost of everything goes up with time. Although the CFPB rejects the broad notion that the cost of everything goes up with time, it has declined to adopt the elimination of the annual adjustments for all other credit card penalty fees covered by § 1026.52(b) because at this time the CFPB does not have the same in-depth data to base its decision as it does with late fees.

*52(b)(1)(ii)(E)*

As discussed in part VI, with respect to Smaller Card Issuers as defined in § 1026.52(b)(3), the CFPB is not adopting at this time the $8 late fee safe harbor threshold and the elimination of the higher late fee safe harbor amount for subsequent violations. In addition, as discussed in part VI and in the section-by section analysis of § 1026.52(b)(1)(ii)(D), with respect to Smaller Card Issuers, the CFPB also is not adopting the proposed elimination of the annual adjustments for the late fee safe harbor threshold.

Accordingly, the CFPB is adopting a new § 1026.52(b)(1)(ii)(E) to implement those decisions. Specifically, § 1026.52(b)(1)(ii)(E) provides that a Smaller Card Issuer, as defined in § 1026.52(b)(3), may impose a fee for a late payment on an account if the dollar amount of the fee does not exceed the safe harbor amount in § 1026.52(b)(1)(ii)(A) or (B), as applicable, notwithstanding the $8 limitation on the amount of a late fee in the lead-in text to § 1026.52(b)(1)(ii). Thus, Smaller Card Issuers as defined in this final rule may continue imposing a late fee pursuant to the safe harbor in an amount that does not exceed the amount in § 1026.52(b)(1)(ii)(A) for a first violation or the amount in § 1026.52(b)(1)(ii)(B) for a late payment violation that occurs during the same billing cycle or one of the next six billing cycles. Further, because the penalty fee dollar amounts in § 1026.52(b)(1)(ii)(A) and (B) are adjusted annually to reflect changes in the CPI as described in § 1026.52(b)(1)(ii)(D), late fees imposed by Smaller Card Issuers pursuant to § 1026.52(b)(1)(ii)(A) and (B) also will be adjusted annually. The CFPB determines that adopting these separate late fee safe harbor provisions for Smaller Card Issuers is necessary and appropriate for the reasons set forth in part VI.

The CFPB also is adopting a new comment 52(b)(1)(ii)–4 explaining the late fee safe harbor provision for Smaller Card Issuers in § 1026.52(b)(1)(ii)(E). The comment explains that pursuant to the provision, and assuming that the original historical safe harbor threshold amounts apply, a Smaller Card Issuer may impose a late fee of $25 for a first late payment violation under § 1026.52(b)(1)(ii)(A) and a late fee of $35 for a late payment violation that occurs during the same billing cycle or one of the next six billing cycles under § 1026.52(b)(1)(ii)(B), provided that those amounts are consistent with the prohibitions in § 1026.52(b)(2). The CFPB is adopting comment 52(b)(1)(ii)–4 to facilitate compliance.

*52(b)(2) Prohibited Fees*

As previously discussed, a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with § 1026.52(b)(1) and (2). Section 1026.52(b)(2) provides certain circumstances where fees are prohibited. Specifically, § 1026.52(b)(2) prohibits (1) fees that exceed the dollar amount associated with the violation; and (2) multiple fees based on a single event or transaction.

In the 2023 Proposal, the CFPB considered whether to require a courtesy period, which would have prohibited late fees imposed within 15 calendar days after each payment due date and be applicable only to late fees assessed if the card issuer uses the safe harbor or alternatively, applicable to all late fees generally (regardless of whether the card issuer assesses late fees pursuant to the safe harbor amount set forth in § 1026.52(b)(1)(ii) or the cost analysis provisions set forth in § 1026.52(b)(1)(i)). The CFPB had preliminary determined that it may be appropriate that the late fee amount essentially be $0 during the courtesy period because card issuers may not incur significant costs to collect late payments immediately after a late payment violation.

Further, the 2023 Proposal noted that given that the late payments may be caused by problems with unavoidable processing delays, the implementation of a courtesy period also would be consistent with considerations of consumer conduct and deterrence, since, in these circumstances, the consumer attempted to pay timely. To the extent card issuers face increased cost from this 15-day courtesy period, the CFPB also noted that issuers have options that may not have been as readily available at the time of the Board's 2010 Final Rule to encourage timely payment, like sending notifications to consumers to warn them of payment due dates or facilitating automatic payment.

The CFPB solicited comments on whether § 1026.52(b)(2) should be amended to provide for a courtesy period which would prohibit late fees imposed within 15 calendar days after each payment due date. The CFPB additionally solicited comment on whether, if a 15-day courtesy period was required, the courtesy period should be applicable only to late fees assessed if the card issuer is using the late fee safe harbor amount (in which case § 1026.52(b)(1)(ii) would have been amended instead of § 1026.52(b)(2)) or alternatively, if the courtesy period should be applicable generally (regardless of whether the card issuer assesses late fees pursuant to the safe harbor amount set forth in § 1026.52(b)(1)(ii) or the cost analysis provisions set forth in § 1026.52(b)(1)(i)). The CFPB also solicited comment, as well as data, on whether a courtesy period of fewer or greater than 15 days may have been appropriate.

The CFPB noted that the alternative of applying a 15-day courtesy period only to use of the safe harbor late fee amount may have certain unintended effects on the possible late fee amounts assessed under the cost analysis provisions. To illustrate, using the Y–14 data, the CFPB estimated that a 15-day courtesy period tied to the proposed $8 safe harbor would cut the incidence of consumers charged the proposed $8 safe harbor amount by as much as half. This would have caused card issuers who use the proposed $8 safe harbor amount to recover as much as half of what they would have recovered if a 15-day courtesy period was not required. Card issuers who use the proposed $8 safe harbor amount, therefore, would have recovered an average of $4 in late fees per late payment. On the other hand, card issuers that opted to use the cost analysis provisions to assess late fees would not have been required to provide a 15-day courtesy period. This could have resulted in an outcome where card issuers who used the cost

analysis provisions to determine the late fee amount could charge a late fee that is less than the proposed $8 safe harbor amount, for example $6, but still, on average, collect more in total late fees than if they had charged the proposed $8 late fee amount. In this example, card issuers could have charged $6 on 100 percent of incidences, whereas if they had used the proposed $8 safe harbor amount, they could have only charged the proposed $8 on approximately half of the incidences. This could have led to a scenario where consumers who are subject to late fees determined by the cost analysis provisions may have been assessed a lower late fee amount than the proposed $8 late fee safe harbor amount but would have been charged a late fee more frequently than consumers who were subject to the late fee safe harbor amount.

The CFPB additionally solicited comments on whether a 15-day courtesy period should apply to the other penalty fees that are subject to § 1026.52(b), including over-the-limit fees and returned-payment fees, and if so, why it would be appropriate to apply a 15-day courtesy period to these other penalty fees. The proposal inquired, for example, should the CFPB provide consumers with (1) 15 calendar days after the billing cycle ends to bring the balance below the credit limit to avoid being charged an over-the-limit fee; and (2) 15 calendar days after each due date to make the required periodic payment to avoid a returned-payment fee if a payment has been returned. With respect to declined access checks, the CFPB solicitated comment on whether a 15-day courtesy period is appropriate and if so, how should it be structured.

Comment Received

*Support for late fee courtesy period.* Many consumer groups in a joint letter, two credit union commenters, two individual commenters, and an industry trade association expressed support in response to the CFPB's solicitation of comments on whether § 1026.52(b)(2) should be amended to provide for a courtesy period which would prohibit late fees imposed within 15 calendar days after each payment due date. The consumer groups provided the CFPB with multiple reasons why it would support a 15-day courtesy period including it would prevent abuses that cause consumers from being trapped into incurring late fees, other payment obligations require a courtesy period before late fees can be imposed, and industry convention shows that, with regards to risk management, payments within 30 days of a due date should not be considered late. The consumer groups urged the CFPB to apply a 15-day courtesy period to when card issuers use the safe harbor amount or the cost analysis provision. The consumer groups indicated that late fees imposed using the cost analysis provision are likely to be higher than the safe harbor amount and thus card issuers may be inclined to trigger late fees more frequently.

An individual commenter indicated that a courtesy period for payments would help consumers who mail in their payments to not be penalized for any payment that is late due to issues with mail delivery.

Two credit unions and a trade association highlighted that many credit unions and other card issuers currently offer consumers a courtesy period. The trade association specifically noted that courtesy periods more appropriately help consumers who may barely miss the minimum payment due date than a staggered late fee schedule. A credit union commenter specifically noted that a 15-day-or-less courtesy period was preferable to any additional notification requirements because notifications run the risk of confusing consumers.

*Opposition to late fee courtesy period.* Several banks and credit unions, several trade associations, and two individual commenters expressed opposition to the CFPB's solicitation for comments on whether § 1026.52(b)(2) should be amended to provide for a courtesy period which would prohibit late fees imposed within 15 calendar days after each payment due date.

Several banks and credit unions, an industry trade association, and an individual commenter indicated that a 15-day courtesy period was not necessary because card issuers are already required to provide consumers with a periodic statement at least 21 days prior to the payment due date disclosed on the statement which puts consumers on notice when the payment is due and gives consumers enough time to then timely make the required payment. Many of these commenters indicated that this 21-day timeframe is akin to a courtesy period.

Two industry trade associations indicated that a courtesy period would contradict, and thus could not be implemented by a card issuer, § 1026.5(b)(2)(ii)(A)'s requirement that periodic statement be mailed or delivered at least 21 days prior to the payment due date disclosed on the statement. The commenters noted that statutorily a card issuer is permitted to treat payments not received by the due date as late immediately so long as the consumer was sent a periodic statement at least 21 days before the payment is due. The commenters believe that a courtesy period runs in contradiction to the ability to treat a payment late immediately.

A bank and a credit union indicated that available payment methods provided by card issuers aid and ensure consumers make timely payments.

Many banks and credit unions and industry trade associations, a law firm representing several card issuers, and a financial regulatory advocacy group expressed concerns about the potential negative impacts a 15-day courtesy period may have on consumers.

Many of these commenters indicated that a 15-day courtesy period would generally cause consumer confusion because there would now be a minimum payment due date and a date by which a late fee may be incurred. Many of these commenters further specified that consumers would be confused about when their payment was actually due or that consumers may be confused by what consequences are triggered by missing the minimum payment on the due date versus paying it within the 15-day courtesy period. For example, one credit union expressed concern that a consumer may not be aware that making a payment within the 15-day courtesy period but after the minimum payment due date could still negatively impact the consumer's credit score. An industry trade association indicated that consumers may not be aware that they could lose the grace period on purchases by not making a payment by the minimum payment due date but within the 15-day courtesy period.

Two trade associations and a financial regulatory advocacy group specifically expressed concerns about the potential confusion surrounding the principal payment and interest accrual. These commenters generally indicated that consumers may not be aware that their payment is actually due on the payment due date and not 15 days thereafter and that interest may continue to accrue between the due date and the end of the courtesy period. An industry trade association indicated it would be difficult to develop a disclosure that accurately informs consumers that the courtesy period applies to a late fee but other negative consequences, like interest accrual, would still occur even if the consumer paid within the 15-day period. A financial regulatory advocacy group also expressed concerns that disclosures would be more confusing because it would include both a minimum payment due date and a different date to avoid incurring a late fee.

Several of these industry commenters cautioned the CFPB that a 15-day

courtesy period would lessen the deterrence effect and negatively alter consumers' payment habits by encouraging late payments. However, a bank did indicate that there is little evidence proving that a courtesy period would alter consumer payment habits.

Several industry trade associations, two banks, and one financial regulatory advocacy group expressed concerns that a 15-day courtesy period would cause negative impacts for card issuers. Many of these commenters indicated that a 15-day courtesy period would generally increase delinquencies thereby decreasing card issuers' revenue and negatively impacting card issuers' costs. These commenters collectively noted that an impact on card issuers' cost could raise significant safety and soundness risks; impact card issuers' cash flow and thus affect their liquidity and financial management; impact a card issuers' ability to absorb losses associated with riskier accounts; and cause card issuers to spend more on monitoring and managing delinquent accounts. The financial regulatory advocacy group also noted that it believed the safe harbor amount would need to be as much as double the proposed $8 in order for card issuers to recover their collection costs. A credit union trade association cautioned the CFPB that card issuers may compensate for reduced revenue by raising interest rates or other fees associated with their credit card products. This trade association warned that due to increases in interest rates cardholders may face higher borrowing costs and credit unions may be less competitive in the market.

A few industry trade associations additionally expressed concerns that a 15-day courtesy period would create a substantial credit risk to card issuers. One of the industry trade associations specifically noted that a courtesy period would make underwriting more difficult because card issuers would have to evaluate whether a cardholder is likely to take advantage of a courtesy period. This commenter indicated that this would cause card issuers to take a more conservative approach to ensure they are not exposed to undue financial risk.

An individual commenter and an industry trade association indicated that courtesy periods provided for mortgage payments are not an applicable comparison to courtesy periods for credit card payments. The individual commenter indicated that for mortgage payments the monthly statement does not provide as much advance notice as is required for credit cards. Further, this individual commenter expressed concern about the comparison between mortgages and credit cards because the risks in mortgage transactions are different in that the mortgages have collateral to offset losses whereas credit cards are unsecured credit. Similarly, the trade association indicated that the CFPB did not adequately explain why mortgages, which are a form of secured lending, are compared to credit cards, a form of unsecured lending.

A few trade associations and one law firm representing several card issuers expressed concerns that the CFPB does not have the authority under TILA to implement a courtesy period. One of these industry trade associations specifically indicated that the CARD Act authorizes the CFPB to regulate only the amount of penalty fees in connection with a violation of a cardholder agreement and not when a violation of such an agreement occurs. The law firm described above specifically expressed concerns that a 15-day courtesy period would redefine when an issuer can consider a payment to be late and this would run contrary to congressional intent and would eliminate limitations created by other statutory provisions.

Several industry trade associations expressed concerns that the proposal lacked data or an overall explanation when the CFPB sought comments on whether § 1026.52(b)(2) should be amended to provide for a courtesy period which would prohibit late fees imposed within 15 calendar days after each payment due date. The trade association indicated that the CFPB did not provide quantification of consumer benefits or harm for the 15-day courtesy period or a courtesy period of any other length. One of the industry trade association commenters indicated that the CFPB, absent a new proposed rule with more specificity, could not implement the 15-day courtesy period because it was not detailed or formally proposed. Another of the trade association commenter indicated that the 15-day courtesy period did not include research specifically on any unintended negative consequences on consumers and credit access.

*Alternative suggestions to late fee courtesy period.* Many consumer groups in a joint letter, one bank and one credit union, and an individual commenter provided the CFPB with alternative suggestions to a 15-day courtesy period. The individual commenter suggested that if a courtesy period was provided than the card issuer should be able to back-date the late fee to the original due date if the payment was not made by the end of the courtesy period. Alternatively, the individual commenter suggested that the card issuer could charge the late fee if the payment was not made by the due date; however, if the payment was made by the end of the courtesy period, then the fee could be automatically reversed on the next statement. The credit union suggested that a 15-day courtesy period in conjunction with maintaining the safe harbor fee at $30 would provide sufficient guardrails for card issuers who may be abusing late payment fees for profit. The bank indicated that there was not enough statistical evidence to support a 15-day courtesy period and that a 10-day courtesy period may be more reasonable as it aligns with other industries, such as mortgages and other consumer products.

*Specific data provided on late fee courtesy periods.* Many credit unions provided the CFPB with the number of days they currently offer consumers as a courtesy period. The number of days ranged from 4 days to 25 days.

*Courtesy period for penalty fees generally.* Many consumer groups in a joint letter expressed support in response to the CFPB's solicitation of comments on whether § 1026.52(b)(2) should be amended to provide for a courtesy period for all penalty fees. The consumer groups specifically expressed concerns that card issuers will engage in tactics that generate more of these credit card penalty fees.

One bank and one industry trade association indicated they would not be supportive of extending the 15-day courtesy period to all other credit card penalty fees. These two commenters were generally concerned that extending the proposal to other penalty fees was not adequately addressed or analyzed in the CFPB's proposal and therefore should not be considered as a part of the final rule.

### The Final Rule

For the reasons stated below, the CFPB has determined it will not be implementing any courtesy period for late fees or other penalty fees at this time. In doing so, the CFPB acknowledges commenters who expressed concerns about the impact a 15-day courtesy period may have on consumers and issuers' costs. Specifically, commenters expressed concerns that a courtesy period would raise issuers' costs and create a substantial credit risk to card issuers including by making underwriting more difficult. Commenters also raised concerns that a courtesy period could cause consumer confusion about when a payment was actually due or that consumers may be confused by what consequences are triggered by missing the minimum payment on the due date versus paying it within the 15-day

courtesy period (*e.g.,* when interest starts accumulating). The CFPB has determined that, absent additional evidence, the potential impacts to card issuers' costs and consumers outweigh the benefits of a mandatory 15-day courtesy period. In addition to the concerns highlighted by commenters, the CFPB previously noted in the 2023 Proposal that a 15-day courtesy period could cut the incidence of consumers charged the proposed $8 safe harbor amount by as much as half and, therefore, card issuers who use the safe harbor amount would have recovered an average of $4 in late fees per late payment. While the CFPB acknowledges the possible benefits raised by commenters, such as helping consumers who mail in their late payments avoid a penalty fee for any mail delivery issues, the potential for card issuers to recoup costs at half the safe harbor amount per late payment combined with other concerns about consumer confusion outweighs the possible benefits to consumers. Additionally, the CFPB understands that consumers who wish to have a courtesy period have that option available to them as some card issuers, primarily credit unions, currently offer courtesy periods for late payments. Based on comments received, the CFPB further acknowledges that some credit unions may offer courtesy periods that are more than 15 days.

In recognizing the availability of courtesy periods, the CFPB acknowledges commenters who discussed the interaction between a courtesy period and § 1026.5(b)(2)(ii)(A)'s requirement that a periodic statement be mailed or delivered at least 21 days prior to the payment due date disclosed on the statement. Specifically, many commenters believed that the 21-day notification of a payment due date was akin to providing a courtesy period. Other commenters noted that comparing courtesy periods for credit cards and mortgages was not an accurate comparison because the 21-day periodic statement provides a longer advance notice, and the risks are different. However, the CFPB notes that the requirement to provide a periodic statement at least 21 days prior to the payment due date is not the same as a courtesy period. Further, although the CFPB is not implementing a 15-day courtesy period, it does reject the notion that it does not have the authority to do so.

The CFPB also acknowledges commenters who provided alternative suggestions including (1) allowing card issuers to back-date late fees to the original due date if the payment was not made by the end of the courtesy period, (2) allowing card issuers to charge the late fee if the payment was not made by the due date but requiring a reversal of the charge if the payment was made within the courtesy period, (3) providing a courtesy period but maintaining a $30 safe harbor amount, and (4) providing for a 10-day courtesy period and not a 15-day period. The CFPB declines to adopt any of the alternative suggestions for the same reasons it is declining to adopt the courtesy period that the CFPB put forth in the 2023 Proposal. Absent additional evidence, the potential impacts to consumers and card issuers' costs outweigh the benefits at this time.

*52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation*

Section 1026.52(b)(2)(i)(A) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation. For late fees, accompanying comment 52(b)(2)(i)–1 provides that the dollar amount associated with a late payment is the full amount of the required minimum periodic payment due immediately prior to assessment of the late payment. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the full amount of the required minimum periodic payment.

In implementing TILA section 149, the Board noted that the prohibition of fees based on violations of the terms or other requirements of an account that exceed the dollar amount associated with the violation as set forth in its Regulation Z, § 226.52(b)(2)(i)(A) would be consistent with Congress' intent to prohibit penalty fees that are not reasonable and proportional to the violation.[198] The Board in its reasoning addressed issuers' concerns that when the dollar amount associated with a violation is small, § 226.52(b)(2)(i)(A) could limit the penalty fee to an amount that is neither sufficient to cover the issuer's costs nor to deter future violations.[199] The Board explained that while it is possible that an issuer could incur costs as a result of a violation that exceed the dollar amount associated with that violation, this would not be the case for most violations.[200] Additionally, the Board noted that if card issuers could not recover all of their costs when a violation involves a small dollar amount, prohibiting late fees that exceed the full amount of the required minimum periodic payment would encourage them either to undertake efforts to reduce the costs incurred as a result of violations that involve small dollar amounts or to build those costs into upfront rates, which would result in greater transparency for consumers regarding the cost of using their credit card accounts.[201] Furthermore, the Board considered the deterrent effect and believed that violations involving small dollar amounts are more likely to be inadvertent and therefore the need for deterrence is less pronounced.[202]

The Board also considered whether compliance with its Regulation Z, § 226.52(b)(2)(i)(A) would be burdensome on card issuers and concluded that it would not be overly burdensome.[203] The Board explained that, although card issuers may incur substantial costs at the outset, because § 226.52(b)(2)(i)(A) required a mathematical determination, issuers should generally be able to program their systems to perform the determination automatically.[204]

When implementing comment 52(b)(2)(i)–1, the Board clarified that the dollar amount associated with a late payment is the full amount of the required minimum periodic payment due immediately prior to the assessment of the late payment. Industry commenters had argued that the dollar amount associated with a late payment should be the outstanding balance on the account because that is the amount the issuer stands to lose if the delinquency continues and the account eventually becomes a loss.[205] However, the Board explained that relatively few delinquencies result in losses, and the violation giving rise to a late payment fee is the consumer's failure to make the required minimum periodic payment by the payment due date.

The CFPB's Proposal

The CFPB proposed to amend § 1026.52(b)(2)(i)(A) to limit the dollar amount associated with a late payment to 25 percent of the required minimum periodic payment due immediately prior to assessment of the late payment. The CFPB also proposed to revise comment 52(b)(2)(i)–1 in the following two ways: (1) to clarify that the required minimum periodic payment due immediately prior to assessment of the

[198] 75 FR 37526 at 37544.

[199] *Id.* at 37545.

[200] *Id.*

[201] *Id.*

[202] *Id.*

[203] *Id.*

[204] *Id.*

[205] *Id.*

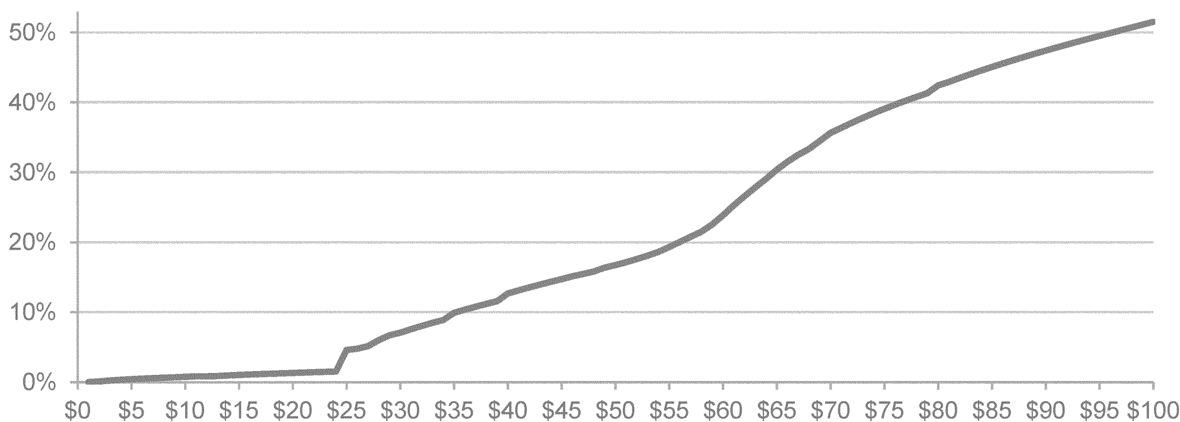
late payment is the amount that the consumer is required to pay to avoid the late payment fee, including as applicable any missed payments and fees assessed from prior billing cycles; and (2) to revise several examples consistent with the proposed 25 percent limitation.

Like the Board's reasoning in the 2010 Final Rule, the proposal intended to ensure that late fees are reasonable and proportional, even late fees that are imposed when consumers are late in paying small minimum payments. However, the CFPB preliminarily determined that restricting the late fee to 25 percent of the minimum payment is more consistent with Congress' intent to prohibit penalty fees that are not reasonable and proportional to the violation than the current rule that allows for a card issuer to potentially charge a late fee that is 100 percent of the minimum payment.

For example, the proposal stated that when considering collection costs incurred by card issuers, it is likely that allowing a late fee that is 100 percent of the minimum payment is not reasonable and proportional to such costs. Generally, most card issuers do not incur collection costs that are 100 percent of the amount they are trying to collect. The CFPB preliminarily determined that lowering the limitation on late fees to 25 percent of the minimum payment due would still likely allow card issuers to cover contingency fees paid to third-party agencies for collecting the amount of the minimum payment prior to account charge-off. The CFPB understood, based on information obtained through orders pursuant to section 1022(c)(4) of the CFPA for purposes of compiling the CFPB's periodic CARD Act reports to Congress, that card issuers that contract with third-party agencies for pre-charge-off collections pay a contingency fee that is a percentage of the amount collected, which may include an amount (if collected) exceeding the minimum payment. These contingency fees can range from 9.5 percent to 23 percent, further supporting that the proposed 25 percent of minimum payment due is more reasonable and proportional than permitting 100 percent of the minimum payment.[206] It appears that the Board did not consider or have access to such figures when it limited the dollar amount associated with a late payment to 100 percent of the required minimum periodic payment. With these additional data, the CFPB proposed a limitation on late fees that it preliminarily determined would be more reasonable and proportional than what was set forth in the Board's 2010 Final Rule.

The CFPB recognized that the proposed 25 percent limitation would most likely impact the amount of the late fee a card issuer can charge when (1) the minimum payment is small, and (2) the card issuer is using the cost analysis provisions in § 1026.52(b)(1)(i) generally to set the late fee amount. Based on the distribution of minimum payments in the Y–14 data, the CFPB estimated that this may occur infrequently. Y–14 data from October 2021 to September 2022 show that for those months in which an account was late, only 12.7 percent of accounts had a minimum payment of $40 or less. Additionally for those months in which an account was late, at least 48.5 percent of accounts had a minimum payment above $100. If a card issuer had used the proposed late fee safe harbor of $8, however, the instances where 25 percent of the minimum payment may be less than the proposed $8 safe harbor appeared to have been even less frequent. For instance, based on the distribution of minimum payments due in the Y–14 on a monthly basis from October 2021 to September 2022, if card issuers could have only charged up to 25 percent of the minimum payment, only 7.7 percent of accounts would have been charged a late fee of less than $8. Figure 5 below, which was provided in the 2023 Proposal, plots the cumulative distribution function[207] of total payments due in the range of $1 to $100 in the account-level Y–14 data, for all months that payments were late between October 2021 and September 2022.

**Figure 5:** Distribution of Minimum Payments on Late Accounts (Y-14)




Additionally, when the dollar amount associated with the late payment is small, the CFPB recognized that the proposal could have had the potential to limit the late fee to an amount that is insufficient to cover a card issuer's costs

[206] 2021 Report, at 137.

[207] The values plotted vertically are the shares of account-months that paid late with minimum payments at or below the integer dollar amounts shown on the horizontal axis.

in collecting the late payment. However, permitting a late fee that is 100 percent of the minimum payment did not appear to be reasonable and proportional to the consumer's conduct of paying late when the minimum payment is small. For instance, the proposal stated that in situations where the dollar amount associated with the late payment is small and the card issuer is permitted to charge a late fee that is 100 percent of the minimum payment then a consumer is essentially required to pay double the amount of a missed payment in the next billing cycle in addition to the minimum payment due for that next billing cycle. The CFPB preliminarily determined that this result would have been neither reasonable nor proportional to the consumer's conduct in paying late.

Furthermore, as the Board noted in its 2010 Final Rule and which the CFPB preliminarily determined was still relevant in the 2023 Proposal, to the extent card issuers cannot recover all of their costs through a late fee when a late payment involves a small dollar amount, the proposed limitation would have likely encouraged card issuers to undertake efforts to either reduce costs incurred as a result of violations that involve small dollar amounts or to build those costs into upfront rates, which had the additional benefit of resulting in greater transparency for consumers regarding the cost of using credit card accounts. Finally, in the 2023 Proposal, the CFPB preliminarily determined that the Board's explanation that compliance would not be overly burdensome also remained applicable to the CFPB's proposal. The proposal would have similarly required a mathematical determination that issuers should generally be able to program their systems to perform automatically.

In addition, as discussed above, the CFPB proposed to revise comment 52(b)(2)(i)–1 to clarify that the required minimum periodic payment due immediately prior to assessment of the late payment is the amount that the consumer is required to pay to avoid the late payment fee, including as applicable any missed payments and fees assessed from prior billing cycles. The CFPB understood that card issuers report two payment amounts when responding to Y–14 collection efforts, a minimum payment calculated just for that billing cycle and the total amount that is required to be paid that billing cycle which includes missed payment amounts or fees assessed. The CFPB proposed this revision to comment 52(b)(2)(i)–1 to address any potential confusion about the payment amount to which the proposed 25 percent limitation would apply.

The CFPB solicited comment on the proposed 25 percent limitation discussed above. The CFPB also solicited comment on whether the dollar amount associated with the other penalty fees covered by § 1026.52(b) should be limited to 25 percent of the dollar amount associated with the violation. The proposal inquired, for example, (1) should over-the-limit fees be limited to 25 percent of the amount of credit extended by the card issuer in excess of the credit limit during the billing cycle in which the over-the-limit fee is imposed;[208] (2) should the returned-payment fee be limited to 25 percent of the amount of the required minimum periodic payment due immediately prior to the date on which the payment is returned to the card issuer;[209] and (3) should the declined access check fee be limited to 25 percent of the amount of the check.[210]

Comments Received

*Support for 25 percent restriction.* Many individual commenters and many consumer groups expressed support for the CFPB's proposal to limit the dollar amount associated with a late payment to 25 percent of the required minimum periodic payment due immediately prior to assessment of the late payment. Many consumer groups and an individual commenter highlighted that, in particular, this proposal would prevent excessive late fees on small remaining balances. The consumer groups also commented that card issuers may raise minimum payments due as a result of the 25 percent limitation, but expressed to the CFPB that this would be a positive outcome because current minimum payments due result in long repayment periods and higher finance charges for consumers who only pay the minimum each billing cycle.

*Opposition to 25 percent restriction.* As discussed below, many industry commenters, and a few individuals, urged the CFPB to reconsider implementing the proposal to limit the dollar amount associated with a late payment to 25 percent of the required minimum periodic payment due immediately prior to assessment of the late payment.

Several trade associations, a few banks and credit unions, and an individual commenter urged the CFPB to consider the impact the 25 percent limitation would have on card issuers' costs. Commenters expressed concerns that the 25 percent limitation would be an impediment to card issuers' ability to cover current or future increased costs associated with late payments. Two commenters specifically highlighted that many costs associated with a late payment are fixed and do not depend on the minimum payment due. A few of the trade associations urged the CFPB to consider the upfront costs card issuers could incur due to a change in the minimum payment requirement, namely that applications, solicitations, and initial disclosures would need to be amended along with the issuance of a change in terms notice to reflect the new minimum payment calculation. Another trade association reported that one of its credit union members indicated that for certain balances, its current minimum payment due is $40 so with the 25 percent limitation the late fee would be $10 which would not cover its costs (and it would be $2 higher than the proposed safe harbor amount). One bank highlighted that the CFPB indicated 7.7 percent of accounts would have been charged a late fee of less than $8 if card issuers could only charge up to 25 percent between October 2021 to September 2022. This commenter indicated that the CFPB failed to explain why $8 would be a reasonable estimate of costs incurred if nearly 8 percent of late payment incidents would be subject to a fee lower than the proposed safe harbor due to the 25 percent limitation.

A law firm representing several card issuers, an individual commenter, and two trade associations expressed concerns that the 25 percent limitation would lead to a late fee amount that is not reasonable or proportional to a cardholder's omission or violation or otherwise did not properly consider the factors the CFPB is guided by when considering the appropriate safe harbor amount.[211] One industry trade association and the law firm described above broadly indicated the CFPB did not acknowledge any of the guiding factors. A few banks and one industry trade association indicated that the CFPB did not consider the deterrent

[208] *See* comment 52(b)(2)(i)–3 for an explanation of the dollar amount associated with an over-the-limit violation.

[209] *See* comment 52(b)(2)(i)–2 for an explanation of the dollar amount associated with a returned-payment violation.

[210] *See* comment 52(b)(2)(i)–4 for an explanation of the dollar amount associated with a declined access check violation.

[211] In considering the appropriate safe harbor threshold amount, the CFPB is guided by factors including (1) the cost incurred by the creditor from an omission or violation; (2) the deterrence of omissions or violations by the cardholder; (3) the conduct of the cardholder; and (4) such other factors deemed necessary or appropriate. CARD Act section 102, 123 Stat. 1740 (15 U.S.C. 1665d(c)).

effect in the 25 percent limitation proposal and a research group further indicated that the deterrent effect was not considered for a safe harbor amount below $8, to the extent that is a possibility due to the 25 percent limitation. One industry trade group and the law firm described above also indicated that the CFPB did not provide the underlying raw data it relied on, and therefore, they could not be sure that the analysis undertaken with respect to the 25 percent limitation set forth in the 2023 Proposal was accurate. An individual commenter indicated that the CFPB disregarded the legal meanings of ''reasonable and proportional'' and that it would be reasonable for card issuers to impose late fees that are up to the full amount of the payment past due using the same methodology as certain State laws on returned payments.

One credit union indicated that the CFPB inaccurately based the 25 percent limitation on the cost of collecting delinquent accounts pre-charge-off. The commenter expressed concerns with this analysis because accounts assessed late fees pose a higher risk of delinquency and thus charge-off. The commenter noted that all costs incurred on credit unions' credit card products are also incurred by all members and, therefore, all costs should be included in the analysis.

Several banks and credit unions and many trade associations cautioned the CFPB that the 25 percent limitation could potentially cause negative consequences for consumers. One credit union and several trade associations indicated that the 25 percent limitation would cause card issuers to raise their minimum payment requirements in order to charge a higher late fee. Industry commenters and trade associations highlighted various potential consequences that could result from card issuers increasing their minimum payment requirements including an increase in delinquencies and defaults; damage to consumers' credit scores; higher rates for credit cards; decrease in credit availability, and an increase in consumers' future borrowing costs.

Many trade associations also raised concerns that any potential effect that the 25 percent limitation may have on raising card issuers' costs, from upfront costs like additional computer programming needs to the late fee not covering issuers' costs, could cause card issuers to take actions that may have a negative effect on consumers. For example, these commenters asserted that card issuers may raise other fees associated with their credit card products, raise rates, be unable to issue credit cards, or be unable to provide credit access to as many consumers.

One credit union trade association also cautioned the CFPB that the 25 percent limitation may cause consumers to be less likely to try to avoid late fees by communicating with credit unions that they are experiencing financial difficulties which would ultimately cost both the consumer and the credit union.

*Alternative suggestions to 25 percent restriction.* Many consumer groups in a joint letter, an individual commenter, and a bank provided the CFPB with alternative suggestions to the CFPB's 25 percent limitation proposal. The consumer groups urged the CFPB to consider alternatively limiting the late fee to 25 percent of the minimum payment remaining. Therefore, if a consumer had made a partial payment of the minimum payment due, the late fee would be limited to 25 percent of the remaining minimum amount due and not 25 percent of the total minimum payment.

The individual commenter suggested that a card issuer should be permitted to charge a late fee that is 3 percent of the total underlying debt, similar to § 1026.52(b)(1)(ii)(C). The individual commenter indicated that a card issuer who permits a consumer to pay the underlying debt off over time is taking on a higher credit risk than card issuers that require payments in full. Therefore, all card issuers, at a minimum, should be able to charge 3 percent of the total underlying debt. Similarly, a bank suggested the CFPB tie the late fee to the underlying balance rather than the minimum payment.

*Specific data provided on 25 percent restriction.* Many individual commenters on behalf of a credit union, a few industry trade associations, and a few bank and credit union commenters provided the CFPB with specific data as it relates to the CFPB's proposal to limit the dollar amount associated with a late payment to 25 percent of the required minimum periodic payment due immediately prior to assessment of the late payment.

An industry trade association and many individual commenters on behalf of a credit union indicated that the credit union's late fee of $25 would effectively be reduced to $6.25 under the proposal. The individual commenters also indicated that the CFPB's proposal would require the card issuer to elect the lesser of the proposed $8 safe harbor amount or 25 percent of the missed payment.

One credit union indicated that according to estimates, the 25 percent limitation would result in an average late fee amount of $4.61, which is a 62 percent decrease compared to the credit union's average late fee of $12.13. A bank commenter indicated that more than 53 percent of its accounts have a minimum payment less than $32 and two-thirds of its accounts have a minimum payment below $50.

A few trade associations indicated that one bank reported that 40 percent of its required minimum payments for consumer credit card accounts are under $32. These trade associations also indicated that a small card issuer reported to the trade associations that it estimated 53 percent of its accounts and 29.1 percent of balances have minimum payments under $32.

*Application of 25 percent restriction to all penalty fees.* Many consumer groups in a joint letter expressed support in response to the CFPB's solicitation of comments on whether the CFPB's proposal to limit the dollar amount associated with a late payment to 25 percent of the required minimum periodic payment due immediately prior to assessment of the late payment should extend to all other credit card penalty fees. The consumer groups specifically expressed concerns that card issuers otherwise will begin to engage in tactics to increase the amount of other credit card penalty fees.

One bank and one industry trade association indicated they would not be supportive of extending the 25 percent limitation to all other credit card penalty fees. These two commenters were generally concerned that extending the proposal to other penalty fees was not adequately addressed or analyzed in the CFPB's proposal and therefore should not be considered as a part of the final rule.

The Final Rule

For the reasons stated herein, the CFPB is not adopting, for either Larger Card Issuers or Smaller Card Issuers, the proposed amendment to § 1026.52(b)(2)(i)(A) to limit the dollar amount associated with a late payment to 25 percent of the required minimum periodic payment due immediately prior to assessment of the late payment. Therefore, the CFPB is also not adopting the proposed revision to comment 52(b)(2)(i)–1.[212] In doing so, the CFPB acknowledges comments highlighting the impact a 25 percent limitation may have on issuers' costs. Many commenters specifically noted the impact the 25 percent limitation may have on credit unions and small card

[212] This final rule makes technical changes to cross references in comments 52(b)(2)(i)–1.ii, 52(b)(2)(i)–2.ii and iii, and 52(b)(2)(i)–3.ii to conform to OFR style requirements.

issuers. The commenters expressed concerns that credit unions and small card issuers tend to have higher pre-charge-off collection costs and a lower minimum payment. It was also noted that restrictions on Federal credit unions on charging higher interest rates may further impact their potential to recoup pre-charge-off collections costs they cannot collect through late fees because of the 25 percent limitation. Commenters additionally expressed concerns that not only would the 25 percent limitation prevent card issuers from covering pre-charge-off collection costs related to a late payment but there would also be upfront costs incurred. For example, for card issuers that choose to adjust its minimum payments due, a notice of change in terms would need to be issued.

The CFPB recognizes that some of the concerns discussed above could be addressed by only applying the 25 percent restriction to Larger Card Issuers. Nonetheless, the CFPB has determined that even with respect to Larger Card Issuers, the benefits the 25 percent limitation may have for consumers, such as requiring a more reasonable and proportional late fee for instances where the minimum payment due is small, do not outweigh considerations of card issuers' ability to recoup their pre-charge-off collection costs when they are using the $8 safe harbor threshold amount. In addition to considering the comments noted above, the CFPB also acknowledges the specific data provided by commenters demonstrating potential late fee amounts based on current minimum payments due. Commenters here highlighted that some card issuers have a large percentage of their accounts with a minimum payment of less than $32. For these card issuers, the 25 percent limitation would be especially impactful because, as reported in comments, 40 to 53 percent of accounts would have charges under the $8 safe harbor. The CFPB is concerned that when a card issuer cannot charge a significant number of their accounts the $8 safe harbor amount, card issuers' pre-charge-off collection costs may not be covered.

The CFPB also acknowledges commenters who highlighted the potential for card issuers to raise its minimum payments due in response to the 25 percent limitation and the impacts this may have on consumers. These comments noted that in order to combat lower late payment fees that the 25 percent limitation may impose, card issuers might raise minimum payments due. Conversely, other commenters explained that card issuers raising minimum payments would be a positive for consumers because, according to these commenters, current minimum payments due result in long repayment periods and higher finance charges.

In weighing these considerations, the CFPB has determined not to adopt the 25 percent limitation proposal in order to minimize impacts to minimum balances due. While the CFPB agrees with commenters that raising minimum payments due could be a positive for some consumers, the potential negative impacts of higher minimum payments on consumers, like an increase in delinquencies and defaults in particular for consumers with limited cash flow, do not outweigh any benefits higher minimum payments due may have for consumers.

The CFPB also acknowledges alternative suggestions provided by commenters such as limiting the late fee to 25 percent of the minimum payment remaining or permitting a late fee that is 3 percent of the total underlying debt. The CFPB declines to adopt alternatives suggested for the same reasons the CFPB is not adopting the proposed 25 percent limitation. That is to say, the CFPB has determined that the potential impacts on card issuers' ability to recoup pre-charge-off collection costs does not outweigh the benefits to consumers, and the CFPB is concerned about the impact the 25 percent restriction may have on minimum payments due.

As discussed above, the CFPB received only a few responses to its request for comment on whether the 25 percent limitation should be applied to all penalty fees covered by § 1026.52(b). The CFPB has determined that, like the 25 percent limitation for late payments, the benefits to consumers do not outweigh the impact on card issuers' costs. Additionally, with respect to consumer groups' concern that card issuers will begin to engage in tactics to increase the number of those penalty fees if the CFPB lowers the safe harbor late fee amounts, the CFPB notes that this is less likely because it has not adopted the 25 percent limitation for late fees. As such, a 25 percent limitation for all other credit card penalty fees will not be implemented. In doing so, the CFPB rejects the notion raised by industry commenters that the CFPB could not have adopted the 25 percent limitation with respect to these other penalty fees in this final rule because it did not establish a sufficient factual or legal analysis with respect to these penalty fees.

*52(b)(2)(ii) Multiple Fees Based on a Single Event or Transaction*

Section 1026.52(b)(2)(ii) prohibits card issuers from imposing multiple penalty fees based on a single event or transaction.

The CFPB's Proposal

The CFPB did not propose to amend the text of § 1026.52(b)(2)(ii). However, the CFPB proposed to revise comment 52(b)(2)(ii)–1 to clarify several examples illustrating this requirement. Specifically, the 2023 Proposal would have amended several examples in comment 52(b)(2)(ii)–1 to reflect a late fee amount of $8, consistent with the proposed amendments to § 1026.52(b)(1)(ii), and to make minor technical changes for consistency with the proposal.

Comments Received and the Final Rule

The CFPB received no comments on the proposed revisions to comment 52(b)(2)(ii)–1. This final rule adopts comment 52(b)(2)(ii)–1 as proposed with several revisions. Consistent with the proposal, this final rule amends comment 52(b)(2)(ii)–1 to reflect a late fee amount of $8 for purposes of the examples, consistent with the new late fee safe harbor amount applicable to Larger Card Issuers. This final rule also amends comment 52(b)(2)(ii)–1.i and ii to specify that the card issuer for purposes of the examples is not a Smaller Card Issuer pursuant to § 1026.52(b)(3). This final rule also makes a technical change to a cross reference in comment 52(b)(2)(ii)–1.ii.B to conform to OFR style requirements. Even though Smaller Card Issuers are not subject to the $8 late fee safe harbor threshold in § 1026.52(b)(1)(ii), the CFPB has determined it is useful to revise the late fee amounts in the examples to be $8, consistent with the late fee safe harbor threshold amount that applies to Larger Card Issuers.

*52(b)(3) Smaller Card Issuers*

As discussed in part VI, the CFPB is not adopting at this time certain proposed provisions with respect to Smaller Card Issuers. Specifically, with respect to such card issuers, the CFPB is not adopting: (1) the $8 late fee safe harbor threshold and the elimination of the higher late fee safe harbor amount for subsequent violations; and (2) the elimination of the annual adjustments for the safe harbor threshold. To implement that distinction, the CFPB is adopting a definition of Smaller Card Issuer in new § 1026.52(b)(3). The CFPB's reasons for not adopting the provisions as to Smaller Card Issuers, including the reasons for setting the

Smaller Card Issuer definition at one million open credit card accounts, are discussed in detail in part VI. The CFPB's reasons for adopting specific aspects of the Smaller Card Issuer definition are discussed in the section-by-section analysis of § 1026.52(b)(3)(i) and (ii) below.

*52(b)(3)(i)*

Section 1026.52(b)(3)(i) sets forth the general definition of Smaller Card Issuer. It provides that, except as provided in § 1026.52(b)(3)(ii), a card issuer is a Smaller Card Issuer for purposes of the safe harbor late fee provisions in § 1026.52(b)(1)(ii)(E) if the card issuer together with its affiliates had fewer than one million open credit card accounts, as defined in § 1026.58(b)(6), for the entire preceding calendar year.[213] Thus, a card issuer must include its affiliates' open credit card accounts along with its own in determining whether it meets the Smaller Card Issuer definition. The CFPB determines that requiring card issuers to include the open credit card accounts of their affiliates is consistent with the goal of ensuring coverage of Larger Card Issuers and preventing those Larger Card Issuers with more than one million open accounts from relying on affiliates to divide accounts in order to qualify as Smaller Card Issuers—and thus impose higher safe harbor late fee amounts. Section 1026.52(b)(3)(i) further provides that for purposes of the Smaller Card Issuer definition, ''affiliate'' means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*). The CFPB is adopting this common definition of ''affiliate'' because it is one with which card issuers are familiar and, as such, will facilitate compliance.

The Smaller Card Issuer definition also incorporates the existing definition of open credit card account in § 1026.58(b)(6) of Regulation Z, which is used for purposes of determining whether a card issuer meets certain exceptions to requirements for submitting card agreements to the CFPB. The CFPB is incorporating this open credit card account definition into the definition of Smaller Card Issuer because it is one with which card issuers are familiar and, as such, will facilitate compliance.

[213] *See supra* note 5.

Existing § 1026.58(b)(6) defines open account, or open credit card account, broadly as a credit card account under an open-end (not home-secured) consumer credit plan for which either (1) the cardholder can obtain extensions of credit on the account; or (2) there is an outstanding balance on the account that has not been charged off. The definition further provides that an account that has been suspended temporarily is considered an open account or open credit card account. The CFPB notes that this broad definition generally encompasses open credit card accounts that a card issuer keeps on-balance sheet as well as those that a card issuer may have sold or otherwise keeps off-balance sheet (except for accounts that have been charged off). The CFPB determines that this metric more accurately reflects the size of a card issuer's portfolio and ensures that card issuers cannot meet the Smaller Card Issuer definition, and thereby impose higher late fee safe harbor amounts, by simply securitizing their accounts and moving them off-balance sheet.

The CFPB also notes that to meet the Smaller Card Issuer definition in § 1026.52(b)(3), a card issuer together with its affiliates must have fewer than one million open credit card accounts for the entire preceding calendar year. Thus, as explained in new comment 52(b)(3)(i)–1, if a card issuer together with its affiliates had more than one million open credit card accounts from January through October of the preceding calendar year, for example, but had fewer than that threshold number in November and December, the card issuer is not a Smaller Card Issuer in the next calendar year. Further, as also explained in the comment, the card issuer is not a Smaller Card Issuer until such time that the card issuer's number of open credit card accounts, together with those of its affiliates, remains below one million for an entire preceding calendar year.[214] In order to provide clarity and certainty for card issuers, the comment provides that a card issuer must remain below the open credit card account threshold for the entire preceding calendar year in order to meet the Smaller Card Issuer definition. The requirement also provides certainty and consistency for consumers, who might otherwise experience significant fluctuations in their late fee amounts as their card issuer moves above and below the threshold.

[214] Consistent with § 1026.9(c)(2)(i)(A), a Larger Card Issuer that becomes a Smaller Card Issuer would have to provide consumers a change-in-terms notice at least 45 days prior to imposing higher late fee amounts under the safe harbor.

*52(b)(3)(ii)*

Section 1026.52(b)(3)(ii) sets forth an exception to the general definition of Smaller Card Issuer in § 1026.52(b)(3)(i). It provides that if a card issuer together with its affiliates had fewer than one million open credit card accounts for the entire preceding calendar year but meets or exceeds that number of open credit card accounts in the current calendar year, then the card issuer will no longer be a Smaller Card Issuer for purposes of § 1026.52(b)(1)(ii)(E) as of 60 days after meeting or exceeding that number of open credit card accounts.[215] Thus, as explained in new comment 52(b)(3)(ii)–1, the card issuer may not impose a late fee pursuant to § 1026.52(b)(1)(ii)(E) as of 60 days after meeting or exceeding the threshold number of open credit card accounts, because at that point the card issuer is no longer a Smaller Card Issuer. Instead, for purposes of imposing a late fee pursuant to the safe harbor provisions, the card issuer may impose a late fee of no more than $8 pursuant to § 1026.52(b)(1)(ii) as of the 60th day.

The CFPB notes that this approach is similar to the definition of creditor in § 1026.2(a)(17). That definition generally provides, in relevant part, that a creditor is a person who regularly extends consumer credit that is subject to finance charge or is payable by written agreement in more than four installments. It further provides that a person regularly extends consumer credit if, with certain exceptions, that person extended consumer credit more than 25 times in the preceding calendar year. However, the definition also generally provides that if a person did not meet the numerical standard (*i.e.,* 25 extensions of consumer credit) in the preceding calendar year, the numerical standard must be applied in the current calendar year. As such, a person who begins a calendar year beneath the definitional threshold can become a creditor, and subject to all of the Regulation Z requirements that apply to creditors, during that calendar year if the person meets or exceeds the threshold.

[215] A Smaller Card Issuer that becomes a Larger Card Issuer would not be required to provide consumer a change-in-terms notice prior to imposing lower late amounts under the safe harbor, as the requirement generally does not apply to reductions in fee amounts. *See* § 1026.9(c)(2)(v)(A).

Similarly, under this final rule, the definition of Smaller Card Issuer generally provides that if a card issuer together with its affiliates did not meet the numerical standards (*i.e.,* one million open credit card accounts) in the preceding calendar year, the numerical standard must be applied in the current calendar year. The CFPB is incorporating this concept into the definition of Smaller Card Issuer in order to ensure that the $8 limitation in § 1026.52(b)(1)(ii) becomes applicable to formerly Smaller Card Issuers—and that cardholders of those issuers receive the benefits therefrom—as soon as practicable. To that end, the CFPB determines that a period of 60 days after a formerly Smaller Card Issuer meets or exceeds the threshold, as provided in the definition, is a sufficient amount of time for the card issuer to come into compliance with the limitation in § 1026.52(b)(1)(ii). The CFPB notes that 60 days is the same compliance period accorded to Larger Card Issuers under this final rule as discussed in part VIII.

*Section 1026.58 Internet Posting of Credit Card Agreements*

*58(b) Definitions*

*58(b)(6) Open Account*

The CFPB is adopting a technical amendment to the definition of open account, or open credit card account, in § 1026.58. As discussed in the section-by-section analysis of § 1026.52(b)(3), the CFPB is adopting a definition of Smaller Card Issuer to implement its decision not to finalize certain provisions of this final rule with respect to card issuers with fewer than one million open credit card accounts. That definition incorporates the definition of open account, or open credit card account, in § 1026.58(b)(6). The CFPB is revising § 1026.58(b)(6) to clarify that the definition of open account, or open credit card account, is for purposes of both § 1026.58 and § 1026.52.

*Section 1026.60 Credit and Charge Card Applications and Solicitations*

*60(a) General Rules*

*60(a)(2) Form of Disclosures; Tabular Format*

Section 1026.60(a) provides that a card issuer must provide the disclosures set forth in § 1026.60 on or with a solicitation or an application to open a credit or charge card account. Section 1026.60(a)(2) provides certain format requirements for the disclosures required under § 1026.60. Section 1026.60(a)(2)(i) provides that in certain circumstances the disclosures required by § 1026.60 generally must be disclosed in a tabular format. Section 1026.60(a)(2)(ii) provides that when a tabular format is required, certain disclosures must be disclosed in the table using bold text, including any late fee amounts and any maximum limits on late fee amounts required to be disclosed under § 1026.60(b)(9). Comment 60(a)(2)–5.ii includes a late fee example to illustrate the requirement that any maximum limits on fee amounts must be disclosed in bold text. The current example assumes that a card issuer's late fee will not exceed $35.

The CFPB's Proposal

The CFPB proposed to amend the example to assume that the late fee would not exceed $8, so that the maximum late fee amount in the example would have been consistent with the proposed $8 late fee safe harbor amount set forth in proposed § 1026.52(b)(1)(ii).

Comments Received and the Final Rule

The CFPB received no comments on the proposed revisions to comment 60(a)(2)–5.ii. This final rule adopts comment 60(a)(2)–5.ii as proposed with minor revisions to specify that the card issuer in the example is not a Smaller Card Issuer as defined in § 1026.52(b)(3). The CFPB has determined that revising the example to be consistent with the late fee safe harbor amount of $8 is necessary to reflect the changes to the late fee safe harbor dollar amount as set forth in § 1026.52(b)(1)(ii) for Larger Card Issuers. Notwithstanding the revisions to the late fee safe harbor amount in the example, Smaller Card Issuers as defined in § 1026.52(b)(3) are not subject to the $8 late fee safe harbor threshold adopted in this final rule and may use the relevant safe harbor thresholds set forth in § 1026.52(b)(1)(ii)(A) through (C). This final rule also makes a technical change to a cross reference in comment 60(a)(2)–6.i to conform to OFR style requirements.

*Appendix G to Part 1026—Open-End Model Forms and Clauses*

Appendix G to part 1026 generally provides model or sample forms or clauses for complying with certain disclosure requirements applicable to open-end credit plans, including a credit card account under an open-end (not home-secured) consumer credit plan. The following five sample forms or clauses set forth an example of the maximum late fee amount of ''Up to $35'' under the heading ''Late Payment'': (1) G–10(B); (2) G–10(C); (3) G–10(E); (4) G–17(B); and (5) G–17(C). The following two sample forms set forth an example of the maximum late fee amount of ''Up to $35'' under the heading ''Late Payment Warning'': (1) G–18(D); and (2) G–18(F). Sample form G–21 sets forth an example of the maximum late fee amount of ''Up to $35'' under the heading ''Late Payment Fee.'' The following two sample forms or clauses set forth an example of the late fee amount ($35) a consumer may incur if the consumer does not pay the required amount by the due date under the heading ''Late Payment Warning'': (1) G–18(B); and (2) G–18(G). The following three sample forms set forth an example of the late fee amount ($35) that the consumer was charged in the particular billing cycle under the heading ''Fees'': (1) G–18(A); (2) G–18(F); and (3) G–18(G).

The CFPB solicited comment on whether the late fee amount of $35 in these sample forms or clauses, as applicable, should be revised to set forth a late fee amount of $8, and whether the maximum late fee amount of ''Up to $35'' in these sample forms or clauses, as applicable, should be revised to set forth a maximum late fee amount of ''Up to $8'' so that the late fee amount and maximum late fee amount in the examples are consistent with the proposed $8 late fee safe harbor amount set forth in proposed § 1026.52(b)(1)(ii). The CFPB noted that the 11 forms or clauses discussed above are just samples; card issuers would need to disclose the late fee amount that they charge or the maximum late fee amount on the account, as applicable, consistent with the restrictions in § 1026.52(b).

In addition, as discussed in the section-by-section analysis of § 1026.52(b)(2)(i), in the 2023 Proposal, the CFPB solicited comment on whether to restrict card issuers from imposing a late fee on a credit card account, unless the consumer has not made the required payment within 15 calendar days following the due date. The CFPB solicited comment on whether the following 10 sample forms or clauses that currently disclose an example of the late fee amount ($35) or maximum late fee amount (''Up to $35'') that could be incurred on the account should be revised to disclose that a late fee will only be charged if the consumer does not make the required payment within 15 calendar days of the due date: (1) G–10(B); (2) G–10(C); (3) G–10(E); (4) G–17(B); (5) G–17(C); (6) G–18(B); (7) G–

18(D); (8) G–18(F),[216] (9) G–18(G); [217] and (10) G–21.[218] The CFPB also solicited comment on effective ways to help ensure that consumers understand that a 15-day courtesy period only relates to the late fee, and not to other possible consequences of paying late, such as the loss of a grace period or the application of a penalty rate.

In addition, the CFPB noted that the following five samples forms also include disclosures about maximum penalty fee amounts of ''Up to $35'' for over-the-limit fees [219] and returned-payment fees: (1) G–10(B); (2) G–10(C); (3) G–10(E); (4) G–17(B); and (5) G–17(C). As discussed in the section-by-section analysis of § 1026.52(b)(1)(ii), in the 2023 Proposal, the CFPB solicited comment on whether the $8 safe harbor threshold amount that it proposed for late fees should also apply to other penalty fees, including over-the-limit fees and returned-payment fees. If the CFPB were to adopt the $8 safe harbor threshold amount for all penalty fees, the CFPB solicited comment on whether the CFPB should revise the maximum amount of the over-the-limit fees and returned-payment fees shown on these forms to be ''Up to $8.'' Moreover, as discussed in the section-by-section analysis of § 1026.52(b)(2), in the 2023 Proposal, the CFPB solicited comment on whether the 15-day courtesy period should be provided with respect to all penalty fee, including the over-the-limit fees and returned-payment fees. If the CFPB were to adopt the 15-day courtesy period for all penalty fees, the CFPB solicited comment on whether the 15-day courtesy period should be disclosed in the five sample forms discussed above with respect to the over-the-limit fee and the returned-payment fee.

Comments Received and the Final Rule

The CFPB received no comments on the revisions to the relevant sample forms or clauses in appendix G on which it solicited comment and is adopting the revisions as discussed below. The final rule amends the applicable sample forms or clauses to include a late fee amount of $8 and a maximum late fee amount of ''Up to $8'' consistent with the late fee safe harbor amount set forth in § 1026.52(b)(1)(ii) applicable to Larger Card Issuers. Specifically, the final rule amends the following 11 sample forms or clauses: (1) G–10(B); (2) G–10(C); (3) G–10(E); (4) G–17(B); (5) G–17(C); (6) G–18(A); (7) G–18(B); (8) G–18(D); (9) G–18(F); (10) G–18(G); and (11) G–21.

Notwithstanding the changes to the late fee amount in the sample forms or clauses, Smaller Card Issuers as defined in § 1026.52(b)(3) are not subject to the $8 late fee safe harbor threshold adopted in this final rule and may use the relevant safe harbor thresholds set forth in § 1026.52(b)(1)(ii)(A) through (C). The 11 revised forms or clauses are samples and card issuers are required to disclose the late fee amounts, or maximum late fee amount, that it charges consistent with § 1026.52(b).

The CFPB did not receive comments regarding other changes to the sample forms or clauses on which it solicited comment, such as whether the 15-day courtesy period for imposing late fees or other penalty fees, if adopted, should be disclosed in the sample forms or clauses. As discussed in the section-by-section analysis of § 1026.52(b)(2), the CFPB is not adopting the 15-day courtesy period for late fees or other penalty fees. Therefore, the CFPB is not adopting any edits to the sample forms or clauses to disclose a courtesy period related to late fees or any other penalty fees. In addition, as discussed in the section-by-section analysis of § 1026.52(b)(1)(ii), this final rule does not adopt the $8 safe harbor threshold for penalty fees other than late fees imposed by Larger Card Issuers including over-the-limit fees and return payment fees, so this final rule does not adopt any changes to the sample forms or clauses for penalty fees other than late fees.

## VIII. Effective Date

*The CFPB's Proposal*

The CFPB proposed that the final rule, if adopted, would take effect 60 days after publication in the **Federal Register**. The CFPB solicited comment on whether the CFPB should provide a mandatory compliance date that is after the effective date for the proposed changes. The CFPB indicated in the 2023 Proposal that if a mandatory compliance date were adopted, it would be limited to the prohibitions on late fees in § 1026.52(b)(1) and (2), except for the proposed change to § 1026.52(b)(1)(ii)(D) which would provide that future annual adjustments for safe harbor amounts based on changes in the CPI do not apply to the late fee safe harbor amount. The CFPB sought comment on whether card issuers would need additional time after the effective date to make changes to their disclosures to reflect the changes in the late fee amounts that they are charging on credit card accounts. And, if so, when compliance with the proposed changes, if adopted, should be mandatory.

Separately, under TILA section 105(d), CFPB regulations requiring any disclosure which differs from disclosures previously required by TILA part A, part D, or part E must have an effective date of October 1 which follows by at least six months the date of promulgation subject to certain exceptions.[220]

The 2023 Proposal noted that, TILA section 105(d) only applies to any proposed changes requiring disclosures, if adopted, it would not necessitate the October 1 effective date for purposes of the late fee disclosure for two reasons. First, the 2023 Proposal noted that under Regulation Z, card issuers are currently required to disclose the late fees amounts, or maximum late fees amounts, as applicable, that apply to credit card accounts in certain disclosures, and the disclosure of those late fee amounts must reflect the terms of the legal obligation between the parties.[221] In other words, the proposal, if finalized, would not require any disclosure that differed from the current requirement because the proposed change is not substantive but a mere alteration of the disclosed maximum late fee amounts. Second, the change in amount would apply to the safe harbor,

[216] Sample Form G–18(F) contains two examples of late fees—one example is the maximum late fee of ''Up to $35'' under the heading ''Late Fee Warning'' and the other example is the late fee ($35) that was charged to the consumer in the particular billing cycle under the heading ''Fees.'' The CFPB solicited comment only on whether the 15-day courtesy period should be incorporated into the ''Late Fee Warning'' to indicate the late fee would only be charged if the consumer does not make the required payment within 15 calendar days after each due date. The 15-day courtesy period disclosure would not have been appropriate for the example of the late fee under the heading ''Fee.''

[217] Sample Form G–18(G) contains two examples of late fees—one example is the late fee of ''$35'' under the heading ''Late Fee Warning'' and the other example is the late fee ($35) that was charged to the consumer in the particular billing cycle under the heading ''Fees.'' The CFPB solicited comment only on whether the 15-day courtesy period should be incorporated into the ''Late Fee Warning'' to indicate the late fee would only be charged if the consumer does not make the required payment within 15 calendar days after each due date. The 15-day courtesy period disclosure would not have been appropriate for the example of the late fee under the heading ''Fee.''

[218] Sample Form G–18(A) only provides an example of a late fee that has been charged on the account in that billing cycle (*see* late fee disclosed under the ''Fees'' heading), so a disclosure of the 15-day courtesy period would not have been appropriate for this disclosure.

[219] These sample forms refer to over-the-limit fees as ''over-the-credit-limit fees.''

[220] 15 U.S.C. 1604(d).

[221] Section 1026.5(c) requires that ''disclosures shall reflect the terms of the legal obligation between the parties.''

which is an amount that card issuers may elect but are not required to use.

In addition, if the CFPB were to finalize the proposed 15-day courtesy period, as discussed in the 2023 Proposal, the CFPB solicited comment on whether the 15-day courtesy period and potential disclosure language should have an effective date of ''October 1 which follows by at least six months the date of promulgation,'' consistent with TILA section 105(d).[222]

*Comments Received*

*Disclosure and operational changes.* One industry trade association commenter advised that the CFPB provide a reasonable date within which issuers could adjust their practices and systems, update disclosures and conduct internal evaluations in order to determine whether they would continue to rely on the safe harbor or use the cost analysis provisions in § 1026.52(b)(1)(i) to set the late fee amount. One credit union commenter asserted that an implementation period of at least six months from the effective date of the rule is necessary to allow smaller institutions time to comply with the new requirements. One credit union trade association commenter stressed that smaller issuers would need an extended compliance window to accurately implement the necessary changes to their systems and consumer disclosures. This commenter further advised that the CFPB adopt a staggered implementation strategy such that larger issuers are required to comply before smaller issuers.

One credit union and several industry trade association commenters asserted that the proposed changes, if adopted, would require major adjustments to multiple disclosures, cost calculations and cost composition, and not just adjustments to the $8 late fee in the disclosures as stated in the CFPB's 2023 Proposal. These commenters indicated that issuers would also need to disclose and explain the proposed fee cap of 25 percent of the minimum required payment and how it relates to the proposed $8 late fee, eliminate disclosures for the higher late payment fee for recurring late payments within a six-month period and update their systems to reflect the changes as detailed in the CFPB's proposal. The commenters further asserted that the CFPB's proposed 60-day effective date ignores the full impact of the proposed revisions, if adopted, and the substantial changes to disclosures and systems that would be necessary to comply with the revised regulation. Furthermore, some of these commenters mentioned that the CFPB's assertion that card issuers are not mandated to use the safe harbor failed to take into account the fact that most card issuers rely on the existing safe harbor and would need to change their disclosures regardless of whether they continue to rely on the safe harbor or opt to disclose late fees calculated under the cost analysis provisions in § 1026.52(b)(1)(i). These commenters concluded that either option would require extensive changes to required disclosures and that the 60-day effective period is impracticable and unworkable.

One financial institution asserted that the CFPB's proposal for the 60-day effective date would be problematic for issuers whose portfolios significantly consist of private label and co-branded credit cards, due to existing contractual limitations that will need to be renegotiated with partners to effectuate changes in account-pricing terms. This commenter asserted that the 60-day effective date provides an unreasonably short amount of time to renegotiate existing contracts and implement new terms and the proposal, if finalized, would disproportionately affect private label and co-branded credit card issuers.

*Impact of TILA section 105(d) on the effective date.* One law firm commenter on behalf of several card issuers and several industry trade association commenters asserted that the CFPB's proposed effective date was in violation of section 105(d) of TILA. These commenters asserted that because the CFPB's 2023 Proposal, if adopted, would require changes to multiple mandatory consumer disclosures, the effective date must be October 1 which follows by at least six months the date of promulgation consistent with TILA section 105(d). One of the trade association commenters indicated that under section 105(d), any proposed changes finalized after March 31, 2023, is statutorily required to have an effective date of October 1, 2024. They explained that the only statutory exception provided to the CFPB under section 105(d) to shorten the effective date is ''when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices,'' neither of which the CFPB mentioned in its proposal. Furthermore, the law firm commenter and several of the industry trade association commenters explained that the two grounds provided by the CFPB for the non-applicability of section 105(d) mischaracterized the proposed changes and that, as long as any changes are to be made to the disclosures, section 105(d) of TILA would apply. These commenters concluded that it would be arbitrary and capricious for the CFPB to reduce the amount of time statutorily required to amend existing disclosure requirements, or to reclassify existing late fee practices and disclosures as ''unfair or deceptive'' when they are fully consistent with TILA and the CFPB's Regulation Z current penalty fee safe harbor provision. The law firm described above and several of the industry trade association commenters asserted that the delayed effective date requirements of section 105(d) of TILA are necessary not only to accommodate the changes in disclosures, but also to provide issuers sufficient time to put in place systems to calculate the late fee amounts they can charge customers, which then become the subject of the disclosures. These commenters asserted that the final rule should take effect no earlier than October 1, 2024.

*The Final Rule*

For the reasons discussed below, the CFPB has determined that this final rule will take effect 60 days after publication in the **Federal Register**. The 60-day effective date applies to the following revisions, among others, with respect to late fees imposed by Larger Card Issuers; (1) the repeal of the current safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B); (2) the adoption of a late fee safe harbor dollar amount of $8 in § 1026.52(b)(1)(ii); (3) the elimination of a higher safe harbor dollar amount for subsequent late fees that occur during the same billing cycle or in one of the next six billing cycles;[223] and (4) the elimination of the annual adjustment provisions for the safe harbor dollar amounts so that those provisions do not apply to the $8 late fee safe harbor amount.

*Disclosure and operational changes.* With respect to the commenters asserting that the 2023 Proposal, if adopted, would require complex changes to their operating systems, the CFPB has determined that Larger Card Issuers likely have the capacity and resources to comply with the revisions discussed above within 60-days of when this final rule is published in the **Federal Register**.

The CFPB notes that several provisions proposed, and for which the CFPB sought comments, have not been adopted under this final rule. For example, the CFPB is not adopting the proposed provisions to restrict late fee amounts to 25 percent of the required minimum payment. In addition, this

[222] 15 U.S.C. 1604(d).

[223] This final rule does not amend the safe harbor set forth in § 1026.52(b)(1)(ii)(C) applicable to charge card accounts.

final rule does not adopt the following provisions on which the CFPB sought comment: (1) a 15-day courtesy period; (2) the elimination of safe harbor threshold amounts for other penalty fees; and (3) imposing additional conditions on using the safe harbor threshold amounts (such as providing auto payment options). The CFPB has determined that not adopting these changes in this final rule reduces the extent of operational and disclosure changes referenced by industry commenters. The full impact of this final rule on card issuers' operations is therefore much more limited than the possible revisions discussed in the CFPB's 2023 Proposal. In sum, Larger Card Issuers would have 60 days to delete the existing late fee figure in their disclosures and replace it with $8 or another number computed using the cost analysis provisions, and this change would only have to appear on disclosures mailed or delivered to consumers 60 days after publication of this final rule in the **Federal Register**. The CFPB expects that this effective date will provide Larger Card Issuers with sufficient time to accomplish this task.

With respect to commenters' assertions that card issuers would need to conduct a comprehensive cost analysis to determine whether the new safe harbor late fee adequately covers their cost, the CFPB maintains that this final rule does not mandate Larger Card Issuers to conduct any cost analysis. Due to safety and soundness regulation and general good corporate governance principles, the CFPB expects that Larger Card Issuers have more sophisticated cost accounting systems than Smaller Card Issuers and should be able to calculate a late fee amount based on the cost analysis provisions within 60 days. However, if Larger Card Issuers choose to use the cost analysis provisions as set forth in § 1026.52(b)(1)(i), including the requirement to exclude post-charge off collection costs from its analysis, they must do so and comply with the changes in this final rule by this final rule's effective date. Alternatively, Larger Card Issuers may choose to initially adopt the $8 late fee safe harbor amount while separately conducting a more extensive cost analysis.

With respect to comments on the impact of the 60-day effective date on private label and co-branded card issuers, the CFPB notes that many private label and co-branded card issuers are likely to be Larger Card Issuers (*i.e.,* card issuers that together with their affiliates have one million or more open credit card accounts), and these issuers, whose business focuses on credit cards, likely have the capacity and resources to make the required disclosures within the 60-day timeframe. In addition, such issuers have the option to initially adopt the $8 late fee safe harbor as they separately renegotiate contract terms with their partners.

With respect to the commenters' requests for a staggered implementation strategy and additional time to comply with the final rule by smaller issuers, the CFPB has determined that this request is not needed. The CFPB notes that Smaller Card Issuers as defined in § 1026.52(b)(3) are not subject to the safe harbor reduction.

Impact of TILA section 105(d) on the effective date. Under TILA section 105(d), CFPB regulations requiring any disclosure which differs from disclosures previously required by TILA part A, part D, or part E, or by any regulation of the Bureau promulgated thereunder must have an effective date of October 1 which follows by at least six months the date of promulgation subject to certain exceptions.[224] The CFPB maintains that TILA section 105(d) does not necessitate the October 1, 2024 effective date for purposes of the late fee disclosure for three reasons. First, as noted in the proposal, under Regulation Z, card issuers are currently required to disclose the late fee amount, or maximum late fee amount, as applicable, that apply to credit card accounts in certain disclosures, and the disclosure of those late fee amounts must reflect the terms of the legal obligation between the parties.[225] This final rule does not change these requirements nor alter any existing disclosure of the maximum late fee amounts; instead, it would solely result in a change to the amount of the late fee disclosed by Larger Card Issuers using the safe harbor, *i.e.,* from a current amount of up to $41 to the new safe harbor of $8.

Second, while the CFPB recognizes that this rule will result in Larger Card Issuers changing the numerical value for late fees in their disclosures for consumers, the CFPB notes that such changes to the numerical amount of late fees are something that card issuers frequently do. For example, card issuers change the disclosure of late fee amounts after the CFPB adjusts the safe harbors for inflation without waiting until the next October 1. Third, the change in amount applies to the safe harbor, which is an amount that card issuers may elect but are not ''required'' to use.

[224] 15 U.S.C. 1604(d).

[225] *See supra* note 221.

## IX. CFPA Section 1022(b) Analysis

### *A. Overview*

This final rule is summarized in part I. In developing this final rule, the CFPB has considered this final rule's potential benefits, costs, and impacts in accordance with section 1022(b)(2)(A) of the CFPA.[226] The CFPB requested comment on the preliminary analysis presented in the 2023 Proposal and submissions of additional data that could inform the CFPB's analysis of the benefits, costs, and impacts, and the discussion below reflects comments received. In developing this final rule, the CFPB consulted with the appropriate prudential regulators and other Federal agencies, including regarding the consistency of this final rule with any prudential, market, or systemic objectives administered by those agencies, in accordance with section 1022(b)(2)(B) of the CFPA.[227] The CFPB also consulted with agencies described in TILA section 149.[228]

### *B. Data Limitations and Quantification of Benefits, Costs, and Impacts*

The discussion below relies on information that the CFPB has obtained from industry, other regulatory agencies, and publicly available sources, including reports published by the CFPB. These sources form the basis for the CFPB's consideration of the likely impacts of this final rule. The CFPB provides estimates, to the extent possible, of the potential benefits and costs to consumers and covered persons of this final rule, given available data.

Specifically, this discussion relies on the CFPB's analysis of both portfolio and account data from the Y–14 collection, as described in part V above. The discussion also relies on data collected directly from a diverse set of credit card issuers to support the CFPB's biennial report on the state of the consumer credit card market as required by the CARD Act.[229] The CFPB also consulted the academic literature, as well as public comments in response to the Board's 2010 Final Rule, the CFPB's ANPR, and the CFPB's 2023 Proposal that preceded this final rule.

The CFPB acknowledges limitations that prevent an exhaustive determination of benefits, costs, and impacts. Quantifying the benefits, costs, and impacts requires quantifying future consumer and card issuer responses to the changes. It is impossible to predict these responses with certainty given

[226] 12 U.S.C. 5512(b)(2)(A).

[227] 12 U.S.C. 5512(b)(2)(B).

[228] 15 U.S.C. 1665d(b) and 1665d(e).

[229] *See supra* note 87.

available data and research methods. This reflects in part the fact that the effects of this final rule will depend on choices made by independent actors in response to this final rule, which are inherently difficult to predict with certainty. In particular, the available evidence does not permit a definitive prediction of how changes to late fees will affect late payments and delinquencies or the expected substitution effects across credit cards and between credit cards and other forms of credit. Similarly, the evidence available does not permit definitive conclusions about the cost and effectiveness of steps Larger Card Issuers might take to facilitate timely repayment, collect efficiently, reprice any of their services, remunerate their staff, suppliers, or sources of capital differently, or enter or exit any segment of the credit card market. Having said that, the data and research available is relatively significant and helpful for understanding the likely general effects of this final rule.

In light of these data limitations, the analysis below provides quantitative estimates where possible and a qualitative discussion of this final rule's benefits, costs, and impacts. General economic principles and the CFPB's expertise, together with the available data, provide insight into these benefits, costs, and impacts.

*C. Baseline for Analysis*

In evaluating this final rule's benefits, costs, and impacts, the CFPB considered the impacts against a baseline in which the CFPB takes no action. This baseline includes existing regulations and the current state of the market. In particular, it assumes (1) the continuation of the existing safe harbor amounts for credit card late fees, currently $30 generally and $41 for each subsequent late payment occurring in one of the next six billing cycles; and (2) that these amounts will be adjusted when there are changes to the CPI in accordance with the current provision in § 1026.52(b)(1)(ii)(D).

*D. Comments Received*

General Comments on the 1022(b)(2)(A) Analysis

Several industry trade associations and one academic commenter generally asserted that the cost-benefit analysis for the 2023 Proposal was inadequate. The academic commenter asserted that the cost-benefit analysis was not based on academically vetted and scrutinized economic justifications for a specific safe harbor of $8 in distinction to another level, whether lower or higher than $30.

One credit union trade association commenter asserted that the 2023 Proposal lacked a sufficient cost-benefit analysis, and the proposal did not contain a comprehensive outline of potential effects. This commenter further asserted that the proposal did not contain a systematic economic analysis of a ''but-for world'' in which the rule is implemented. This commenter provided the views of a consulting firm hired by the commenter indicating that in the consultant's view, the CFPB did not provide a valid economic analysis of the impact of the 2023 Proposal on: (1) the increased frequency of late payments caused by lower late fees; (2) the changes in APRs, credit limits, minimum payments and other credit card terms caused by lower late fees; (3) the increased risk of charge-offs and losses faced by credit card issuers resulting from the increased frequency of late and skipped payments caused by lower late fees; (4) the much greater difficulty in adapting to lower late fees faced by Federal credit unions that cannot charge APRs of more than 18 percent; (5) which consumers will benefit from, and which consumers will be harmed by, the decrease in late fees and the resulting changes in other credit card terms; and (6) the decrease in access to credit, and the reduction in credit limits for consumers with lower credit scores caused by lower late fees.

The CFPB disagrees with the general assertion that its consideration of benefits and costs of the 2023 Proposal under section 1022(b) of the CFPA was inadequate. The CFPB in its 1022(b) analysis for the 2023 Proposal conducted a thorough analysis of the reasonably available data to estimate, quantify, and monetize benefits and costs to the extent possible. As noted above, the CFPB has limited evidence to predict fully how changes to late fees will affect late payments and delinquencies or the expected substitution effects across credit cards and between credit cards and other forms of credit. While some commenters assumed that such predictions can be made with a high degree of certainty, no commenter offered new and reliable evidence or research to corroborate their assertions. Given the difficulties of precisely foreseeing future impacts, the most viable approach involves a careful examination of the effects from analogous historical events. In developing this final rule, the CFPB undertook a thorough review of available research and data analyzing the impacts of comparable regulatory changes in recent decades that allow some reasonable extrapolation regarding potential outcomes.

Comments Concerning Proposal's Impact on Consumers

One financial regulatory advocacy group asserted that reducing the amount of late fees charged would have a positive effect on the financial health of consumers especially those who carry over credit balances each month. This commenter asserted that the financial distress suffered by consumers due to the high cost of late fees was further compounded by the limited amount of a consumer's payment that is applied to the principal.

One trade association commenter asserted that the CFPB failed to properly quantify the benefits to consumers, and the commenter claimed that the 2023 Proposal would disproportionately benefit a small portion of consumers at the expense of others. This commenter also asserted that the CFPB's proposal (1) evinced a lack of understanding with respect to issuers' obligations to manage credit risk, which the commenter claimed would require issuers to take actions that may result in a reduction in access to credit, and (2) assumed that the proposed changes would incentivize issuers to do more to encourage on-time payments.

One credit union trade association claimed that the cost-benefit analysis in the 2023 Proposal indicated that there would be many possible negative consequences to consumers of the proposed changes, which the commenter stated would include higher interest rates on credit cards and negative changes to other terms and fee amounts. This commenter claimed that the CFPB indicated that many consumers will be ''harmed'' by these changes without experiencing any of the benefits. This commenter urged the CFPB to re-examine the cost/benefit balance of the proposal and recognize that it will ultimately cause more harm to more consumers than the benefits to those it will favor.

Several industry trade associations asserted that the CFPB did not adequately reflect the cost of the 2023 Proposal to consumers. These commenters claimed that the vast majority of consumer cardholders will be harmed by the proposal. These commenters also claimed that the proposal (1) would limit the ability of issuers to allocate the cost and risk of late payments to the late paying population and would require issuers to spread these costs across all consumer cardholders; (2) would increase late payments and associated costs; and (3) would cause the cost of credit to

increase, credit availability to drop, and rewards and other credit card features to decline or disappear. These commenters also claimed, somewhat contradictorily, that the CFPB ''expressly acknowledges'' these consequences with no rebuttal.

One law firm representing several card issuers claimed that while the CFPB acknowledged various costs imposed by the 2023 Proposal, it did not provide adequate support for its assessment that the 2023 Proposal would result in a ''net benefit for consumers.'' This commenter asserted that the 2023 Proposal would benefit only the ''very small subset'' of the consumer population that regularly pays late fees and claimed that the 2023 Proposal acknowledges that cardholders who never make late payments ''would not benefit and would be worse off'' due to potential increases in maintenance fees and APRs. This commenter asserted that with respect to the population of consumers with subprime credit scores that regularly pay late fees, the proposal did not adequately consider that any benefits received ''would ultimately be offset'' by any of the possible outcomes articulated by the CFPB in the 2023 Proposal: increases in the APR; reduced access to credit; increased delinquencies and negative credit reporting; or increases in other credit card fees.

As an initial matter, this rule is intended to tailor the safe harbor to a more reasonable approximation of the existing statutory standard of ''reasonable and proportional.'' In other words, this rule brings the regulations closer in line with the statutory text. The requirement that penalty fees be reasonable and proportional to violations reflects Congress' judgment that penalty fees should not be higher, even if higher fees might have led to lower prices for consumers who do not incur penalties. The CFPB is not in a position to dispute Congress' conclusion that the benefits of the statutory scheme were worth the trade-offs. The CFPB's analysis of the costs, benefits, and impacts of this rule inform the agency's decision, but ultimately, the decision to finalize this rule is based on a conclusion that the rule is more closely aligned with the statute.

The CFPB disagrees with the assertion that its consideration of benefits and costs to consumers was inadequate in the 2023 Proposal. As noted by several commenters, the CFPB discussed in the 2023 Proposal not only the proposed rule's potential benefits to consumers who often incur late fees but also the potential costs to some consumers, in particular those who seldom incur late fees, from potential offsetting changes to the terms of credit card agreements, such as increases in the interest rate, increases in the amount of other fees, or changes in rewards.[230] For example, the 2023 Proposal explained the decrease in late fees would affect different consumers differently depending on how often they pay late and whether they carry a balance. The 2023 Proposal further noted that: (1) Cardholders who never pay late will not benefit from the reduction in late fees and could pay more for their account if maintenance fees in their market segment rise in response—or if their interest rate increases in response and these on-time cardholders also carry a balance; (2) Frequent late payers are likely to benefit monetarily from reduced late fees, even if their higher interest rates or maintenance fees offset some of the benefits; (3) Cardholders who do not regularly carry a balance but occasionally miss a payment would benefit from the proposed changes so long as any increase in the cost of finance charges (including the result of late payments that eliminate their grace period) is smaller than the drop in fees; and (4) Cardholders who carry a balance but rarely miss a payment are less likely to benefit on net.[231]

The CFPB also notes that APRs and other prices reflect the issuer's assessment of individual consumers' likely usage and risk profiles, particularly at Larger Card Issuers. If an issuer prices its product knowing that a consumer is very unlikely to make late payments, then a reduction in late fees will make little difference to the optimal pricing for that consumer, and there is no reason to expect meaningful offsetting price changes for such a consumer. Any offsetting price changes are likely to be more significant for categories of consumers that issuers anticipate are more likely to pay late fees.

These expectations can be correct only as averages for broader groups based on factors the issuer can observe when setting prices for an account, meaning that the effects of the rule on consumers will still depend on whether they make more or fewer late payments relative to others who appear similar. Nonetheless, individualized pricing based on risk profiles limits the extent to which consumers who infrequently pay late are likely to pay more as a result of the rule.

In the 2023 Proposal, the CFPB also considered that for consumers who incur late fees the possibility that the dollar value of additional consumer costs from offsetting price changes could be equal to or greater than the savings to consumers from lower late fees. The CFPB explained that it was unlikely that the fee reductions would be fully offset because (1) offsetting price increases are most likely where markets are most competitive since, in competitive markets where profit margins are low, any reduction in revenue is likely to lead some firms to exit the market, limiting supply and driving prices up for consumers; and (2) recent evidence suggests that profits from credit card issuance are significant, making it unlikely that reduced fee revenue would lead to exit.[232] This reasoning has been empirically validated by the very limited offset found by studies of the fee reductions from the implementation of the CARD Act. The 2023 Proposal cited a prominent academic study as well as its own internal research. Some commenters cited research on the effects of debit card interchange fee limits in the Durbin Amendment.[233] The latest revision of this working paper estimates that banks offset less than half of the lost interchange revenue through increases in checking account fees. Although these findings relate to a different product market, they are generally consistent with the conclusion that lost bank revenue from reduced credit card late fees would not be fully offset.[234]

The CFPB considered the evidence that it deemed to be reliable and that was reasonably available, and commenters did not provide additional sources of reliable data about the effects of late fees on consumers and covered persons that materially alters the CFPB's assessment of the benefits and costs to consumers and covered persons of the 2023 Proposal.

In the 2023 Proposal, the CFPB also considered general economic principles in its analysis. For example, economic principles imply that private firms will weigh costs and benefits of different actions, and that if the benefit of an action is exogenously reduced, those firms will generally change their actions in response. Thus, for example, in the 2023 Proposal, the CFPB considered that firms considering investments in

[230] 88 FR 18906 at 18932–36.

[231] *Id.* at 18934.

[232] *Id.* at 18933–34.

[233] Vladimir Mukharlyamov & Natasha Sarin, *Price Regulation in Two-Sided Markets: Empirical Evidence from Debit Cards* (Dec. 24, 2022), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3328579.*

[234] The authors also note that the Durbin amendment's limits on debit card interchange fees may have led banks to issue credit cards more actively, which generate larger interchange fees, which would tend to lessen any reduction in total interchange fees for merchants.

reminders or other mechanisms to discourage late payment would balance the cost of such investments against the benefit, and that the reduction of late fee amounts would affect that cost/benefit calculation.[235]

Comments Concerning Proposal's Impact on Card Issuers

One industry trade association asserted that the CFPB inadequately weighed the costs and reduced deterrent effect of the lower safe harbor described in the 2023 Proposal. In doing so, the commenter also claimed that the CFPB (1) underweighted the costs of compliance with a lower safe harbor regime; and (2) did not adequately quantify the various impacts that its $9 billion estimated reduction in fee revenue will have on the pricing and availability of credit cards. This commenter claimed that the CFPB's inadequate evaluation of the costs associated with the 2023 Proposal render the proposal arbitrary and capricious in violation of the APA.

One bank asserted that the CFPB in the 2023 Proposal did not adequately consider the reduction of access to consumer financial products in its cost-benefit analysis under 1022(b); rather, the bank claimed that the CFPB stated the 2023 Proposal is ''likely to drive some firms out of the market.'' This commenter also claimed that the CFPB in the 2023 Proposal did not adequately consider the impact on covered persons in rural areas.

One law firm representing several clients claimed that the 2023 Proposal's consideration of costs and burdens did not adequately consider the cost of compliance for card issuers. This commenter claimed that the 2023 Proposal would impose disproportionately high costs on credit card issuers that service borrowers with subprime credit scores, many of whom may need to exceed the $8 safe harbor, and such issuers would need to spend significant resources to build internal processes and procedures for calculating and documenting the costs of late fees if they want to use cost analysis provisions set forth in § 1026.52(b)(1)(i). This commenter also claimed that the 2023 Proposal would require such issuers to spend significant resources building out an evidentiary record in order to use the cost analysis provisions, particularly in light of the CFPB's continued public scrutiny of credit card late fees.

One individual commenter claimed that the CFPB has acted arbitrarily and capriciously in not adequately considering the potential costs to issuers. This commenter asserted that the CFPB did not adequately estimate the possible increase in compliance burden as more credit card issuers would find it necessary to prove their collection costs exceed the safe harbor limits.

One industry trade association questioned whether the CFPB had evidence to support the claim that card issuers could mitigate late payment using other steps. For example, this commenter claimed that the CFPB did not have adequate evidence for the CFPB's statement that card issuers can mitigate the lost revenue by launching additional programs to reduce the incidence of late payments, such as sending reminders and offering automatic or convenient payment options. The commenter asserted that its members report that such measures are common practice now and are not likely to be more effective if cardholders are contacted more frequently.

Two credit union trade associations asserted that the CFPB should not have suggested in the 2023 Proposal that issuers can mitigate the loss of revenue from late fees by taking other measures such as increasing interest rates. For example, these commenters indicated that credit unions face different compliance costs and challenges than larger card issuers particularly as related to use of the cost analysis provisions set forth in § 1026.52(b)(1)(i). Several credit union trade associations and credit union commenters further asserted that Federally chartered credit unions may be prohibited from raising interest rates because they are subject to a statutory interest rate cap so that may not be a feasible mechanism to recover lost revenue.[236]

The CFPB disagrees with the claim that its analysis pursuant to section 1022(b)(2)(A) of the CFPA in the 2023 Proposal does not adequately address the costs to card issuers. As discussed in the 1022(b) analysis of the 2023 Proposal, the CFPB considered a range of potential costs to issuers of complying with the 2023 Proposal.[237] For example, the 2023 Proposal noted that because the proposal would significantly reduce the aggregate value of late fees paid by consumers, the proposal would significantly reduce late fee revenue for issuers.[238] Nor does the CFPB agree with commenters suggesting that affected credit card issuers lack adequate existing means to track pertinent costs in a manner sufficient to conduct reliable cost analysis as set forth in § 1026.52(b)(1)(i). Given the general sophistication and scale of the Larger Card Issuers covered under the final rule, these institutions have access to substantial data on internal costs and operations.

The CFPB also disagrees with the claim that it did not adequately consider in the 2023 Proposal the potential effects on the pricing and availability of credit cards, as it discussed a range of possible effects on the terms of credit cards and availability of credit cards as a result of reduced late fee revenue. For example, the 2023 Proposal explained that (1) issuers can mitigate the costs of the proposal to some extent by taking other measures (*e.g.,* increasing interest rates or changing rewards); and (2) it is also possible that some consumers' access to credit could fall if issuers could adequately offset lost fee revenue expected from them only by increasing APRs to a point at which a particular card is not viable, for example, because the APR exceeds applicable legal limits.[239] The CFPB also noted that economic theory as well as relevant empirical evidence convinced it that full pass-through to consumers was not likely.

With respect to the criticism by the two credit union trade associations that credit unions face different compliance costs and challenges than larger card issuers particularly as related to use of the cost analysis provisions set forth in § 1026.52(b)(1)(i), the CFPB notes that this final rule will not cover most credit unions because they are Smaller Card Issuers as defined in new § 1026.52(b)(3). As discussed in part VI, the CFPB recognizes that it relied on Y–14 data from certain Larger Card Issuers in the 2023 Proposal, and as discussed in that part, the CFPB also recognizes that smaller credit unions could face different challenges in using the cost analysis provisions in § 1026.52(b)(1)(i) because of economies of scale and other issues.

The CFPB acknowledges that at least four Federal credit unions are likely to be impacted by the final rule. The APR caps reduce these firms' ability to risk-price to certain customers, especially in an environment with higher inflation and prevailing nominal rates of interest. This fact will be heightened by the final rule, which will be a further constraint on credit card pricing for these firms, consistent with the intent of Congress to ensure that penalty fees are reasonable and proportional.

[235] *Id.* at 18935.

[236] *See supra* note 104.

[237] *Id.* at 18935–36.

[238] *Id.* at 18935.

[239] *Id.* at 18934–35.

### *E. Potential Benefits and Costs to Consumers and Covered Persons*

This section discusses the benefits and costs to consumers and covered persons of the following changes applicable to late fees charged by Larger Card Issuers: (1) the repeal of the current safe harbor threshold amounts, the adoption of a lower safe harbor dollar amount of $8, and the elimination of a higher safe harbor dollar amount for subsequent violations of the same type that occur during the same billing cycle or in one of the next six billing cycles; and (2) the elimination of the annual adjustments for the safe harbor dollar amounts to reflect changes in the CPI set forth in current § 1026.52(b)(1)(ii)(D) to the $8 late fee safe harbor. These two amendments will only apply with respect to late fees charged by Larger Card Issuers (*i.e.,* card issuers that together with their affiliates have million or more open credit card accounts). This final rule does not adopt these two amendments for Smaller Card Issuers.

Pursuant to the annual adjustments for safe harbor dollar amounts in § 1026.52(b)(1)(ii)(D), this final rule also revises the safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) to $32, except that it sets forth a safe harbor of $43 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles. These revised safe harbor threshold amounts of $32 and $43 apply to penalty fees other than late fees for all card issuers (*i.e.,* Smaller Card Issuers and Larger Card Issuers) as well as late fees imposed by Smaller Card Issuers, as noted above.

This final rule also amends certain sample forms and clauses in, and commentary to, Regulation Z to clarify the application of the rule and make conforming adjustments. The CFPB does not separately discuss the benefits and costs of these other amendments but has determined that they will generally lower compliance costs for card issuers and facilitate consumer understanding of the rule. Finally, the discussion below also considers the benefits and costs of certain other alternatives that the CFPB considered.

#### Potential Benefits and Costs to Consumers and Covered Persons of the $8 Late Fee Safe Harbor Changes

The CFPB is amending § 1026.52(b)(1)(ii) to repeal the current safe harbor amounts for late fees charged by Larger Card Issuers—currently set at $30 and $41 for a first and subsequent violation, respectively—and to adopt a late fee amount of $8 for the first and subsequent violations.[240] This final rule will eliminate the higher safe harbor amount for subsequent late payment violations with respect to late fees charged by Larger Card Issuers.

As discussed in part VI, based on its review of both public and confidential data, the CFPB estimates that these revised provisions would apply to approximately the largest 30 to 35 issuers by outstanding balances (out of around 4,000 financial institutions that offer credit cards). This would cover over 95 percent of the total outstanding balances in the credit card market. Thus, these revised provisions would cover all of the Y–14+ issuers for which the CFPB has total collections and late fee revenue data, as well as about a dozen other similar issuers with large credit card portfolios.

#### Potential Benefits and Costs to Consumers of the $8 Late Fee Safe Harbor Changes

In general, this final rule's lower safe harbor amount for late fees of $8 for first and subsequent violations will benefit consumers doing business with Larger Card Issuers who pay late by reducing their late fee amounts. This direct benefit may be offset to the extent that Larger Card Issuers respond to lost fee revenue from consumers in specific risk tiers with price increases elsewhere (like APR) to consumers in that same risk tier, and potentially if consumers respond to reduced late fees in ways that harm them in the long run. The discussion below begins with the direct benefits from lower late fees, then turns to the possibility that those benefits are offset through changes to other prices, and then addresses the potential effects on consumers of changes to late payment behavior.

The direct benefits to consumers who pay late could be as high as the fees saved with the $8 fee amount on violations without or with a recent prior violation—that is, the difference between fees currently charged and the lower $8 amount. For example, for a consumer who would incur a $31 late fee, the savings will be $23. Based on data considered in the 2023 Proposal, the CFPB estimates that aggregate late fees assessed for issuers in the Y–14+ data were $14 billion in 2019 and $12 billion in 2020 and that the average late fee charged was $31 in 2020.[241] Thus, if fees had been reduced to $8, it would have reduced aggregate late fees charged to consumers by several billion dollars.

To estimate the extent of the reduction, based on data considered in the 2023 Proposal, the CFPB examines Y–14 account-level data for the 12-month period from September 2021 to August 2022. The issuers in this sample represent an estimated 73 percent of aggregate credit card balances and reported collecting $5.688 billion in late fees during the period, and the CFPB estimates that the collected fees would have been $1.451 billion, or 74.6 percent lower, if fees had been $8 rather than the fees actually collected.[242] As noted in the 2023 Proposal, the CFPB does not have account-level data for any issuers other than those included in the Y–14 data. In the 2023 Proposal, the CFPB assumed that the 73 percent of balances covered by these issuers with collection costs in the Y–14 data collection most recently is representative of the fee structure and incidence of the entire market, and provided that these figures would have implied $5.8 billion savings for consumers (not including any fees charged but not ultimately collected). However, as noted in the 2023 Proposal, the Y–14+ data suggest that late fee revenue per account at these Y–14 issuers is less than for other issuers in the Y–14+. This implies an even greater reduction in fee revenue and, in turn, greater consumer savings from Larger Card Issuers not included in the Y–14 data, meaning that $5.8 billion is therefore likely to be an underestimate of the potential reduction in fees. As discussed in the 2023 Proposal, if the 74.6 percent reduction in fee revenue were applied to the total estimated $12 billion in late fees at the Larger Card Issuers included in the Y–14+ from 2020, it would have implied a reduction

[240] As discussed in the section-by-section analysis of § 1026.52(b)(1)(ii)(C) in part VII, the CFPB is not lowering or otherwise changing the safe harbor amount of a late fee that card issuers may impose when a charge card account becomes seriously delinquent.

[241] Late Fee Report, at 4. As discussed in part V, the Y–14+ data includes information from the Board's Y–14 data and a diverse group of specialized issuers. After issuing the 2023 Proposal, the CFPB also published its 2023 CARD Act report on credit cards, which reports $11.5 billion and $14.5 billion late fee revenue for Y–14+ issuers in 2021 and 2022, respectively. 2023 Report, at 65.

[242] By adjusting the collected late fee revenue with how assessed fee amounts would have changed, this analysis disregards the apparent but immaterial benefits to accounts whose assessed fees are not collected (but charged off). The CFPB estimates that this affects as much as 14 percent of late fee incidents. Also, as many as 5 percent of assessed late fees are reversed in later months (within-month waivers and reversals might already be netted out in the account data the Y–14 collection collects). The analysis here applied the same cap to reversals as to the original fees, thus minimizing the overcounting of benefits.

in fee revenue of approximately $9 billion.[243]

The benefits to consumers, however, will be lower if issuers choose to rely on the cost analysis provisions in § 1026.52(b)(1)(i) in order to set late fees at amounts higher than the $8 safe harbor. By using estimates of pre-charge-off collection costs per paid incident using the Y–14 data from September 2021 to August 2022 (consistent with the data used in the 2023 Proposal), the CFPB expected that fewer than four of the 12 issuers might use the cost analysis provisions to charge late fee amounts above $8 based on their reported pre-charge-off collection costs per paid violation. The CFPB's calculations suggested that if these major issuers rely on the cost analysis provisions in § 1026.52(b)(1)(i) while the others in the Y–14 data use the $8 safe harbor amount, it would lower the mechanical impact of the new safe harbor amounts by 3 percent relative to the case of all Y–14 issuers charging late fees of $8 (from an estimated fee reduction of $4.23 billion for these Y–14 issuers to an estimated $4.11 billion), representing a reduction in fees collected of 72.3 percent for these issuers.[244] In the 2023 Proposal, the CFPB assumed that the 73 percent of balances covered by these issuers with collection costs in the Y–14 data collection is representative of the fee structure and incidence of the entire market, and provided that these figures would have implied $5.6 billion savings for consumers (not including any fees charged but not ultimately collected). However, as discussed above and in the 2023 Proposal, the Y–14+ data suggest that late fee revenue per account at these Y–14 issuers is less than for other issuers in the Y–14+. This implies a larger reduction in fee revenue at Larger Card Issuers not in the Y–14 data, meaning that $5.6 billion is therefore likely to be an underestimate of the potential reduction in fees. As discussed in the 2023 Proposal, if the 72.3 percent reduction in fee revenue were applied to the total estimated $12 billion in late fees at Larger Card Issuers in the Y–14+ from 2020, it will imply a reduction in fee revenue of approximately $9 billion.[245]

After issuance of the 2023 Proposal, the CFPB collected quarterly data on Larger Card Issuers in the Y–14+ sample for 2021 and 2022. Thus, for a similar period, but from October 2021 to September 2022, the CFPB now can compare late fee revenue of the Y–14 analysis sample to the Y–14+ total. The Y–14 issuers whose account level data was used reported $5.8 billion in late fee revenue over this period, which is 53 percent of the $11 billion total for that time period in the Y–14+ data. These data are consistent with the CFPB's expectation as noted above and in the 2023 Proposal that the late fee revenue per account at these Y–14 issuers is less than for other issuers in the Y–14+.

Also, since the issuance of the 2023 Proposal, the CFPB published new estimates for late fee revenue at Larger Card Issuers in the Y–14+ from 2021 and 2022. These data are consistent with the consumer benefits discussed above and in the 2023 Proposal of the $8 safe harbor as applied to the Y–14+ issuers, and in fact, suggest that the consumer benefits may be higher than the $9 billion estimated in the 2023 Proposal. Based on the $14.5 billion estimated late fee revenue for the Y–14+ in 2022, the CFPB estimates that the total consumer benefits at Y–14+ issuers from the mechanical effect (based on a drop-in late fee revenue proportional to the simulated effects in the account-level data) would be $10.5 billion instead of the estimated consumer benefit of $9 billion based on the lower $12 billion total in 2020. In addition, total benefits for consumers holding cards of Larger Card Issuers will be even higher than the estimate based on the Y–14+ data, given that the CFPB estimates that there are about a dozen Larger Card Issuers that are not included in the Y–14+ data.[246]

The above analysis is based on collection expenses as reported in the Y–14 data. Some commenters reported that some issuers that report Y–14 data have collection expenses that they do not account for in their Y–14 reporting of collection expenses. If some Larger Card Issuers have greater costs than they report in the Y–14 data and such costs can be included for purposes of the cost analysis provisions in § 1026.52(b)(1)(i), it is possible that more Y–14 issuers than reflected above would use the cost analysis provisions, reducing both potential benefits to cardholders and potential costs to issuers.

The above estimates do not consider potential responses by consumers to lower late fees—in particular, the possibility that consumers are more likely to miss a payment due date if the fee for doing so is reduced. If this occurs and more consumers make untimely payments, consumers could face costs for doing so, including costs like increased penalty interest rates or lower credit scores. Such a response will affect the estimates above, as well as the final incidence of the benefits and costs.

As discussed in part VII above concerning deterrence and in the 2023 Proposal's 1022(b) analysis, however, the available evidence leads the CFPB to expect that a $8 late fee will still have a deterrent effect on late payments, although that effect may be lessened by the change to some extent, and other factors may be more relevant (or may become more relevant) towards creating deterrence. Even with a late fee of $8 at Larger Card Issuers, consumers will have incentives to make their minimum payment on time to avoid the late fee and other potential consequences of paying late, such as the potential loss of the grace period, and potential credit reporting consequences. To the extent consumers are late in paying because they are inattentive to their account or because they are so cash-constrained that they are unable to make a minimum payment, the amount of the late fee may have little effect on whether they pay late.

To the extent consumers who pay on time when faced with current late fees will instead rationally choose to make a late payment in response to lower late fees that will result from this final rule, those consumers will benefit from the additional flexibility that a lower late fee will afford. For such consumers, the benefit of delaying the minimum payment past the due date, net of the perceived other financial consequences of missing the due date, must be less than their account's existing late fees but greater than the fees that will result from this final rule. Their benefit from this final rule will be less than the difference between the two fees, but it will still add to the total consumer gains from this final rule. More generally, all consumers will benefit from the option value of managing a potential episode of financial distress at lower costs if and when necessary.

[243] The CFPB notes that the estimated reduction of fee revenue of approximately $9 billion was for the Y–14+ issuers only and did not factor in additional reduction of fee revenue for other card issuers (namely, Larger Card Issuers that are not included in the Y–14+ and are covered by this final rule, and Smaller Card Issuers that would have been covered by the $8 late fee safe harbor under the proposal but are not covered by the $8 late fee safe harbor under this final rule).

[244] This analysis assumes each issuer sets late fees for all their credit card products using only the safe harbor in § 1026.52(b)(1)(ii) or only the cost analysis provisions in § 1026.52(b)(1)(i). In practice, some issuers may use the safe harbor amount for some credit card products and the cost analysis provisions for others, which could lead the revenue impact of the new safe harbor amount to be different among issuers in the Y–14.

[245] *See supra* note 243.

[246] The CFPB is not aware of estimates of late fee revenue of Larger Card Issuers not in the Y–14+ data. Consumers doing business with Smaller Card Issuers would not be directly impacted by the $8 late fee safe harbor adopted in this final rule.

Since this final rule will reduce Larger Card Issuers' revenue from late fees, these issuers may respond by adjusting interest rates or other card terms to offset the lost income. Issuers' responses will affect both the sum of consumer gains and their distribution across consumers within pricing tiers. Total consumer gains would be the lowest in the unlikely case that Larger Card Issuers made up for all lost revenue and any potential cost increase by changing other consumer prices. Any such offset could manifest in higher maintenance fees, lower rewards, or higher interest on interest-paying accounts.

Offsetting price increases are most likely where markets are most competitive since, in competitive markets, any reduction in revenue is likely to drive some firms out of the market, limiting supply and driving prices up for consumers. As the recent profitability of consumer credit card businesses suggests that these markets are imperfectly competitive, the CFPB expects less than full offset, with consumers gaining in total from reduced late fees.[247] The same observation indicates that the market is unlikely to see any exits and no fewer entries, especially as the final rule directly impacts the late fee revenue of Larger Card Issuers only, who are even less likely to be on the margin of exit or entry. The two pieces of evidence most relevant to set the CFPB's expectations for offset are an academic publication and a CFPB report that includes an analysis of the effects of the fee changes resulting from the Board's 2010 Final Rule implementing the CARD Act.[248] The academic study used a precursor of the Y–14 data and expanded on the CFPB's analysis in its 2013 CARD report [249] that also compared average outcomes for consumer and small business credit cards but did not conduct a formal causal analysis. The identifying assumption of the academic work is that in the absence of the CARD Act, outcomes for consumer and small business accounts would have maintained parallel trends. The authors found late fees dropping in the subprime segment (with FICO scores below 660 at origination) by 1.5 percentage point of average daily balances as a result of the rule, and around a tenth as large a response at accounts with FICO credit scores above 660.[250] The authors also found that fees that were not subject to the CARD Act restrictions for consumer accounts did not increase to offset lost revenue from regulated fees. The frequency of late payments did not change around the August 2010 implementation date, which suggested to the authors that cardholders did not respond to the reduction in the late fee amount by increasing the frequency of late payments, and thus late fee revenue changed one-for-one with the late fee amounts.

To attempt to identify potential offsetting price changes, the authors develop a theoretical model of pricing offset under imperfect competition and imperfect salience (at the end of their appendix, extended in a separate publication [251]), and calibrate the model to market benchmarks. They conclude from this model that for every dollar in fee reduction, credit card issuers will increase prices by about 19 cents. The empirical investigation rules out offset effects of greater than 61 cents on the dollar with 95 percent confidence.

A third study that some commenters deemed relevant focuses on the effects of debit card interchange fee limits in the Durbin Amendment, which applied to large institutions, and found that less than half of lost interchange revenue was offset through increases to consumer checking account fees.[252] Although these findings relate to a different product market, they are generally consistent with the conclusion that lost bank revenue from reduced credit card late fees would not be fully offset.[253]

The CFPB reads this evidence as strongly suggesting less than full offset, if any. In considering offsetting changes, Larger Card Issuers will also face competitive pressures from Smaller Card Issuers, which will not be required by this final rule to reduce late fee amounts and therefore may not face similar pressure to increase other fees or APRs.

To illustrate a realistic level of the potential offsetting effect, consider the increase in interest income required to offset 19 percent lost late fee income, using the same calibration as in the academic study.[254] As discussed above, over the 12 months between September 2021 and August 2022, limiting late fees to $8 could have reduced the late fee revenue of Y–14 issuers with cost data by 72.3 percent, or $4.11 billion, even if some issuers use the cost analysis provisions to determine the amount of the late fee as discussed above. Total interest income at the issuers with collection costs in the Y–14 data was $71.4 billion over the same 12 months, so offsetting 19 percent of the lost fee revenue would require increasing interest revenue by $780 million, or 1.1 percent. Were such a proportional change uniform across all accounts, it would be less than 40 basis points on any APR that is below 36 percent.[255] Differentiated, for instance, ''risk-based'' pricing might imply interest rates rising more than this average in some groups (presumably those who are predicted to generate more late fee revenue) and less

[247] In its latest annual report on credit card profitability to Congress, the Board found that ''[c]redit card earnings have almost always been higher than returns on all bank activities, and earnings patterns for 2022 were consistent with historical experience.'' Bd. of Governors of the Fed. Rsrv. Sys., *Profitability of Credit Card Operations of Depository Institutions* (July 2023), at 4, *https://www.federalreserve.gov/publications/files/ccprofit2023.pdf.* The Board also found that the quarterly average return on credit card assets (ROA) using Y–14 data was stable at around 1.10 percent during the 2014–19 period before the pandemic, while the quarterly average credit card bank ROA using Call Report data was 1.03 percent. These measures dipped below zero early in the COVID–19 pandemic but rebounded to around 2 percent by 2021 for the Y–14. Late and other fees accounted for slightly less than 10 to 30 percent of ROA at reporting firms during the 2014–2021 period. Robert Adams *et al., Credit Card Profitability,* FEDS Notes, Bd. of Governors of the Fed. Rsrv. Sys. (Sept. 9, 2022), *https://doi.org/10.17016/2380-7172.3100.*

[248] Sumit Agarwal *et al., Regulating Consumer Financial Products: Evidence from Credit Cards,* 130 Quarterly J. of Econ., at 111–164 (Feb. 2015), *https://doi.org/10.1093/qje/qju037;* 2013 Report, at 20–37.

[249] 2013 Report, at 35–36.

[250] *See* Agarwal *et al., supra* note 248.

[251] *See* Agarwal *et al., supra* note 248; see Sumit Agarwal *et al., A Simple Framework for Estimating Consumer Benefits from Regulating Hidden Fees,* 43 J. of Legal Studies (Jun. 2014), *https://www.journals.uchicago.edu/doi/abs/10.1086/677856?journalCode=jls.*

[252] *Supra* note 233.

[253] Another study cited by commenters compares the credit card limits relative to total debt of consumers with subprime scores to consumers with better scores and finds that credit cards made up a smaller share of available credit for consumers with subprime scores during the period when the CARD Act was proposed, passed and implemented. Yiwei Dou, Julapa Jagtiani, Joshua Ronen and Ramain Quinn Maingi (2022), ''The Credit Card Act and Consumer Debt Structure,'' Journal of Law, Finance, and Accounting: Vol. 7: No. 1, pp 91–126. *http://dx.doi.org/10.1561/108.00000058.* The CFPB is not convinced that this comparison can establish the causal effect of the CARD Act for consumers with subprime credit scores, as consumers in all credit score categories are likely to have been affected by the provisions of the CARD Act and market responses.

[254] The available evidence suggests that issuers compete fiercely with more salient (though not necessarily transparent) rewards and, to a lesser extent, annual or account maintenance fees. (Other types of penalty fees, such as over-the-limit or returned check fees, are subject to existing CARD Act limits, and in any case apply only in particular circumstances and generate relatively little revenue.) This leads the CFPB to estimate an interest-only response as the full-offset benchmark. *See,* for instance, the academic research cited in *supra* note 248, or Figure 44 of the 2013 Report, at 82.

[255] For data related to total interest income in the Y–14 collection, *see* Revenue-Cost Report, at 6–9.

in other groups, if at all—essentially limiting any offset to within pricing tiers.

Economic theory also suggests the potential for a pass-through greater than what would be required to offset lost fee revenue, if the credit card market is sufficiently adversely selected on APRs.[256] Intuitively, if the offsetting change in APRs leads low-risk consumers to leave the pool of credit card borrowers to a greater degree than it leads higher-risk consumers to leave the pool of credit card borrowers, then the resulting change in average credit risk could lead to further increases in APRs in market equilibrium. However, the CFPB notes that existing evidence on adverse selection in the credit card market suggests that adverse selection is unlikely to be this severe. Most notably, the aforementioned research paper studying the effects of the safe-harbor fee levels in the Board's 2010 Final Rule finds that this high pass-through scenario can be rejected with high statistical confidence.[257] Complementary academic research finds less than full pass-through of other shocks to credit card lenders' costs,[258] and that the effects of adverse selection after the Board's 2010 Final Rule took effect were generally modest.[259] Overall, the CFPB concludes that concerns about adverse selection are unlikely to alter the above analysis's conclusion that any offsetting changes to APRs are likely to be limited.

This middle-of-the-road interest offset estimate for Larger Card Issuers, at least on one that reprices all accounts by the same percentage to recover all lost late fee revenue with higher finance charges, suggests that any losses to credit access will be limited. However, the CFPB acknowledges that late fee revenue has been concentrated on certain market segments, suggesting that any price responses are also likely to be focused in those segments. Risk-based pricing is likely to work by tiers. In particular, interest rates or other charges of subprime credit cards might increase more than for other cards, and some consumers might find these cards too expensive due to higher interest rate offers. Even if this were to happen, it would not result from a higher average consumer cost of using credit cards but from greater transparency about the cards' actual expected cost of ownership.[260] To the extent consumers consciously decline offers because of the card's actual price becoming more salient, this will constitute a benefit to those consumers.

On the other hand, it is also possible that some consumers' access to credit could fall if Larger Card Issuers could adequately offset lost fee revenue expected from them only by increasing APRs to a point at which a particular card is not viable, for example, because the APR exceeds applicable legal limits.

Any offsetting changes, like the decrease in late fees, would affect different consumers differently depending, for example, on how often they pay late and whether they carry a balance. For example, within any market segment there will be some cardholders who never pay late; such consumers will not benefit from the reduction in late fees and could pay more for their account if maintenance fees in their market segment rise in response—or if interest rates increase in a segment in response and some on-time cardholders in that segment also carry a balance. Frequent late payers are likely to benefit monetarily from reduced late fees, even if higher interest rates or maintenance fees offset some of the benefits. Cardholders who do not regularly carry a balance but occasionally miss a payment will benefit from the changes so long as any increase in the cost of finance charges (including the result of late payments that eliminate their grace period) is smaller than the drop in fees.[261] Cardholders who carry a balance but rarely miss a payment are less likely to benefit on net. Any consumers potentially harmed by changes to terms of credit cards at Larger Card Issuers could potentially switch to cards issued by Smaller Card Issuers, which in turn could deter offsetting salient price responses at the Larger Card Issuers.

Though the late fee changes most directly benefit those who make late payments, the CFPB notes that late fees are collected only from those delinquent cardholders who eventually pay at least the late fee amount. Some collection costs and charge-off losses are caused by delinquent customers who do not recover before account closure and charge-off. These cardholders will not receive any of the benefits of the lower fees they are nominally assessed but do not pay in practice.[262] Using a subsample of Y–14 account data, the CFPB estimated that around 14 percent of late fees are assessed to accounts that never make another payment.

As mentioned above in part II.E, consumers may not fully consider late fees when shopping for a credit card.[263] This is true in the baseline and is most likely to remain the case once this final rule is implemented. To the extent this is or will be true, the actual cost of using a credit card is or will be greater than consumers' expected cost and reducing late fees will reduce the difference between the two. Whether or not changes to other prices offset a reduction in late fee revenue, consumers may benefit if, when choosing a credit card, they have a more accurate view of the expected total costs of using the card. To the extent that some consumers become better informed about the terms of credit cards, issuers may respond by offering improved terms, which could benefit even consumers who do not shop around. In addition, consumers might benefit or incur costs from further repricing and restructuring other financial products cross-marketed by credit card issuers and their holding companies. The CFPB is not aware of data that could help quantify such effects.

Recent studies in psychology and economics highlight some patterns likely to affect consumer welfare in the credit card market, depending on how accurately cardholders forecast the likelihood that they will incur late fees. A seminal theoretical study[264] identified and coined the term for naïveté-based discrimination, in which firms recognize that some potential consumers are prone to such systematic mistakes. If this is indeed a feature of credit card markets, ''naïve'' and ''sophisticated'' consumers, using the

[256] Neale Mahoney & E. Glen Weyl, *Imperfect Competition in Selection Markets,* 99 Review of Economics and Statistics, MIT Press at 637–51 (Oct. 1, 2017), *https://doi.org/10.1162/REST_a_00661.*

[257] Agarwal *et al., supra* note 248.

[258] Tal Gross *et al., The Economic Consequences of Bankruptcy Reform,* 111 (7) American Economic Review, 2309–41 (July 2021), *https://www.aeaweb.org/articles?id=10.1257/aer.20191311.*

[259] Scott Thomas Nelson, *Essays on Household finance and credit market regulation,* Ph.D. Thesis, Massachusetts Institute of Technology, Department of Economics (2018), *https://dspace.mit.edu/handle/1721.1/118066.*

[260] As discussed below, however, the cost of ownership of cards could go up for some consumers and down for others, depending on their usage patterns.

[261] If a consumer pays late and loses the grace period, the consumer will pay interest on the balances. The analysis here focuses on whether an increased interest as a result of the increase in the rate to offset some of the reduction in late fee revenue is greater than the reduction in the late fee.

[262] This holds as long as the additional charged-off balance due to higher late fees does not change the amount the holder of the debt can eventually collect after charge-off, including through litigation or wage garnishment. Even defaulting consumers would benefit otherwise.

[263] Under the final rule, these consumers might also mistakenly choose a credit card of a Smaller Card Issuer, when they would have preferred an offer from a Larger Card Issuers that has lower late fees.

[264] Paul Heidhues & Botond Köszegi, *Naïveté-Based Discrimination,* 132 (2) The Quarterly Journal of Economics, at 1019–1054 (May 2017), *https://doi.org/10.1093/qje/qjw042.*

terminology of this scholarship, could be affected by this final rule differently. Naïve consumers may mistakenly expect high fees to be unimportant to them, as they are overly optimistic about not missing a payment. Such consumers will benefit from the changes to late fee amounts, which lower the cost of this mistake. Sophisticated consumers, inasmuch they would have been cross subsidized by naïve customers' costly mistakes, may pay higher maintenance fees or interest or collect fewer rewards if the issuer offsets the revenue lost to naïve consumers. The CFPB considers that to the extent there are offsetting changes to card terms, some of these effects are likely but has not quantified their magnitude.

The CFPB acknowledges the possibility that consumers who were more likely to pay attention to late fees than to other consequences of paying late, like interest charges, penalty rates, credit reporting, and the loss of a grace period, might be harmed in the short run if a reduction in late fees makes it more likely that they mistakenly miss payments. The CFPB has not quantified this effect but notes that reducing late fees may increase issuer incentives to find other approaches to make the consequences of late payment salient to consumers, including reminders or warnings.

Other studies in psychology and economics might suggest that penalties can serve as a valuable commitment device, for example helping them to make choices that they prefer in the long term despite the temptation to make different choices in the short term.[265] If some consumers were to value high fees for late payment in this way, then they might experience some harm if lower fees make it harder to responsibly manage their credit card debt. To the extent that late fees benefit some consumers in this way, any harm to such consumers may be mitigated to the extent that this final rule creates additional incentives for issuers to emphasize reminders, automatic payment, and other mechanisms that maintain similar or better payment behavior, as discussed below.

This final rule may benefit consumers indirectly by making late payments less profitable to Larger Card Issuers and thereby increasing Larger Card Issuer incentives to take steps that will encourage on-time payment. Consumers may benefit from issuer practices such as more effective reminders or convenient payment options. If issuers bear no net cost from late payments, or even profit from them, then they have no incentive to take even inexpensive steps to reduce the incidence of late payments. Even with this final rule changes, Larger Card Issuers will not have incentives to take all steps they could that would efficiently reduce the incidence of late payment since the late fees they do charge mean they do not bear the full cost of late payments. Nonetheless, by limiting Larger Card Issuer revenue from violations that exceeds cost, this final rule changes Larger Card Issuer incentives in a way that benefits consumers.

Relative to the 2023 Proposal, this final rule introduces an incentive for credit card issuers that together with their affiliates have close to one million open credit card accounts to stay or get below that threshold for the sake of higher late fee revenues as a Smaller Card Issuer than as a Larger Card Issuer. If this results in the closure of some accounts, maybe dormant accounts, those cardholders will have less liquidity immediately available as well as a potentially worse credit score. Similarly, consumers whose credit card applications are turned down, or who do not receive card offers, because of more stringent underwriting standards by issuers just below the size threshold could incur additional costs of shopping for an additional card and perhaps pay a slightly higher cost of applying for the next best credit card. The CFPB expects few issuers, if any, to be close to the threshold at any given time and change practices just because of this incentive.

Potential Benefits and Costs to Covered Persons of the $8 Late Fee Safe Harbor Changes

Because this final rule will significantly reduce the aggregate value of late fees paid by consumers, this final rule will significantly reduce late fee revenue for Larger Card Issuers. As noted above in part II.F, late fee revenue constitutes over one-tenth of the $120 billion issuers in the Y–14+ charged to consumers in interest and fees in 2019, totaling over $14 billion in that year.[266] Since the CPFB issued the 2023 Proposal, this remains true as late fees represented over one-tenth of the more than $130 billion issuers in the Y–14+ charged to consumers in interest and fees in 2022, totaling over $14 billion that year.[267] As discussed below, Larger Card Issuers can offset losses to consumer revenue to some extent by taking other measures (*e.g.,* increasing interest rates or changing rewards), and the reduction in late fees could affect consumer choices or market competition in ways that may create benefits or costs to Larger Card Issuers.

Larger Card Issuers' costs and revenue will also be affected by changes in consumer behavior in response to the reduced late fee amounts. In particular, lower late fees at Larger Card Issuers could make some consumers somewhat more likely to make late payments. As discussed above in the section-by-section analysis of § 1026.52(b)(1)(ii) in part VII, the CFPB expects that a $8 late fee will still have a deterrent effect on late payments, although that effect may be lessened by the lower late fee to some extent, and other factors may be more relevant (or may become more relevant) to creating deterrence. For example, as discussed in the 2023 Proposal, and in this final rule (the section-by-section of § 1026.52(b)(1)(ii)), the CFPB expects that consumers may be deterred by factors other than the fee amount, like higher interest rates and potential credit reporting.

As noted in the 2023 Proposal and this final rule, the CFPB also expects that any additional late payments due to the reduced late fee safe harbor amount will generate both additional fee income and additional collection costs relative to an outcome with lower fee amounts but no additional incidents. Even if more consumers pay late because of the decreased late fee amount, the cost of collecting any such additional late payments is unlikely to be greater, per incident, than the cost of collecting late payments under the existing safe harbor. Therefore, the CFPB expects that collection costs to Larger Card Issuers will not increase by more than fee income derived from any additional late payments.

The CFPB recognizes that an increased number of late payments could result in additional delinquencies and ultimately increase credit losses for Larger Card Issuers. But the CFPB is not aware of evidence showing that higher late fees prevent consumers from eventually defaulting on their accounts.[268] Further, if this is a concern,

[265] For a discussion of commitment devices most relevant to this context, *see* section 10.2 of John Beshears *et al., Behavioral Household Finance,* Handbook of Behavioral Economics: Applications and Foundations 1, at 177–276 (2018), *https://doi.org/10.1016/bs.hesbe.2018.07.004.*

[266] Late Fee Report, at 4.

[267] 2023 Report, at 65.

[268] For some consumers, a high late fee may contribute to default by increasing their overall debt burden and making it more difficult to recover from delinquency. For example, the 2023 paper by Grodzicki *et al.,* described above in the section-by-section analysis of § 1026.52(b)(1)(ii) in part VII, with all the caveats noted there, found that a decrease in late fees increases borrowing for prime borrowers but triggers repayment for subprime cardholders. This paper explained that this latter effect on subprime cardholders might result from

Continued

the CFPB notes that Larger Card Issuers can take other steps to help reduce the likelihood of consumers missing payments, which would mitigate potential costs of this final rule from increased delinquencies. For example, as noted in the 2023 Proposal and this final rule, Larger Card Issuers could increase investments in payment reminders or automatic payments or provide lower-friction methods of payment, payment rescheduled for soon after regular deposits, or rewards for paying on time.[269] Larger Card Issuers could also increase minimum payment amounts or adjust credit limits to reduce credit risk associated with consumers who make late payments.

As discussed above, Larger Card Issuers could also increase other prices in a way that would offset some revenue lost from reduced late fees. In general, Larger Card Issuers will set the terms of credit cards to maximize profits, and it is not clear that limiting late fees will directly affect the existing profit-maximizing finance charge or account maintenance fee, for example. However, a reduction in late fee revenue could cause Larger Card Issuers to change other terms if the lost late fee revenue reduced the profitability of issuing credit cards to the point at which issuers are faced with a choice between raising new revenue by changing other card terms or exiting the market segment. As discussed above, such offsetting price increases are most likely where profit margins are low since any reduction in revenue is likely to drive risk-adjusted returns on capital below market expectations, limiting supply and driving prices up for consumers. The recent profitability of consumer credit card businesses makes the CFPB expect the market to see exceedingly few exits and no change in entries.[270]

Larger Card Issuers' revenue loss from this final rule could be mitigated by the ability to use the cost analysis provisions in § 1026.52(b)(1)(i) rather than setting late fees at the safe harbor amount. Any Larger Card Issuer with costs greater than $8 per late payment will be able to set a higher fee using the cost analysis provisions, although doing so would likely involve some expense to conduct the relevant analysis, ensure that it complies with the existing rule's requirements and potential changes from this final rule, and ensure that the relevant data and analysis are documented in a way that would permit the issuer to demonstrate compliance to regulators. The CFPB understands that Larger Card Issuers already conduct sophisticated analyses of credit card operations, and the CFPB expects the cost of additional analyses to be small, with most additional costs to come from procedures needed to demonstrate compliance.

The $8 late fee safe harbor in this final rule will only apply to Larger Card Issuers, but changes to the terms of credit cards at these institutions could affect demand for similar products at financial institutions not covered by the $8 late fee safe harbor, and this could affect Smaller Card Issuers and their customers in turn. In general, Smaller Card Issuers will benefit from new limitations on the types of products that competing firms can offer. For example, if Larger Card Issuers were to increase account annual fees to offset some lost revenue from late fees, the credit cards of other issuers would become more attractive. The ability of consumers to switch to these products could mitigate any costs to consumers from offsetting interest or fee changes at Larger Card Issuers or from reduced access to credit cards. On the other hand, significant reductions in credit card late fees at Larger Card Issuers might create competitive pressure for Smaller Card Issuers to lower their own late fees, in which case their consumers could experience effects similar to those at Larger Card Issuers. Given the difficulty in predicting the market response of Larger Card Issuers to this final rule, it is uncertain whether cardholders of Smaller Card Issuers will experience net benefits or costs from this final rule, and whether Smaller Card Issuers will experience net benefits or costs from this final rule.

Potential Benefits and Costs to Consumers and Covered Persons From Not Applying the Annual Adjustments to the $8 Safe Harbor Amount for Late Fees at Larger Card Issuers

The CFPB will not apply the annual adjustments to reflect changes in the CPI to the $8 safe harbor amount for late fees imposed by Larger Card Issuers. Instead, the CFPB will continue to monitor the market and adjust the safe harbor amount as the CFPB determines is appropriate to reflect changes to pre-charge-off collection costs and other factors. The discussion below considers the effects of this change relative to a baseline in which the new $8 safe harbor amount applicable to late fees charged by Larger Card Issuers is adjusted to reflect changes in the CPI; however, the effects would be qualitatively similar at other safe harbor amounts.

The benefits and costs of this final rule to consumers and covered persons depend on whether future adjustments by the CFPB would be greater or less than the changes that would result from the CPI adjustments that are currently used. As discussed in the section-by-section analysis of § 1026.52(b)(1)(ii)(D) in part VII and illustrated in Figure 3, trends in collection costs for Larger Card Issuers and the CPI do not appear to be closely related.[271] If the safe harbor amount were to fall or to grow less rapidly through the CFPB's future adjustments than the current CPI adjustments, then consumers would benefit from the reduced real cost of late fees, and Larger Card Issuers using the late fee safe harbor amount would see lower revenue. Conversely, if the late fee safe harbor amount were adjusted in the future by more than it would be through the current CPI adjustments, consumers could face costs from the change, and Larger Card Issuers using the late fee safe harbor amount would see increased revenue.

Under this final rule, it is likely that the $8 late fee safe harbor amount applicable to late fees charged by Larger Card Issuers will be adjusted less frequently than under the current rule. Some consumers will benefit from the transparency and administrative ease of these late fee amounts changing less often. The cardholders who will benefit are those whose late fee amount is not

the lower late fee amount lessening the need for subprime cardholders to focus on avoiding late fees and instead allowing some subprime cardholders to start to pay more attention to the high cost of their revolving debt.

[269] A joint comment in response to the ANPR submitted by several industry trade associations stated that issuers promote on-time payments through a variety of means in addition to late fees, including multiple payment reminders sent via mail, email, or text notification depending on consumer preference. These commenters further stated that one issuer reported that as of five months after rollout of its new alert system, the issuer's gross monthly late fees were 20 percent lower and the late fee incidence rate per balance had fallen by nearly 25 percent. Similarly, a large credit union trade association noted that some credit unions already have systems in place or are currently contracting with third-party vendors to offer their members convenient reminders for upcoming payment due dates via text message and email.

[270] *See supra* note 247.

[271] The 2023 Proposal looked at costs and the CPI–U price index, as in Figure 3. As discussed elsewhere, the CFPB uses the CPI–W index to make adjustments pursuant to § 1026.52(b)(1)(ii)(D) and thus, this final rule considers the impact of eliminating the adjustment based on the CPI–W price index. As Figure 4 attests, the relationship between costs and this price index is fundamentally the same as the one in Figure 3.

set using the cost analysis provisions in § 1026.52(b)(1)(i), because the provision does not affect how often fees could be adjusted pursuant to the cost analysis provisions. The CFPB also notes that even if the CPI-based adjustments were to continue to apply to the late fee safe harbor threshold amount applicable to Larger Card Issuers, the lower $8 safe harbor amount combined with the requirement that if the cumulative change in the adjusted value derived from applying the annual CPI–W to the safe harbor amounts has risen by a whole dollar, means that the $8 would be adjusted less frequently using the annual adjustments than how often the late fee safe harbor amounts have changed recently. Similarly, the lower $8 safe harbor amount combined with the requirement that if the cumulative change in the adjusted value derived from applying the annual CPI–W level to the safe harbor amounts has decreased by a whole dollar, means that this $8 safe harbor amount would likely change less frequently using the annual adjustments than the current late fee safe harbor amounts.

To the extent that some Larger Card Issuers experience increases in collection costs that would have been addressed through CPI-based adjustments, these issuers will retain the option under this final rule to use the cost analysis provisions in § 1026.52(b)(1)(i) and thus recover their higher costs with higher late fee amounts. Their cardholders will still benefit from the elimination of the annual adjustments to the $8 late fee safe harbor amount if the cost analysis provisions result in less substantial increase than would have been the case under the CPI adjustments. If a rise in a fee stemming from the cost analysis provision were faster, the consumer would have seen the same fee rise from this issuer determining the late fee using the cost analysis provisions in § 1026.52(b)(1)(i), irrespective of this provision.

Larger Card Issuers with decreasing costs will lose out on a mechanical increase in their revenue above cost to reflect CPI adjustments unless the late fee safe harbor amount is otherwise adjusted. As shown in Figure 3 above in part VII, recent collection cost totals from the Y–14 portfolio data suggest that some issuers have been experiencing decreasing nominal collection costs even in the inflationary period of 2021–2022.

Potential Benefits and Costs to Consumers and Covered Persons of Applying Annual Adjustments to Safe Harbor Threshold Amounts for Penalty Fees Other Than Late Fees for All Card Issuers and for Late Fees at Smaller Card Issuers

This final rule revises the safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B) to $32, except that it sets forth a safe harbor of $43 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles. These revised safe harbor threshold amounts of $32 and $43 apply to penalty fees other than late fees for all card issuers as well as late fees imposed by Smaller Card Issuers.

Based on a 2023 survey of credit card agreements submitted to the CFPB's Credit Card Agreement Database as discussed in part II.E, the CFPB estimates that 1 percent of Smaller Card Issuers charge the current safe harbor threshold amounts for late fees, representing far less than 1 percent of balances of consumer credit cards. The cardholders of these issuers will pay 6.7 percent more in fees for late payments, and 4.9 percent more for each subsequent late payment in one of the next six billing cycles. These Smaller Card Issuers will collect correspondingly higher revenue from these late fees.

The CFPB does not have specific data on the percentage of Larger and Smaller Card Issuers that charge the safe harbor amount for penalty fees other than late fees. The cardholders of these issuers will pay 6.7 percent more in fees for violations.

Annual adjustments in the future will operate the same way as in the baseline and thus have no additional impact.

Potential Benefits and Costs to Consumers and Covered Persons of Proposed Alternatives Lowering the Limitation on Late Fees to 25 Percent of the Minimum Payment Due

The CFPB considered whether to amend § 1026.52(b)(2)(i)(A) to limit the dollar amount associated with a late payment to 25 percent of the required minimum periodic payment due immediately before the assessment of the late fee. Currently, late fee amounts must not exceed 100 percent of the required payment. As discussed in part VII, the CFPB is not finalizing this proposed amendment for either Larger Card Issuers or Smaller Card Issuers because the CFPB determined the benefits the 25 percent limitation may have for consumers, such as requiring a more reasonable and proportional late fee for instances where the minimum payment due is small, do not outweigh considerations of card issuers' ability to recoup their pre-charge-off collection costs when they are using the $8 safe harbor threshold amount. The CFPB also determined not to adopt the 25 percent limitation proposal in order to minimize impacts to minimum balances due.

A Courtesy Period That Would Prohibit Late Fees Imposed Within 15 Calendar Days After the Payment Due Date

In the 2023 Proposal, the CFPB considered an alternative approach in which § 1026.52(b)(2) would be amended to provide for a courtesy period that would prohibit late fees imposed within 15 calendar days after the payment due date. Such a courtesy period could apply only to late fees assessed if the card issuer is using the late fee safe harbor amount or, alternatively, could be applicable generally (regardless of whether the card issuer assesses late fees according to the safe harbor amount set forth in § 1026.52(b)(1)(ii) or the cost analysis provisions in § 1026.52(b)(1)(i)). The CFPB is not finalizing this alternative.

The CFPB has determined that, absent additional evidence, the potential impacts to card issuers' costs and consumers outweigh the benefits of a mandatory 15-day courtesy period. While the CFPB acknowledges the possible benefits raised by commenters, such as helping consumers who mail in their late payments avoid a penalty fee for any mail delivery issues, the potential for card issuers to recoup costs at half the safe harbor amount per late payment combined with other concerns about consumer confusion outweighs the possible benefits to consumers.

Eliminating the Safe Harbors for Late Fees

As discussed in part VII, the CFPB solicited comment on the alternative of proposing to eliminate the safe harbor provisions for late fees in § 1026.52(b)(1)(ii) altogether, in which case card issuers could only impose late fees under the cost analysis provisions in § 1026.52(b)(1)(i). The CFPB is not finalizing this alternative to revoke the late fees for Larger Card Issuers without replacing it with another safe harbor amount and thus, requiring Larger Card issuers to use the cost analysis provisions to determine the amount of late fees. As discussed in part VII, the CFPB has determined that revoking the safe harbor and then adopting the $8 late fee safe harbor amount for Larger Card Issuers—as this final rule does—better achieves its goals.

Applying the Changes to the Safe Harbor Provision With Respect to Other Penalty Fees

The CFPB considered an alternative that would apply the $8 safe harbor to other penalty fees, such as over-the-limit fees, returned-payment fees, and declined access check fees. In particular, the CFPB considered whether the new $8 late safe harbor threshold should apply to other penalty fees and whether, alternatively, if the CFPB were to eliminate the safe harbor provisions in § 1026.52(b)(1)(ii) for late fees charged, the CFPB should also eliminate the safe harbor for other penalty fees charged. This final rule does not adopt this alternative.

*F. Potential Specific Impacts of This Final Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, As Described in CFPA Section 1026*

As the lower $8 safe harbor amount in this final rule applies only to Larger Card Issuers (*i.e.,* card issuers that together with their affiliates have one million or more open credit card accounts), the CFPB expects no specific impact on Smaller Card Issuers as defined in § 1026.52(b)(3) (*i.e.,* card issuers that have less than one million open credit card accounts for the entire preceding calendar year) directly.[272]

Based on its review of both public and confidential data, the CFPB expects that there are approximately 30–35 Larger Card Issuers that together with their affiliates have one million or more open credit card accounts, and one dozen or fewer among them with $10 billion or less in assets.

As with other Larger Card Issuers, depository institutions and credit unions that together with their affiliates have one million or more open credit card accounts but the depository institutions and credit unions have $10 billion or less in total assets will generally lose fee revenue as a result of this final rule. The CFPB has no reason to believe that depository institutions and credit unions that are Larger Card Issuers and have $10 billion or less in total assets will experience effects qualitatively different from those discussed above in part IX.E.

Institutions with $10 billion or less in assets might experience indirect effects of the new $8 late fee safe harbor amount adopted in this final rule. As noted above, changes to the terms of credit cards at Larger Card Issuers could affect demand for similar products at financial institutions not covered by the new $8 late fee safe harbor amount adopted in this final rule. For example, if some Larger Card Issuers were to increase some account APRs to offset some lost revenue from late fees, the credit cards of other institutions could become more attractive. On the other hand, significant reductions in late fees at Larger Card Issuers might create competitive pressure for financial institutions not directly affected by this final rule to lower their own late fees, and thus lose revenue. Given the difficulty in predicting the market response of Larger Card Issuers, it is uncertain whether financial institutions not covered by the $8 safe harbor threshold adopted in this final rule will experience net benefits or costs from this final rule.

*G. Potential Specific Impacts of This Final Rule on Consumer Access to Credit and on Consumers in Rural Areas*

The CFPB is concerned about the geographic concentration of current late fees and that areas with higher incidence of late fees tend to also be areas with higher numbers of consumers from disadvantaged groups, as summarized in part II.F above. While the CFPB has not analyzed the incidence of late fees in rural areas specifically, as explained in the 2023 Proposal, CFPB research has found that consumers in rural areas are somewhat less likely than other Americans to have a credit card, and not significantly more likely than other Americans to have a credit card delinquency.[273] These findings suggest that the effects of the rule on late fees paid by rural consumers may generally be similar to those of other Americans.

On the other hand, as discussed in the 2023 Proposal, consumers in rural areas have lower median household income, and lower median credit card balances, than consumers in non-rural areas.[274] Though high-income Americans have more credit cards, low-income areas have more late payments per card. As a result, there is no clear indication whether savings from this final rule will be greater or lesser for consumers in rural areas; however, reductions in fee amounts that are similar in dollar terms may be more meaningful on average for consumers with lower incomes, and given that consumers in rural areas may have lower median income, the reduction in late fees could result in more meaningful on average benefits for consumers in rural areas.

As discussed above in part IX.D and in the 2023 Proposal, the CFPB acknowledges that late fee revenue has been concentrated in certain market segments, suggesting that any price responses to this final rule are also likely to be focused in those segments. In particular, interest rates or other terms could be less advantageous for subprime consumers or certain consumers in specific regions; for these consumers, some types of cards may become too expensive due to higher interest rates or less advantageous terms. Although, even if this were to happen, it would not result from a higher expected consumer cost of using credit cards but from greater transparency about the cards' actual anticipated cost of ownership. Lost credit to consumers consciously declining offers because the cards are too expensive is unlikely to harm and potentially may benefit consumers, particularly given the ability of consumers to shop and compare costs between cards.

**X. Regulatory Flexibility Act Analysis**

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements unless the agency certifies that the rule will not have a SISNOSE.[275] The CFPB is also subject to specific additional procedures under the RFA involving convening a panel to consult with small business representatives before proposing a rule for which an IRFA is required.[276]

Small institutions, for the purposes of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, are defined by SBA. Effective March 17, 2023, depository institutions with less than $850 million in total assets are determined to be small for the period used in the subsequent analysis.[277]

*A. The CFPB's Proposal*

In the 2023 Proposal, the CFPB determined that an IRFA is not required for the proposal because it would not have a SISNOSE.

The 2023 Proposal would have affected small entities that issue credit cards most directly by reducing late fee revenue from credit cards. To assess

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[272] *See supra* note 5.

[273] CFPB, *Consumer Finances in Rural Appalachia,* at 12 (Sept. 1, 2022) (Appalachia Report), *https://www.consumerfinance.gov/data-research/research-reports/consumer-finances-in-rural-appalachia/.*

[274] *Id.* at 8, 12.

[275] 5 U.S.C. 601 *et seq.*

[276] 5 U.S.C. 609.

[277] *See* Small Business Administration, Table of size standards, *https://www.sba.gov/document/support—table-size-standards* (last visited on December 18, 2023).

whether the 2023 Proposal, if adopted, would have had a SISNOSE, the CFPB considered the significance of credit card late fee revenue as a share of the total revenue of affected small entities. As discussed in part VII of the 2023 Proposal, the CFPB did not have data with which to precisely estimate the effect of the 2023 Proposal on late fee revenue. The CFPB analyzed available information on total late fee revenue below because the CFPB considered total late fee revenue to be an upper bound on potential impacts of the 2023 Proposal, if adopted, on small entities.

In the 2023 Proposal, the CFPB estimated that there were approximately 3,780 small banks, of which approximately 498 reported outstanding credit card debt on their balance sheets.[278] In addition, the CFPB estimated that there were approximately 4,586 small credit unions, of which approximately 2,785 reported credit card assets.[279] Detailed information about sources of credit card revenue was not available for most small banks. However, FFIEC Call Reports included a measure of outstanding credit card debt held as assets. Revenue for banks was reported on the FFIEC Call Reports as net-interest income plus non-interest income. Interest income was partially reported by product type. For example, all banks were required to report ''all interest, fees, and similar charges levied against or associated with all extensions of credit to individuals for household, family, or other personal expenditures arising from credit cards (in domestic offices).'' [280] The CFPB considered this interest and fee income on outstanding credit card balances as a proxy for credit card revenue.

As discussed in the 2023 Proposal, credit cards represented a small fraction of both assets and revenue for small banks. Thus, for the vast majority of small banks, even a large reduction in credit card late fee revenue would have represented well below 1 percent of bank revenue and, therefore, would not have had a significant economic impact.

As discussed in the 2023 Proposal, the CFPB did not have equivalent data on credit card revenue for small credit unions because credit unions were not required to separately report income from their credit card business in the NCUA Call Reports. However, NCUA Call Reports provided information on credit card assets as a share of total assets.

To obtain a rough estimate of credit card revenue shares at small credit unions, in the 2023 Proposal, the CFPB extrapolated using the relationship between credit card revenue share and credit card asset share in bank call report data. As with small banks, the small share of revenue coming from credit cards, together with the fact that late fees made up only a fraction of credit card revenue, implied that even a significant drop-in late fee revenue would not have had a significant economic impact for the large majority of small credit unions.

Accordingly, the Director certified that the 2023 Proposal would not have had a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel was required for the proposal.

*B. Comments Received*

Many banks and credit unions, industry trade associations, and individuals on behalf of credit unions, the Office of Advocacy, an independent office within the SBA, and one law firm representing card issuers asserted that the 2023 Proposal, if adopted, would have a SISNOSE and thus the CFPB is required to hold a SBREFA panel under the RFA prior to finalizing the rulemaking. Many banks and credit unions, industry trade associations, and individuals on behalf of credit unions (1) expressed concern that the CFPB did not conduct a SBREFA panel to seek feedback from smaller issuers that would be significantly impacted by the proposal; (2) asserted that lowering the safe harbor as proposed would have a significant impact on small financial institutions; and (3) urged the CFPB to withdraw the proposal and convene a SBREFA panel in fulfillment of its statutory obligation under the SBREFA Act of 1996.

The agency that advocates for small businesses asserted that (1) the CFPB does not have the necessary data to develop an adequate factual basis for its SISNOSE certification and does not have sufficient information to indicate that small institutions contribute to the problem that is the target of the proposal; and (2) without a factual basis, the CFPB may not certify under section 605(b) and must publish an Initial Regulatory Flexibility Analysis under section 603 of the RFA.

One law firm representing card issuers asserted that CFPB's failure to convene a SBREFA panel renders the 2023 Proposal not only statutorily unsound, but also arbitrary and capricious under the APA.

*C. The Final Rule*

In the 2023 Proposal, the CFPB determined that an IRFA was not needed because the 2023 Proposal would not have had a SISNOSE. As described in the analysis included in the 2023 Proposal, the CFPB estimated that credit card assets and revenue held by small banks and small credit unions represent a small fraction of both total assets and revenue for those small entities.

As discussed in more detail in part VI, the CFPB is not finalizing the following provisions in this final rule for Smaller Card Issuers: (1) the repeal of the current safe harbor threshold amounts in § 1026.52(b)(1)(ii)(A) and (B), adoption of $8 late fee safe harbor threshold amount, and elimination of a higher late fee safe harbor dollar amount for subsequent violations of the same type that occur during the same billing cycle or in one of the next six billing cycles; and (2) the elimination of the annual adjustments for the safe harbor threshold dollar amounts set forth § 1026.52(b)(1)(ii)(D). This final rule defines the term ''Smaller Card Issuer'' in § 1026.52(b)(3) to mean a card issuer that together with its affiliates had fewer than one million open credit card accounts for the entire preceding calendar year.[281] For purposes of the definition of ''Smaller Card Issuer,'' this final rule incorporates the definition of ''open credit card account'' from § 1026.58(b)(6), which defines the term to mean a credit card account under an open-end (not home-secured) consumer credit plan and either: (1) the cardholder can obtain extensions of credit on the account; or (2) there is an outstanding balance on the account that has not been charged off. As discussed below, the safe harbors in § 1026.52(b)(1)(ii)(A) and (B), as revised pursuant to the annual automatic adjustments in § 1026.52(b)(1)(ii)(D) in this final rule, will apply to late fees imposed by Smaller Card Issuers.

Pursuant to the annual adjustments for safe harbor dollar amounts in § 1026.52(b)(1)(ii)(D), this final rule revises the safe harbor threshold

[278] These estimates and others for small banks were based on data from the quarterly Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (FFIEC Call Reports), and refer to the fourth quarter of 2021, unless otherwise noted. Fed. Fin. Insts. Examination Council, Call Reports, *https://cdr.ffiec.gov/public/ManageFacsimiles.aspx* (last visited Dec. 14, 2022).

[279] These estimates and others for small credit unions were based on data from NCUA Call Reports, and refer to the fourth quarter of 2021, unless otherwise noted. Nat'l Credit Union Admin., *Call Report Quarterly Data, https://www.ncua.gov/analysis/credit-union-corporate-call-report-data/quarterly-data* (last visited Dec. 14, 2022).

[280] *See* the Board's Micro Data Reference Manual, B485, *https://www.federalreserve.gov/apps/mdrm/data-dictionary* (last visited Dec. 14, 2022).

[281] *See supra* note 5.

amounts in § 1026.52(b)(1)(ii)(A) and (B) to $32, except that it sets forth a safe harbor of $43 for each subsequent violation of the same type that occurs during the same billing cycle or in one of the next six billing cycles. These revised safe harbor threshold amounts of $32 and $43 apply to penalty fees other than late fees for all card issuers (*i.e.,* Smaller Card Issuers and Larger Card Issuers) as well as late fees imposed by Smaller Card Issuers, as noted above.

Small institutions, for the purposes of the SBREFA of 1996, are defined by SBA. Effective March 17, 2023, financial institutions with less than $850 million in total assets are determined to be small.[282]

The CFPB has determined that nearly all small entities for purposes of the RFA will qualify as a ''Smaller Card Issuer'' as defined in this final rule, and therefore, the new, lower $8 late fee safe harbor amount and the elimination of the annual adjustments to the $8 late fee safe harbor amount will not apply to them. Accordingly, this final rule will not directly reduce revenue of a substantial number of small entities.

Accordingly, the Director hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The CFPB notes that it is unconvinced by the comments related to the SISNOSE, and as explained in part VI, and that it appropriately certified in the 2023 Proposal that the 2023 Proposal would not have had a SISNOSE. As described above in the initial regulatory flexibility analysis included in the 2023 Proposal, the CFPB described the credit card market data that it used to develop an adequate basis for the Director's SISNOSE certification. Using this data, the CFPB estimated that credit card assets and revenue held by small banks and small credit unions (as defined by the RFA) represent a small fraction of both total assets and revenue for those small entities. Thus, pursuant to the RFA, the CFPB was not required to conduct a SBREFA panel prior to releasing the 2023 Proposal.

In fact, as discussed in part VI, the CFPB's determination that credit cards are not a significant revenue source for Smaller Card Issuers (in terms of total revenue for the institution) played a part in the CFPB's decision not to apply certain provisions of the 2023 Proposal to Smaller Card Issuers at this time.

[282] *See* Small Business Administration, Table of size standards, *https://www.sba.gov/document/support—table-size-standards* (last visited on October 24, 2023).

## XI. Paperwork Reduction Act

The information collections contained within TILA and Regulation Z are approved under Office of Management and Budget (OMB) Control Number 3170–0015. The current expiration date for this approval is May 31, 2025. The CFPB has determined that this final rule would not impose any new information collections or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by OMB under the Paperwork Reduction Act.[283]

## XII. Severability

If any provision of this rule, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect. In particular, if the $8 safe harbor for Larger Card Issuers is stayed or determined to be invalid, the conclusion to repeal the existing safe harbor is severable and shall continue in effect.

### List of Subjects in 12 CFR Part 1026

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

### Authority and Issuance

For the reasons set forth above, the CFPB amends Regulation Z, 12 CFR part 1026, as set forth below:

## PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

**Authority:** 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

## Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

■ 2. Section 1026.52 is amended by revising paragraph (b)(1)(ii) and adding paragraph (b)(3) to read as follows:

### § 1026.52 Limitation on fees.

* * * * *

(b) * * *

(1) * * *

(ii) *Safe harbors.* Except as provided in paragraph (b)(1)(ii)(E) of this section, a card issuer may impose a fee for a late payment on an account if the dollar amount of the fee does not exceed $8. A card issuer may impose a fee for other types of violations of the terms or other requirements of an account if the dollar amount of the fee does not exceed, as applicable:

(A) $32;

(B) $43 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

(C) Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles, notwithstanding the limitation on the amount of a late payment fee in paragraph (b)(1)(ii) of this section.

(D) The amounts in paragraphs (b)(1)(ii)(A) and (B) of this section will be adjusted annually by the Bureau to reflect changes in the Consumer Price Index.

(E) A smaller card issuer, as defined in paragraph (b)(3) of this section, may impose a fee for a late payment on an account if the dollar amount of the fee does not exceed the amount in paragraph (b)(1)(ii)(A) or (B) of this section, as applicable, notwithstanding the limitation on the amount of a late payment fee in this paragraph (b)(1)(ii).

* * * * *

(3) *Smaller card issuer.* (i) Except as provided in paragraph (b)(3)(ii) of this section, a card issuer is a smaller card issuer for purposes of paragraph (b)(1)(ii)(E) of this section if the card issuer together with its affiliates had fewer than one million open credit card accounts, as defined in § 1026.58(b)(6), for the entire preceding calendar year. For purposes of this paragraph (b)(3), *affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(ii) If a card issuer together with its affiliates had fewer than one million open credit card accounts for the entire preceding calendar year but meets or exceeds that number of open credit card accounts in the current calendar year, the card issuer will no longer be a smaller card issuer for purposes of paragraph (b)(1)(ii)(E) of this section as of 60 days after meeting or exceeding that number of open credit card accounts.

[283] 44 U.S.C. 3506; 5 CFR part 1320.

■ 3. Section 1026.58 is amended by revising paragraph (b)(6) to read as follows:

**§ 1026.58 internet posting of credit card agreements.**

* * * * *

(b) * * *

(6) *Open accounts.* For purposes of this section and § 1026.52, an account is an ''open account'' or ''open credit card account'' if it is a credit card account under an open-end (not home-secured) consumer credit plan and either:

(i) The cardholder can obtain extensions of credit on the account; or

(ii) There is an outstanding balance on the account that has not been charged off. An account that has been suspended temporarily (for example, due to a report by the cardholder of unauthorized use of the card) is considered an ''open account'' or ''open credit card account.''

* * * * *

■ 4. Appendix G to part 1026 is amended by revising the entries for G–10(B), G–10(C), G–10(E), G–17(B), G–17(C), G–18(A), G–18(B), G–18(D), G–18(F), G–18(G), and G–21 to read as follows:

**Appendix G to Part 1026—Open-End Model Forms and Clauses**

* * * * *

BILLING CODE 4810–AM–P

G–10(B) APPLICATIONS AND SOLICITATIONS SAMPLE (CREDIT CARDS)

| Interest Rates and Interest Charges | |
|---|---|
| **Annual Percentage Rate (APR) for Purchases** | **8.99%** to **19.99%** when you open your account, based on your creditworthiness.<br>After that, your APR will vary with the market based on the Prime Rate. |
| **APR for Balance Transfers** | **15.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **APR for Cash Advances** | **21.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **Penalty APR and When it Applies** | **28.99%**<br>This APR may be applied to your account if you:<br>1) Make a late payment;<br>2) Go over your credit limit twice in a six-month period;<br>3) Make a payment that is returned; or<br>4) Do any of the above on another account that you have with us.<br>**How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due. |
| **How to Avoid Paying Interest on Purchases** | Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. |
| **Minimum Interest Charge** | If you are charged interest, the charge will be no less than $1.50. |
| **For Credit Card Tips from the Consumer Financial Protection Bureau** | **To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at http://www.consumerfinance.gov/learnmore** |

| Fees | |
|---|---|
| **Annual Fee** | **None** |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**). |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| • Foreign Transaction | **2%** of each transaction in U.S. dollars. |
| **Penalty Fees** | |
| • Late Payment | Up to **$8**. |
| • Over-the-Credit Limit | Up to **$35**. |
| • Returned Payment | Up to **$35**. |
| **Other Fees** | |
| • Required Account Protector Plan | **$0.79** per $100 of balance at the end of each statement period. See back for details. |

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)."

G–10(C) APPLICATIONS AND SOLICITATIONS SAMPLE (CREDIT CARDS)

| Interest Rates and Interest Charges | |
|---|---|
| **Annual Percentage Rate (APR) for Purchases** | **8.99%, 10.99%, or 12.99%** introductory APR for one year, based on your creditworthiness.<br>After that, your APR will be **14.99%**. This APR will vary with the market based on the Prime Rate. |
| **APR for Balance Transfers** | **15.99%**<br>This APR will vary with the market based on the Prime Rate |
| **APR for Cash Advances** | **21.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **Penalty APR and When it Applies** | **28.99%**<br>This APR may be applied to your account if you:<br>1) Make a late payment;<br>2) Go over your credit limit;<br>3) Make a payment that is returned; or<br>4) Do any of the above on another account that you have with us.<br>**How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due. |
| **How to Avoid Paying Interest on Purchases** | Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. |
| **Minimum Interest Charge** | If you are charged interest, the charge will be no less than $1.50. |
| **For Credit Card Tips from the Consumer Financial Protection Bureau** | **To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at http://www.consumerfinance.gov/learnmore** |

| Fees | |
|---|---|
| **Set-up and Maintenance Fees** | NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. For example, if you are assigned the minimum credit limit of $250, your initial available credit will be only about $209 (or about $204 if you choose to have an additional card). |
| • Annual Fee | **$20** |
| • Account Set-up Fee | **$20** (one-time fee) |
| • Participation Fee | **$12** annually ($1 per month) |
| • Additional Card Fee | **$5** annually (if applicable) |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**). |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| • Foreign Transaction | **2%** of each transaction in U.S. dollars. |
| **Penalty Fees** | |
| • Late Payment | Up to **$8.** |
| • Over-the-Credit Limit | Up to **$29**. |
| • Returned Payment | Up to **$35**. |

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)."

**Loss of Introductory APR:** We may end your introductory APR and apply the Penalty APR if you make a late payment.

* * * * *

G–10(E) APPLICATIONS AND SOLICITATIONS SAMPLE (CHARGE CARDS)

| Payment Information |
|---|
| All charges made on this charge card are due and payable when you receive your periodic statement. |

| Fees | |
|---|---|
| **Annual Fee** | **$50** |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**). |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| **Penalty Fees** | |
| • Late Payment | Up to **$8**. If you do not pay for two consecutive billing cycles, your fee will be **$8** or **3%** of the past due amount, whichever is greater. |
| • Over-the-Credit Limit | Up to **$35**. |
| • Returned Payment | Up to **$35**. |

* * * * *

G–17(B) ACCOUNT-OPENING SAMPLE

G–17(B) ACCOUNT-OPENING SAMPLE

| Interest Rates and Interest Charges | |
|---|---|
| **Annual Percentage Rate (APR) for Purchases** | **8.99%**<br><br>This APR will vary with the market based on the Prime Rate. |
| **APR for Balance Transfers** | **15.99%**<br><br>This APR will vary with the market based on the Prime Rate. |
| **APR for Cash Advances** | **21.99%**<br><br>This APR will vary with the market based on the Prime Rate. |
| **Penalty APR and When it Applies** | **28.99%**<br><br>This APR may be applied to your account if you:<br>1) Make a late payment;<br>2) Go over your credit limit twice in a six-month period;<br>3) Make a payment that is returned; or<br>4) Do any of the above on another account that you have with us.<br><br>**How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due. |
| **Paying Interest** | Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date. |
| **Minimum Interest Charge** | If you are charged interest, the charge will be no less than $1.50. |
| **For Credit Card Tips from the Consumer Financial Protection Bureau** | **To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at http://www.consumerfinance.gov/learnmore** |

| Fees | |
|---|---|
| **Annual Fee** | **None** |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**). |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| • Foreign Transaction | **2%** of each transaction in U.S. dollars. |
| **Penalty Fees** | |
| • Late Payment | Up to **$8**. |
| • Over-the-Credit Limit | Up to **$35**. |
| • Returned Payment | Up to **$35**. |
| **Other Fees** | |
| • Required Account Protector Plan | **$0.79** per $100 of balance at the end of each statement period. See back for details. |

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

**Billing Rights:** Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G–17(C) ACCOUNT-OPENING SAMPLE

| Interest Rates and Interest Charges | |
|---|---|
| **Annual Percentage Rate (APR) for Purchases** | **8.99%** introductory APR for one year.<br>After that, your APR will be **14.99%**. This APR will vary with the market based on the Prime Rate. |
| **APR for Balance Transfers** | **15.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **APR for Cash Advances** | **21.99%**<br>This APR will vary with the market based on the Prime Rate. |
| **Penalty APR and When it Applies** | **28.99%**<br>This APR may be applied to your account if you:<br>1) Make a late payment;<br>2) Go over your credit limit;<br>3) Make a payment that is returned; or<br>4) Do any of the above on another account that you have with us.<br>**How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due. |
| **Paying Interest** | Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date. |
| **Minimum Interest Charge** | If you are charged interest, the charge will be no less than $1.50. |
| **For Credit Card Tips from the Consumer Financial Protection Bureau** | **To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at http://www.consumerfinance.gov/learnmore.** |

| Fees | |
|---|---|
| **Set-up and Maintenance Fees** | NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. Based on your initial credit limit of $250, your initial available credit will be only about $209 (or about $204 if you choose to have an additional card).<br>You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges. |
| • Annual Fee | **$20** |
| • Account Set-up Fee | **$20** (one-time fee) |
| • Participation Fee | **$12** annually ($1 per month) |
| • Additional Card Fee | **$5** annually (if applicable) |
| **Transaction Fees** | |
| • Balance Transfer | Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: $100). |
| • Cash Advance | Either **$5** or **3%** of the amount of each cash advance, whichever is greater. |
| • Foreign Transaction | **2%** of each transaction in U.S. dollars. |
| **Penalty Fees** | |
| • Late Payment | Up to **$8**. |
| • Over-the-Credit Limit | Up to **$35**. |
| • Returned Payment | Up to **$35**. |

**How We Will Calculate Your Balance:** We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

**Loss of Introductory APR:** We may end your introductory APR and apply the Penalty APR if you make a late payment.

**Billing Rights:** Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

* * * * *

G–18(A) PERIODIC STATEMEMT TRANSACTIONS; INTEREST CHARGES; FEES SAMPLE

**Transactions**

| Reference Number | Trans Date | Post Date | Description of Transaction or Credit | Amount |
|---|---|---|---|---|
| 5884186PS0388W6YM | 2/22 | 2/23 | Store #1 | $2.05 |
| 0544400060ZLV72VL | 2/24 | 2/25 | Store #2 | $12.11 |
| 854338203FS8OO0Z5 | 2/25 | 2/25 | Pymt Thank You | $423.00- |
| 55541860705RDYD0X | 2/25 | 2/26 | Store #3 | $4.63 |
| 554328608008WV90M0 | 2/25 | 2/26 | Store #4 | $114.95 |
| 054830709LYMRPT4L | 2/25 | 2/26 | Store #5 | $7.35 |
| 564891561545KOSHD | 2/25 | 2/26 | Store #6 | $14.35 |
| 841517877845AKOJIO | 2/25 | 2/26 | Store #7 | $40.35 |
| 895848561561894KOH | 2/26 | 2/27 | Store #8 | $27.68 |
| 1871556189456SAMKL | 2/26 | 2/27 | Store #9 | $124.76 |
| 1542202074TWWZV48 | 2/26 | 2/26 | Cash Advance | $121.50 |
| 2564894185189LKDFID | 2/27 | 2/28 | Store #10 | $32.87 |
| 4545754784KOHUIOS | 2/27 | 3/1 | Balance Transfer | $785.00 |
| 2564561023184102315 | 2/28 | 3/1 | Store #11 | $14.76 |
| 14547847586KDDL564 | 2/28 | 2/28 | Cash Advance | $196.50 |
| 55542818705RASD0X | 3/1 | 3/2 | Store #12 | $3.76 |
| 289189194ASDS8744 | 3/1 | 3/3 | Store #13 | $13.45 |
| 178105417841045784 | 3/2 | 3/4 | Store #14 | $2.35 |
| 045148714518979874 | 3/4 | 3/5 | Store #13 | $13.45- |
| 8456152156181SDSA | 3/5 | 3/6 | Store #15 | $25.00 |
| 31289105205648AWD | 3/11 | 3/12 | Store #16 | $7.34 |
| 04518478415615ASD | 3/11 | 3/16 | Store #17 | $10.56 |
| 0547810544898718AF | 3/15 | 3/17 | Store #18 | $24.50 |
| 0564894132168480P | 3/16 | 3/17 | Store #19 | $8.76 |
| 054894561564ASDW | 3/17 | 3/18 | Store #20 | $14.23 |
| 5648974891AD98156 | 3/19 | 3/20 | Store #21 | $23.76 |
| **Fees** | | | | |
| 9525156489SFD4545Q | 2/23 | 2/23 | Late Fee | $8.00 |
| 56415615647OJSNDS | 2/26 | 2/26 | Cash Advance Fee | $5.00 |
| 84151564SADS8745H | 2/27 | 2/27 | Balance Transfer Fee | $23.55 |
| 256489156189451516L | 2/28 | 2/28 | Cash Advance Fee | $5.90 |
| | | | **TOTAL FEES FOR THIS PERIOD** | **$42.45** |
| **Interest Charged** | | | | |
| | | | Interest Charge on Purchases | $6.31 |
| | | | Interest Charge on Cash Advances | $4.58 |
| | | | **TOTAL INTEREST FOR THIS PERIOD** | **$10.89** |

| 2012 Totals Year-to-Date | |
|---|---|
| Total fees charged in 2012 | $90.14 |
| Total interest charged in 2012 | $18.27 |

G–18(B) LATE PAYMENT FEE SAMPLE

**Late Payment Warning:** If we do not receive your minimum payment by the date listed above, you may have to pay a $8 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

* * * * *

G–18(D) PERIODIC STATEMENT NEW BALANCE, DUE DATE, LATE PAYMENT AND MINIMUM PAYMENT SAMPLE (CREDIT CARDS)

**Payment Information**

| | |
|---|---|
| New Balance | $1,784.53 |
| Minimum Payment Due | $53.00 |
| Payment Due Date | 4/20/12 |

**Late Payment Warning:** If we do not receive your minimum payment by the date listed above, you may have to pay a $8 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

| If you make no additional charges using this charge card and each month you pay... | You will pay off the balance shown on this statement in about... | And you will end up paying an estimated total of ... |
|---|---|---|
| Only the minimum payment | 10 years | $3,284 |
| $62 | 3 years | $2,232 *(Savings=$1,052)* |

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

* * * * *

G–18(F) PERIODIC STATEMENT FORM

G–18(F) PERIODIC STATEMENT FORM

**XXX Bank Credit Card Account Statement**
**Account Number XXXX XXXX XXXX XXXX**
**February 21, 2012 to March 22, 2012**

| Summary of Account Activity | |
|---|---|
| Previous Balance | $535.07 |
| Payments | -$423.00 |
| Other Credits | -$13.45 |
| Purchases | +$529.57 |
| Balance Transfers | +$785.00 |
| Cash Advances | +$318.00 |
| Past Due Amount | +$0.00 |
| **Fees Charged** | **+$42.45** |
| **Interest Charged** | **+$10.89** |
| New Balance | $1,784.53 |
| Credit limit | $2,000.00 |
| Available credit | $215.47 |
| Statement closing date | 3/22/2012 |
| Days in billing cycle | 30 |

**QUESTIONS?**
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

| Payment Information | |
|---|---|
| New Balance | $1,784.53 |
| Minimum Payment Due | $53.00 |
| Payment Due Date | 4/20/12 |

**Late Payment Warning:** If we do not receive your minimum payment by the date listed above, you may have to pay a $8 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

**Minimum Payment Warning:** If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

| If you make no additional charges using this card and each month you pay... | You will pay off the balance shown on this statement in about... | And you will end up paying an estimated total of... |
|---|---|---|
| Only the minimum payment | 10 years | $3,284 |
| $62 | 3 years | $2,232 (Savings=$1,052) |

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

**Important Changes to Your Account Terms**

The following is a summary of changes that are being made to your account terms. Changes to APRs described below are due to changes in market conditions. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, any changes to APRs described below will apply to these transactions.

Transactions made before 4/9/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, any changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

| Revised Terms, as of 5/10/12 | |
|---|---|
| **APR for Purchases** | 16.99% |

**Transactions**

| Reference Number | Trans Date | Post Date | Description of Transaction or Credit | Amount |
|---|---|---|---|---|
| 5884186PS0388W6YM | 2/22 | 2/23 | Store #1 | $2.05 |
| 0544400060ZLV72VL | 2/24 | 2/25 | Store #2 | $12.11 |
| 55541860705RDYD0X | 2/24 | 2/25 | Store #3 | $4.63 |
| 554328608008W90M0 | 2/24 | 2/25 | Store #4 | $114.95 |
| 054830709LYMRPT4L | 2/24 | 2/25 | Store #5 | $7.35 |
| 854338203FS8OO0Z5 | 2/25 | 2/25 | Pymt Thank You | $423.00– |

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION



Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

| | |
|---|---|
| **Account Number:** | **XXXX XXXX XXXX XXXX** |
| **New Balance** | **$1,784.53** |
| **Minimum Payment Due** | **$53.00** |
| **Payment Due Date** | **4/20/12** |

**AMOUNT ENCLOSED:** $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012



**Transactions (cont.)**

| Reference Number | Trans Date | Post Date | Description of Transaction or Credit | Amount |
|---|---|---|---|---|
| 564891561545KOSHD | 2/25 | 2/26 | Store #6 | $14.35 |
| 841517877845AKOJIO | 2/25 | 2/26 | Store #7 | $40.35 |
| 895848561561894KOH | 2/26 | 2/27 | Store #8 | $27.68 |
| 1871556189456SAMKL | 2/26 | 2/27 | Store #9 | $124.76 |
| 1542202074TWWZV48 | 2/26 | 2/26 | Cash Advance | $121.50 |
| 2564894185189LKDFID | 2/27 | 2/28 | Store #10 | $32.87 |
| 4545754784KOHUIOS | 2/27 | 3/1 | Balance Transfer | $785.00 |
| 14547847586KDDL564 | 2/28 | 2/28 | Cash Advance | $196.50 |
| 2564561023184102315 | 2/28 | 3/1 | Store #11 | $14.76 |
| 55542818705RASD0X | 3/1 | 3/2 | Store #12 | $3.76 |
| 289189194ASDS8744 | 3/1 | 3/3 | Store #13 | $13.45 |
| 178105417841045784 | 3/2 | 3/6 | Store #14 | $2.35 |
| 045148714518979874 | 3/4 | 3/5 | Store #13 | $13.45– |
| 8456152156181SDSA | 3/5 | 3/12 | Store #15 | $25.00 |
| 31289105205648AWD | 3/11 | 3/12 | Store #16 | $7.34 |
| 04518478415615ASD | 3/11 | 3/16 | Store #17 | $10.56 |
| 0547810544898718AF | 3/15 | 3/17 | Store #18 | $24.50 |
| 056489413216848OP | 3/16 | 3/17 | Store #19 | $8.76 |
| 054894561564ASDW | 3/17 | 3/18 | Store #20 | $14.23 |
| 5648974891AD98156 | 3/19 | 3/20 | Store #21 | $23.76 |
| **Fees** | | | | |
| 9525156489SFD4545Q | 2/23 | 2/23 | Late Fee | $8.00 |
| 56415615647OJSNDS | 2/26 | 2/26 | Cash Advance Fee | $5.00 |
| 84151564SADS8745H | 2/27 | 2/27 | Balance Transfer Fee | $23.55 |
| 256489156189451516L | 2/28 | 2/28 | Cash Advance Fee | $5.90 |
| | | | **TOTAL FEES FOR THIS PERIOD** | **$42.45** |
| **Interest Charged** | | | | |
| | | | Interest Charge on Purchases | $6.31 |
| | | | Interest Charge on Cash Advances | $4.58 |
| | | | **TOTAL INTEREST FOR THIS PERIOD** | **$10.89** |

| 2012 Totals Year-to-Date | |
|---|---|
| Total fees charged in 2012 | $90.14 |
| Total interest charged in 2012 | $18.27 |

**Interest Charge Calculation**

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

| Type of Balance | Annual Percentage Rate (APR) | Balance Subject to Interest Rate | Interest Charge |
|---|---|---|---|
| Purchases | 14.99% (v) | $529.57 | $6.31 |
| Cash Advances | 21.99% (v) | $253.50 | $4.58 |
| Balance Transfers | 0.00% | $637.50 | $0.00 |

(v) = Variable Rate

G–18(G) PERIODIC STATEMENT FORM

**XXX Bank Credit Card Account Statement**
**Account Number XXXX XXXX XXXX XXXX**
**February 21, 2012 to March 22, 2012**

| Summary of Account Activity | |
|---|---|
| Previous Balance | $80.52 |
| Payments | -$50.00 |
| Other Credits | +$0.00 |
| Purchases | +$52.13 |
| Balance Transfers | +$0.00 |
| Cash Advances | +$0.00 |
| Past Due Amount | +$0.00 |
| **Fees Charged** | **+$10.00** |
| **Interest Charged** | **+$0.00** |
| New Balance | $92.65 |
| Credit limit | $2,000.00 |
| Available credit | $1,907.35 |
| Statement closing date | 3/22/2012 |
| Days in billing cycle | 30 |

| Payment Information | |
|---|---|
| New Balance | $92.65 |
| Minimum Payment Due | $10.00 |
| Payment Due Date | 4/20/12 |

**Late Payment Warning**: If we do not receive your minimum payment by the date listed above, you may have to pay a $8 late fee and your APRs may increase up to the Penalty APR of 28.99%.

**Minimum Payment Warning**: If you make only the minimum payment each month, it will take you about 10 months to repay the balance shown on this statement.

**QUESTIONS?**
Call Customer Service 1-XXX-XXX-XXXX
Lost or Stolen Credit Card 1-XXX-XXX-XXXX

Please send billing inquiries and correspondence to:
PO Box XXXX, Anytown, Anystate XXXXX

**Notice of Changes to Your Interest Rates**

You have triggered the Penalty APR of 28.99%. This change will impact your account as follows:

Transactions made on or after 4/2/12: As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 4/2/12: Current rates will continue to apply to these transactions. However, if you become more than 30 days late on your account, the Penalty APR will apply to those transactions as well.

**Transactions**

| Reference Number | Trans Date | Post Date | Description of Transaction or Credit | Amount |
|---|---|---|---|---|
| | | | **Payments and Other Credits** | |
| 854338203FS8OO0Z5 | 2/25 | 2/25 | Pymt Thank You | $50.00– |
| | | | **Purchases** | |
| 5884186PS0388W6YM | 2/22 | 2/23 | Store #1 | $2.05 |
| 0544400060ZLV72VL | 2/24 | 2/25 | Store #2 | $2.11 |
| 55541860705RDYD0X | 2/24 | 2/25 | Store #3 | $4.63 |
| 554328608008W90M0 | 2/24 | 2/25 | Store #4 | $4.95 |
| 054830709LYMRPT4L | 2/24 | 2/25 | Store #5 | $7.35 |
| 564891561545KOSHD | 2/25 | 2/26 | Store #6 | $4.35 |
| 841517877845AKOJIO | 2/25 | 2/26 | Store #7 | $2.35 |
| 895848561561894KOH | 2/26 | 2/27 | Store #8 | $7.68 |
| 1871556189456SAMKL | 2/26 | 2/27 | Store #9 | $4.76 |
| 2564894185189LKDFID | 2/27 | 2/28 | Store #10 | $2.87 |
| 55542818705RASD0X | 3/1 | 3/2 | Store #11 | $3.76 |
| 178105417841045784 | 3/2 | 3/6 | Store #12 | $2.35 |
| 8456152156181SDSA | 3/5 | 3/12 | Store #13 | $2.92 |

(transactions continued on next page)

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION



Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

| | |
|---|---|
| **Account Number:** | **XXXX XXXX XXXX XXXX** |
| **New Balance** | **$92.65** |
| **Minimum Payment Due** | **$10.00** |
| **Payment Due Date** | **4/20/12** |

**AMOUNT ENCLOSED:** $

Please indicate address change and additional cardholder requests on the reverse side.

XXX Bank
P.O. Box XXXX
Anytown, Anystate XXXXX

XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Page 2 of 2

**Transactions (cont.)**

| Reference Number | Trans Date | Post Date | Description of Transaction or Credit | Amount |
|---|---|---|---|---|
| | | | **Fees** | |
| 9525156489SFD4545Q | 2/23 | 2/23 | Late Fee | $8.00 |
| 56415615647OJSNDS | 3/22 | 3/22 | Minimum Charge | $2.00 |
| | | | **TOTAL FEES FOR THIS PERIOD** | **$10.00** |
| | | | **Interest Charged** | |
| | | | Interest Charge on Purchases | $0.00 |
| | | | Interest Charge on Cash Advances | $0.00 |
| | | | **TOTAL INTEREST FOR THIS PERIOD** | **$0.00** |

| 2012 Totals Year-to-Date | |
|---|---|
| Total fees charged in 2012 | $90.14 |
| Total interest charged in 2012 | $18.27 |

**Interest Charge Calculation**

Your **Annual Percentage Rate (APR)** is the annual interest rate on your account.

| Type of Balance | Annual Percentage Rate (APR) | Balance Subject to Interest Rate | Interest Charge |
|---|---|---|---|
| Purchases | 14.99% (v) | $89.74 | $0.00 |
| Cash Advances | 21.99% (v) | $0.00 | $0.00 |
| Balance Transfers | 0.00% | $0.00 | $0.00 |

(v) = Variable Rate

* * * * *

G–21 CHANGE-IN-TERMS SAMPLE (INCREASE IN FEES)

**Important Changes to Your Account Terms**

The following is a summary of changes that are being made to your account terms. These changes will take effect on 5/10/12. For more detailed information, please refer to the booklet enclosed with this statement.

You have the right to reject these changes, unless you become more than 60 days late on your account. However, if you do reject these changes you will not be able to use your account for new transactions. You can reject the changes by calling us at 1-800-xxx-xxxx.

| Revised Terms, as of 5/10/12 | |
|---|---|
| **Late Payment Fee** | Up to **$8**. |
| **Returned Payment Fee** | Up to **$35**. |

BILLING CODE 4810–AM–C

* * * * *

■ 5. Supplement I to part 1026 is amended by:

■ a. Under *Section 1026.7—Periodic Statement,* revising *7(b)(11) Due Date; Late Payment Costs;*

■ b. Under *Section 1026.52—Limitations on Fees:*

■ i. Revising *52(a)(1) General rule, 52(b) Limitations on Penalty Fees, 52(b)(1) General Rule, 52(b)(1)(i) Fees Based on Costs, 52(b)(1)(ii) Safe Harbors, 52(b)(2) Prohibited fees, 52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation,* and *52(b)(2)(ii) Multiple Fees Based on a Single Event or Transaction;* and

■ ii. Adding *52(b)(3) Smaller card issuer, 52(b)(3)(i),* and *52(b)(3)(ii)* in alphanumerical order; and

■ c. Under *Section 1026.60—Credit and Charge Card Applications and Solicitations,* revising *60(a)(2) Form of Disclosures; Tabular Format.*

The revisions and additions read as follows:

## Supplement I to Part 1026—Official Interpretations

* * * * *

*Section 1026.7—Periodic Statement*

* * * * *

7(b)(11) Due Date; Late Payment Costs

1. *Informal periods affecting late payments.* Although the terms of the account agreement may provide that a card issuer may assess a late payment fee if a payment is not received by a certain date, the card issuer may have an informal policy or practice that delays the assessment of the late

payment fee for payments received a brief period of time after the date upon which a card issuer has the contractual right to impose the fee. A card issuer must disclose the due date according to the legal obligation between the parties, and need not consider the end of an informal ''courtesy period'' as the due date under § 1026.7(b)(11).

2. *Assessment of late payment fees.* Some State or other laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. In addition, a card issuer may be restricted by the terms of the account agreement from imposing a late payment fee until a payment is late for a certain number of days following a due date. For example, assume a payment is due on March 10 and the account agreement or State law provides that a late payment fee cannot be assessed before March 21. A card issuer must disclose the due date under the terms of the legal obligation (March 10 in this example), and not a date different than the due date, such as when the card issuer is restricted by the account agreement or State or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date (March 21 in this example). Consumers' rights under State law to avoid the imposition of late payment fees during a specified period following a due date are unaffected by the disclosure requirement. In this example, the card issuer would disclose March 10 as the due date for purposes of § 1026.7(b)(11), but could not, under State law, assess a late payment fee before March 21.

3. *Fee or rate triggered by multiple events.* If a late payment fee or penalty rate is triggered after multiple events, such as two late payments in six months, the card issuer may, but is not required to, disclose the late payment and penalty rate disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late payment fee or penalty rate, such as after the consumer made one late payment in this example. For example, if a cardholder has already made one late payment, the disclosure must be on each statement for the following five billing cycles.

4. *Range of late fees or penalty rates.* A card issuer that imposes a range of late payment fees or rates on a credit card account under an open-end (not home-secured) consumer credit plan may state the highest fee or rate along with an indication lower fees or rates could be imposed. For example, a phrase indicating the late payment fee could be ''up to $8'' complies with this requirement.

5. *Penalty rate in effect.* If the highest penalty rate has previously been triggered on an account, the card issuer may, but is not required to, delete the amount of the penalty rate and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the card issuer may, but is not required to, modify the language to indicate that the penalty rate has been increased due to previous late payments (if applicable).

6. *Same day each month.* The requirement that the due date be the same day each month means that the due date must generally be the same numerical date. For example, a consumer's due date could be the 25th of every month. In contrast, a due date that is the same relative date but not numerical date each month, such as the third Tuesday of the month, generally would not comply with this requirement. However, a consumer's due date may be the last day of each month, even though that date will not be the same numerical date. For example, if a consumer's due date is the last day of each month, it will fall on February 28th (or February 29th in a leap year) and on August 31st.

7. *Change in due date.* A creditor may adjust a consumer's due date from time to time provided that the new due date will be the same numerical date each month on an ongoing basis. For example, a creditor may choose to honor a consumer's request to change from a due date that is the 20th of each month to the 5th of each month, or may choose to change a consumer's due date from time to time for operational reasons. *See* comment 2(a)(4)–3 for guidance on transitional billing cycles.

8. *Billing cycles longer than one month.* The requirement that the due date be the same day each month does not prohibit billing cycles that are two or three months, provided that the due date for each billing cycle is on the same numerical date of the month. For example, a creditor that establishes two-month billing cycles could send a consumer periodic statements disclosing due dates of January 25, March 25, and May 25.

9. *Payment due date when the creditor does not accept or receive payments by mail.* If the due date in a given month falls on a day on which the creditor does not receive or accept payments by mail and the creditor is required to treat a payment received the next business day as timely pursuant to § 1026.10(d), the creditor must disclose the due date according to the legal obligation between the parties, not the date as of which the creditor is permitted to treat the payment as late. For example, assume that the consumer's due date is the 4th of every month, and the creditor does not accept or receive payments by mail on Thursday, July 4. Pursuant to § 1026.10(d), the creditor may not treat a mailed payment received on the following business day, Friday, July 5, as late for any purpose. The creditor must nonetheless disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date.

* * * * *

*Section 1026.52—Limitations on Fees*

52(a) Limitations During First Year After Account Opening

52(a)(1) General Rule

1. *Application.* The 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account, including a prepaid account as defined in § 1026.61, to the card issuer or from another credit account provided by the card issuer). For example:

i. Assume that, under the terms of a credit card account, a consumer is required to pay $120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late payment fee of $8 if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). The card issuer is not a smaller card issuer as defined in § 1026.52(b)(3). At account opening on January 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge to the account the $120 in fees for the issuance or availability of credit at account opening. On February 1 of year one, the consumer uses the account for a $100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a $5 cash-advance fee to the account. On March 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a $8 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a $2.50 cash advance fee to the account. Furthermore, § 1026.52(a)(1) prohibits the card issuer from collecting the $2.50 cash advance fee from the consumer by other means.

ii. Assume that, under the terms of a credit card account, a consumer is required to pay $125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge the $125 in fees to the account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees during the first year after the credit card account is opened.

iii. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay $50 in fees for the issuance or availability of credit at account opening. At credit account opening on March 1 of year one, the credit limit for the account is $200. Section 1026.52(a)(1) permits the card issuer to charge the $50 in fees to the credit account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the credit account during the first year after account opening. Section 1026.52(a)(1) also prohibits

the card issuer from requiring the consumer to open an additional credit feature with the card issuer to fund the payment of additional non-exempt fees during the first year after the covered separate credit feature is opened.

iv. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay $120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to 5 percent of any cash advance and a late payment fee of $8 if the required minimum periodic payment is not received by the payment due date (which is the 25th of the month). The card issuer is not a smaller card issuer as defined in § 1026.52(b)(3). At credit account opening on March 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge to the account the $120 in fees for the issuance or availability of credit at account opening. On April 1 of year one, the consumer uses the account for a $100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a $5 cash advance fee to the account. On April 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a $8 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a $2.50 cash advance fee to the account, because the total amount of non-exempt fees reached the 25 percent limit with the $5 cash advance fee on April 1 (the $8 late fee on April 26 is exempt pursuant to § 1026.52(a)(2)(i)). Furthermore, § 1026.52(a)(1) prohibits the card issuer from collecting the $2.50 cash advance fee from the consumer by other means.

2. *Fees that exceed 25 percent limit.* A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 1026.52(a)(1) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For example, assuming the facts in the example in comment 52(a)(1)–1.i, the card issuer complies with § 1026.52(a)(1) if the card issuer charged the $2.50 cash advance fee to the account on July 15 of year one but waived or removed the fee or credited the account for $2.50 (plus any interest charges on that $2.50) at the end of the billing cycle.

3. *Changes in credit limit during first year.*

i. *Increases in credit limit.* If a card issuer increases the credit limit during the first year after the account is opened, § 1026.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). For example, assume that, at account opening on January 1, the credit limit for a credit card account is $400 and the consumer is required to pay $100 in fees for the issuance or availability of credit. On July 1, the card issuer increases the credit limit for the account to $600. Section 1026.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees based on the increased credit limit.

ii. *Decreases in credit limit.* If a card issuer decreases the credit limit during the first year after the account is opened, § 1026.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the credit limit was reduced. For example, assume that, at account opening on January 1, the credit limit for a credit card account is $1,000 and the consumer is required to pay $250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to $600. Section 1026.52(a)(1) requires the card issuer to waive or remove $100 in fees from the account or to credit the account for an amount equal to $100 within a reasonable amount of time but no later than August 31.

4. *Date on which account may first be used by consumer to engage in transactions.*

i. *Methods of compliance.* For purposes of § 1026.52(a)(1), an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. A card issuer may consider an account open for purposes of § 1026.52(a)(1) on any of the following dates:

A. The date the account is first used by the consumer for a transaction (such as when an account is established in connection with financing the purchase of goods or services).

B. The date the consumer complies with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of a new account (such as requiring the consumer to provide information that verifies his or her identity), provided that the account may be used for transactions on that date.

C. The date that is seven days after the card issuer mails or delivers to the consumer account-opening disclosures that comply with § 1026.6, provided that the consumer may use the account for transactions after complying with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of the new account (such as requiring the consumer to provide information that verifies his or her identity). If a card issuer has reasonable procedures designed to ensure that account-opening disclosures that comply with § 1026.6 are mailed or delivered to consumers no later than a certain number of days after the card issuer establishes the account, the card issuer may add that number of days to the seven-day period for purposes of determining the date on which the account was opened.

ii. *Examples.* A. Assume that, on July 1 of year one, a credit card account under an open-end (not home-secured) consumer credit plan is established in connection with financing the purchase of goods or services and a $500 transaction is charged to the account by the consumer. The card issuer may consider the account open on July 1 of year one for purposes of § 1026.52(a)(1). Accordingly, § 1026.52(a)(1) ceases to apply to the account on July 1 of year two.

B. Assume that, on July 1 of year one, a card issuer approves a consumer's application for a credit card account under an open-end (not home-secured) consumer credit plan and establishes the account on its internal systems. On July 5, the card issuer mails or delivers to the consumer account-opening disclosures that comply with § 1026.6. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may consider the account open on July 12 of year one for purposes of § 1026.52(a)(1). Accordingly, § 1026.52(a)(1) ceases to apply to the account on July 12 of year two.

C. Same facts as in comment 52(a)(1)–4.ii.B except that the card issuer has adopted reasonable procedures designed to ensure that account-opening disclosures that comply with § 1026.6 are mailed or delivered to consumers no later than three days after an account is established on its systems. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may consider the account open on July 11 of year one for purposes of § 1026.52(a)(1). Accordingly, § 1026.52(a)(1) ceases to apply to the account on July 11 of year two. However, if the consumer uses the account for a transaction or complies with the card issuer's reasonable procedures for preventing fraud or unauthorized use on July 8 of year one, the card issuer may, at its option, consider the account open on that date for purposes of § 1026.52(a)(1), and therefore § 1026.52(a)(1) ceases to apply to the account on July 8 of year two.

* * * * *

52(b) Limitations on Penalty Fees

1. *Fees for violating the account terms or other requirements.* For purposes of § 1026.52(b), a fee includes any charge imposed by a card issuer based on an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, other than charges attributable to periodic interest rates. Accordingly, for purposes of § 1026.52(b), a fee does not include charges attributable to an increase in an annual percentage rate based on an act or omission that violates the terms or other requirements of an account.

i. The following are examples of fees that are subject to the limitations in § 1026.52(b) or are prohibited by § 1026.52(b):

A. Late payment fees and any other fees imposed by a card issuer if an account becomes delinquent or if a payment is not received by a particular date. A late payment fee or late fee is any fee imposed for a late payment. *See* § 1026.60(b)(9) and accompanying commentary.

B. Returned payment fees and any other fees imposed by a card issuer if a payment received via check, automated clearing house, or other payment method is returned.

C. Any fee or charge for an over-the-limit transaction as defined in § 1026.56(a), to the extent the imposition of such a fee or charge is permitted by § 1026.56.

D. Any fee imposed by a card issuer if payment on a check that accesses a credit card account is declined.

E. Any fee or charge for a transaction that the card issuer declines to authorize. *See* § 1026.52(b)(2)(i)(B).

F. Any fee imposed by a card issuer based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). *See* § 1026.52(b)(2)(i)(B).

G. Any fee imposed by a card issuer based on the closure or termination of an account. *See* § 1026.52(b)(2)(i)(B).

ii. The following are examples of fees to which § 1026.52(b) does not apply:

A. Balance transfer fees.

B. Cash advance fees.

C. Foreign transaction fees.

D. Annual fees and other fees for the issuance or availability of credit described in § 1026.60(b)(2), except to the extent that such fees are based on account inactivity. *See* § 1026.52(b)(2)(i)(B).

E. Fees for insurance described in § 1026.4(b)(7) or debt cancellation or debt suspension coverage described in § 1026.4(b)(10) written in connection with a credit transaction, provided that such fees are not imposed as a result of a violation of the account terms or other requirements of an account.

F. Fees for making an expedited payment (to the extent permitted by § 1026.10(e)).

G. Fees for optional services (such as travel insurance).

H. Fees for reissuing a lost or stolen card.

2. *Rounding to nearest whole dollar.* A card issuer may round any fee that complies with § 1026.52(b) to the nearest whole dollar. For example, if § 1026.52(b) permits a card issuer to impose a late payment fee of $5.50, the card issuer may round that amount up to the nearest whole dollar and impose a late payment fee of $6. However, if the late payment fee permitted by § 1026.52(b) were $5.49, the card issuer would not be permitted to round that amount up to $6, although the card issuer could round that amount down and impose a late payment fee of $5.

3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. For example, assume that a late fee will be imposed by the card issuer if the covered separate credit feature becomes delinquent or if a payment is not received by a particular date. This fee is subject to § 1026.52(b) regardless of whether the fee is imposed on the asset feature of the prepaid account or on the separate credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). *See* § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

5. *Examples.* Any dollar amount examples in the commentary to § 1026.52(b) relating to the safe harbors in § 1026.52(b)(1) are based on the original historical safe-harbor thresholds of $25 and $35 for penalty fees other than late fees, and on the threshold of $8 for late fees applicable to card issuers other than smaller card issuers as defined in § 1026.52(b)(3).

52(b)(1) General Rule

1. *Relationship between § 1026.52(b)(1)(i) and (ii) and (b)(2).*

i. *Relationship between § 1026.52(b)(1)(i) and (ii).* A card issuer may impose a fee for violating the terms or other requirements of an account pursuant to either § 1026.52(b)(1)(i) or (ii).

A. A card issuer that complies with the safe harbors in § 1026.52(b)(1)(ii) is not required to determine that its fees represent a reasonable proportion of the total costs incurred by the card issuer as a result of a type of violation under § 1026.52(b)(1)(i).

B. A card issuer may impose a fee for one type of violation pursuant to § 1026.52(b)(1)(i) and may impose a fee for a different type of violation pursuant to § 1026.52(b)(1)(ii). For example, a card issuer may impose a late payment fee of $9 based on a cost determination pursuant to § 1026.52(b)(1)(i) but impose returned payment and over-the-limit fees of $25 or $35 pursuant to the safe harbors in § 1026.52(b)(1)(ii).

C. A card issuer that previously based the amount of a penalty fee for a particular type of violation on a cost determination pursuant to § 1026.52(b)(1)(i) may begin to impose a penalty fee for that type of violation that is consistent with § 1026.52(b)(1)(ii) at any time (subject to the notice requirements in § 1026.9), provided that the first fee imposed pursuant to § 1026.52(b)(1)(ii) is consistent with § 1026.52(b)(1)(ii)(A). For example, assume that consistent with § 1026.56, a consumer has affirmatively consented to the payment of transactions that exceed the credit limit. A transaction occurs on January 15 that causes the account balance to exceed the credit limit and, based on a cost determination pursuant to § 1026.52(b)(1)(i), the card issuer imposes a $30 over-the-limit fee. The consumer's next monthly payment brings the account balance below the credit limit. On July 15, another transaction causes the account balance to exceed the credit limit. The card issuer may impose another $30 over-the-limit fee pursuant to § 1026.52(b)(1)(i) or may impose a $25 over-the-limit fee pursuant to § 1026.52(b)(1)(ii)(A). However, the card issuer may not impose a $35 over-the-limit fee pursuant to § 1026.52(b)(1)(ii)(B). If the card issuer imposes a $25 fee pursuant to § 1026.52(b)(1)(ii)(A) for the July 15 over-the-limit transaction and on September 15 another transaction causes the account balance to exceed the credit limit, the card issuer may impose a $35 fee for the September 15 over-the-limit transaction pursuant to § 1026.52(b)(1)(ii)(B).

ii. *Relationship between § 1026.52(b)(1) and (2).* Section 1026.52(b)(1) does not permit a card issuer to impose a fee that is inconsistent with the prohibitions in § 1026.52(b)(2). For example, if § 1026.52(b)(2)(i) prohibits the card issuer from imposing a late payment fee that exceeds $7, § 1026.52(b)(1)(ii) does not permit the card issuer to impose a higher late payment fee.

52(b)(1)(i) Fees Based on Costs

1. *Costs incurred as a result of violations.* Section 1026.52(b)(1)(i) does not require a card issuer to base a fee on the costs incurred as a result of a specific violation of the terms or other requirements of an account. Instead, for purposes of § 1026.52(b)(1)(i), a card issuer must have determined that a fee for violating the terms or other requirements of an account represents a reasonable proportion of the costs incurred by the card issuer as a result of that type of violation. A card issuer may make a single determination for all of its credit card portfolios or may make separate determinations for each portfolio. The factors relevant to this determination include:

i. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (for example, a period of twelve months).

ii. The costs incurred by the card issuer during that period as a result of those violations.

iii. At the card issuer's option, the number of fees imposed by the card issuer as a result of those violations during that period that the card issuer reasonably estimates it will be unable to collect. *See* comment 52(b)(1)(i)–5.

iv. At the card issuer's option, reasonable estimates for an upcoming period of changes in the number of violations of that type, the resulting costs, and the number of fees that the card issuer will be unable to collect. *See* illustrative examples in comments 52(b)(1)(i)–6 through –9.

2. *Amounts excluded from cost analysis.* The following amounts are not costs incurred by a card issuer as a result of violations of

the terms or other requirements of an account for purposes of § 1026.52(b)(1)(i):

i. Losses and associated costs (including the cost of holding reserves against potential losses, the cost of funding delinquent accounts, and any collection costs that are incurred after an account is charged off in accordance with loan-loss provisions).

ii. Costs associated with evaluating whether consumers who have not violated the terms or other requirements of an account are likely to do so in the future (such as the costs associated with underwriting new accounts). However, once a violation of the terms or other requirements of an account has occurred, the costs associated with preventing additional violations for a reasonable period of time are costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of § 1026.52(b)(1)(i).

3. *Third-party charges.* As a general matter, amounts charged to the card issuer by a third party as a result of a violation of the terms or other requirements of an account are costs incurred by the card issuer for purposes of § 1026.52(b)(1)(i). For example, if a card issuer is charged a specific amount by a third party for each returned payment, that amount is a cost incurred by the card issuer as a result of returned payments. However, if the amount is charged to the card issuer by an affiliate or subsidiary of the card issuer, the card issuer must have determined that the charge represents a reasonable proportion of the costs incurred by the affiliate or subsidiary as a result of the type of violation. For example, if an affiliate of a card issuer provides collection services to the card issuer on delinquent accounts, the card issuer must have determined that the amounts charged to the card issuer by the affiliate for such services represent a reasonable proportion of the costs incurred by the affiliate as a result of late payments.

4. *Amounts charged by other card issuers.* The fact that a card issuer's fees for violating the terms or other requirements of an account are comparable to fees assessed by other card issuers does not satisfy the requirements of § 1026.52(b)(1)(i).

5. *Uncollected fees.* For purposes of § 1026.52(b)(1)(i), a card issuer may consider fees that it is unable to collect when determining the appropriate fee amount. Fees that the card issuer is unable to collect include fees imposed on accounts that have been charged off by the card issuer, fees that have been discharged in bankruptcy, and fees that the card issuer is required to waive in order to comply with a legal requirement (such as a requirement imposed by this part or 50 U.S.C. app. 527). However, fees that the card issuer chooses not to impose or chooses not to collect (such as fees the card issuer chooses to waive at the request of the consumer or under a workout or temporary hardship arrangement) are not relevant for purposes of this determination. *See* illustrative examples in comments 52(b)(2)(i)–6 through –9.

6. *Late payment fees.*

i. *Costs incurred as a result of late payments.* For purposes of § 1026.52(b)(1)(i), the costs incurred by a card issuer as a result of late payments include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements).

ii. *Examples.* A. *Late payment fee based on past delinquencies and costs.* Assume that, during year one, a card issuer experienced 1 million delinquencies and incurred $26 million in costs as a result of those delinquencies. For purposes of § 1026.52(b)(1)(i), a $26 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

B. *Adjustment based on fees card issuer is unable to collect.* Same facts as in comment 52(b)(1)(i)–6.ii.A except that the card issuer imposed a late payment fee for each of the 1 million delinquencies experienced during year one but was unable to collect 25% of those fees (in other words, the card issuer was unable to collect 250,000 fees, leaving a total of 750,000 late payments for which the card issuer did collect or could have collected a fee). For purposes of § 1026.52(b)(2)(i), a late payment fee of $35 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

C. *Adjustment based on reasonable estimate of future changes.* Same facts as in comments 52(b)(1)(i)–6.ii.A and B except the card issuer reasonably estimates that—based on past delinquency rates and other factors relevant to potential delinquency rates for year two—it will experience a 2% decrease in delinquencies during year two (in other words, 20,000 fewer delinquencies for a total of 980,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (25%) during year two as during year one (in other words, the card issuer will be unable to collect 245,000 fees, leaving a total of 735,000 late payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of delinquencies and other factors relevant to potential costs for year two—it will experience a 5% increase in costs during year two (in other words, $1.3 million in additional costs for a total of $27.3 million). For purposes of § 1026.52(b)(1)(i), a $37 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

7. *Returned payment fees.*

i. *Costs incurred as a result of returned payments.* For purposes of § 1026.52(b)(1)(i), the costs incurred by a card issuer as a result of returned payments include:

A. Costs associated with processing returned payments and reconciling the card issuer's systems and accounts to reflect returned payments;

B. Costs associated with investigating potential fraud with respect to returned payments; and

C. Costs associated with notifying the consumer of the returned payment and arranging for a new payment.

ii. *Examples.* A. *Returned payment fee based on past returns and costs.* Assume that, during year one, a card issuer experienced 150,000 returned payments and incurred $3.1 million in costs as a result of those returned payments. For purposes of § 1026.52(b)(1)(i), a $21 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

B. *Adjustment based on fees card issuer is unable to collect.* Same facts as in comment 52(b)(1)(i)–7.ii.A except that the card issuer imposed a returned payment fee for each of the 150,000 returned payments experienced during year one but was unable to collect 15% of those fees (in other words, the card issuer was unable to collect 22,500 fees, leaving a total of 127,500 returned payments for which the card issuer did collect or could have collected a fee). For purposes of § 1026.52(b)(2)(i), a returned payment fee of $24 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

C. *Adjustment based on reasonable estimate of future changes.* Same facts as in comments 52(b)(1)(i)–7.ii.A and B except the card issuer reasonably estimates that—based on past returned payment rates and other factors relevant to potential returned payment rates for year two—it will experience a 2% increase in returned payments during year two (in other words, 3,000 additional returned payments for a total of 153,000). The card issuer also reasonably estimates that it will be unable to collect 25% of returned payment fees during year two (in other words, the card issuer will be unable to collect 38,250 fees, leaving a total of 114,750 returned payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of returned payments and other factors relevant to potential costs for year two—it will experience a 1% decrease in costs during year two (in other words, a $31,000 reduction in costs for a total of $3.069 million). For purposes of § 1026.52(b)(1)(i), a $27 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

8. *Over-the-limit fees.*

i. *Costs incurred as a result of over-the-limit transactions.* For purposes of § 1026.52(b)(1)(i), the costs incurred by a card issuer as a result of over-the-limit transactions include:

A. Costs associated with determining whether to authorize over-the-limit transactions; and

B. Costs associated with notifying the consumer that the credit limit has been exceeded and arranging for payments to reduce the balance below the credit limit.

ii. *Costs not incurred as a result of over-the-limit transactions.* For purposes of § 1026.52(b)(1)(i), costs associated with obtaining the affirmative consent of consumers to the card issuer's payment of transactions that exceed the credit limit consistent with § 1026.56 are not costs incurred by a card issuer as a result of over-the-limit transactions.

iii. *Examples.* A. *Over-the-limit fee based on past fees and costs.* Assume that, during year one, a card issuer authorized 600,000 over-the-limit transactions and incurred $4.5 million in costs as a result of those over-the-limit transactions. However, because of the affirmative consent requirements in § 1026.56, the card issuer was only permitted to impose 200,000 over-the-limit fees during year one. For purposes of § 1026.52(b)(1)(i), a $23 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

B. *Adjustment based on fees card issuer is unable to collect.* Same facts as in comment 52(b)(1)(i)–8.iii.A except that the card issuer was unable to collect 30% of the 200,000 over-the-limit fees imposed during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer did collect or could have collected a fee). For purposes of § 1026.52(b)(2)(i), an over-the-limit fee of $32 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

C. *Adjustment based on reasonable estimate of future changes.* Same facts as in comments 52(b)(1)(i)–8.iii.A and B except the card issuer reasonably estimates that—based on past over-the-limit transaction rates, the percentages of over-the-limit transactions that resulted in an over-the-limit fee in the past (consistent with § 1026.56), and factors relevant to potential changes in those rates and percentages for year two—it will authorize approximately the same number of over-the-limit transactions during year two (600,000) and impose approximately the same number of over-the-limit fees (200,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (30%) during year two as during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of over-the-limit transactions and other factors relevant to potential costs for year two—it will experience a 6% decrease in costs during year two (in other words, a $270,000 reduction in costs for a total of $4.23 million). For purposes of § 1026.52(b)(1)(i), a $30 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

9. *Declined access check fees.*

i. *Costs incurred as a result of declined access checks.* For purposes of § 1026.52(b)(1)(i), the costs incurred by a card issuer as a result of declining payment on a check that accesses a credit card account include:

A. Costs associated with determining whether to decline payment on access checks;

B. Costs associated with processing declined access checks and reconciling the card issuer's systems and accounts to reflect declined access checks;

C. Costs associated with investigating potential fraud with respect to declined access checks; and

D. Costs associated with notifying the consumer and the merchant or other party that accepted the access check that payment on the check has been declined.

ii. *Example.* Assume that, during year one, a card issuer declined 100,000 access checks and incurred $2 million in costs as a result of those declined checks. The card issuer imposed a fee for each declined access check but was unable to collect 10% of those fees (in other words, the card issuer was unable to collect 10,000 fees, leaving a total of 90,000 declined access checks for which the card issuer did collect or could have collected a fee). For purposes of § 1026.52(b)(1)(i), a $22 declined access check fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of declined access checks during year two.

52(b)(1)(ii) Safe Harbors

1. *Multiple violations of same type.*

i. *Same billing cycle or next six billing cycles.* A card issuer other than a smaller card issuer as defined in § 1026.52(b)(3) cannot impose a late fee in excess of $8 pursuant to § 1026.52(b)(1)(ii), regardless of whether the card issuer has imposed a late fee within the six previous billing cycles. For all other penalty fees, a card issuer cannot impose a fee for a violation pursuant to § 1026.52(b)(1)(ii)(B) unless a fee has previously been imposed for the same type of violation pursuant to § 1026.52(b)(1)(ii)(A). Once a fee has been imposed for a violation pursuant to § 1026.52(b)(1)(ii)(A), the card issuer may impose a fee pursuant to § 1026.52(b)(1)(ii)(B) for any subsequent violation of the same type until that type of violation has not occurred for a period of six consecutive complete billing cycles. A fee has been imposed for purposes of § 1026.52(b)(1)(ii) even if the card issuer waives or rebates all or part of the fee.

A. *Late payments.* For purposes of § 1026.52(b)(1)(ii), a late payment occurs during the billing cycle in which the payment may first be treated as late consistent with the requirements of this part and the terms or other requirements of the account.

B. *Returned payments.* For purposes of § 1026.52(b)(1)(ii), a returned payment occurs during the billing cycle in which the payment is returned to the card issuer.

C. *Transactions that exceed the credit limit.* For purposes of § 1026.52(b)(1)(ii), a transaction that exceeds the credit limit for an account occurs during the billing cycle in which the transaction occurs or is authorized by the card issuer.

D. *Declined access checks.* For purposes of § 1026.52(b)(1)(ii), a check that accesses a credit card account is declined during the billing cycle in which the card issuer declines payment on the check.

ii. *Relationship to §§ 1026.52(b)(2)(ii) and 1026.56(j)(1).* If multiple violations are based on the same event or transaction such that § 1026.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of § 1026.52(b)(1)(ii). Furthermore, consistent with § 1026.56(j)(1)(i), no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for purposes of § 1026.52(b)(1)(ii). However, § 1026.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction to the extent permitted by § 1026.56(j)(1). In these circumstances, the second and third over-the-limit fees permitted by § 1026.56(j)(1) may be imposed pursuant to § 1026.52(b)(1)(ii)(B). *See* comment 52(b)(2)(ii)–1.

iii. *Examples.* The following examples illustrate the application of § 1026.52(b)(1)(ii) introductory text and (b)(1)(ii)(A) and (B) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan that are not charge card accounts. For purposes of these examples, assume that the card issuer is not a smaller card issuer as defined in § 1026.52(b)(3). Also assume that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

A. *Violations of same type (over the credit limit).* Consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 20, a transaction causes the account balance to increase to $1,150, which exceeds the account's $1,000 credit limit. Consistent with § 1026.52(b)(1)(ii)(A), the card issuer imposes a $25 over-the-limit fee for the March billing cycle. The card issuer receives a $300 payment on March 25, bringing the account below the credit limit. In order for the card issuer to impose a $35 over-the-limit fee pursuant to § 1026.52(b)(1)(ii)(B), a second over-the-limit transaction must occur during the April, May, June, July, August, or September billing cycles.

*1.* Same facts as in the lead-in paragraph to comment 52(b)(1)(ii)–1.iii.A. On April 20, a transaction causes the account balance to increase to $1,200, which exceeds the account's $1,000 credit limit. Consistent with § 1026.52(b)(1)(ii)(B), the card issuer may impose a $35 over-the-limit fee for the April billing cycle. Furthermore, the card issuer may impose a $35 over-the-limit payment fee for any over-the-limit transaction or event that triggers an over-the-limit fee that occurs during the May, June, July, August, September, or October billing cycles, subject to the limitations in § 1026.56(j)(1).

*2.* Same facts as in the lead-in paragraph to comment 52(b)(1)(ii)–1.iii.A. The account remains below the limit from March 25 until October 20, when a transaction causes the account balance to exceed the credit limit. However, because this over-the-limit transaction did not occur during the six billing cycles following the March billing cycle, § 1026.52(b)(1)(ii) only permits the card issuer to impose an over-the-limit fee of $25.

B. *Violations of different types (late payment and over the credit limit).* The credit limit for an account is $1,000. Consistent with § 1026.56, the consumer has

affirmatively consented to the payment of transactions that exceed the credit limit. A required minimum periodic payment of $35 is due on August 25. On August 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 1026.52(b)(1)(ii), the card issuer imposes a $8 late payment fee on August 26. On August 30, the card issuer receives a $35 payment. On September 10, a transaction causes the account balance to increase to $1,150, which exceeds the account's $1,000 credit limit. On September 11, a second transaction increases the account balance to $1,350. On September 23, the card issuer receives the $50 required minimum periodic payment due on September 25, which reduces the account balance to $1,300. On September 30, the card issuer imposes a $25 over-the-limit fee, consistent with § 1026.52(b)(1)(ii)(A). On October 26, a late payment has occurred because the $60 required minimum periodic payment due on October 25 has not been received. Accordingly, consistent with § 1026.52(b)(1)(ii) the card issuer imposes a $8 late payment fee on October 26.

C. *Violations of different types (late payment and returned payment).* A required minimum periodic payment of $40 is due on July 25. On July 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 1026.52(b)(1)(ii), the card issuer imposes a $8 late payment fee on July 26. On July 30, the card issuer receives a $60 payment. A required minimum periodic payment of $40 is due on August 25. On August 24, a $40 payment is received. On August 27, the $40 payment is returned to the card issuer for insufficient funds. In these circumstances, § 1026.52(b)(2)(ii) permits the card issuer to impose either a late payment fee or a returned payment fee but not both, because the late payment and the returned payment result from the same event or transaction. Accordingly, for purposes of § 1026.52(b)(1)(ii), the event or transaction constitutes a single violation. However, if the card issuer imposes a late payment fee, § 1026.52(b)(1)(ii) permits the issuer to impose a fee of $8. If the card issuer imposes a returned payment fee, the amount of the fee may be no more than $25 pursuant to § 1026.52(b)(1)(ii)(A).

2. *Adjustments based on Consumer Price Index for penalty fees imposed pursuant to § 1026.52(b)(1)(ii)(A) and (B).* For purposes of § 1026.52(b)(1)(ii)(A) and (B), the Bureau shall calculate each year price level adjusted amounts using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has risen by a whole dollar, those amounts will be increased by $1.00. Similarly, when the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in § 1026.52(b)(1)(ii)(A) and (B) has decreased by a whole dollar, those amounts will be decreased by $1.00. The Bureau will publish adjustments to the amounts in § 1026.52(b)(1)(ii)(A) and (B).

i. *Historical thresholds.*

A. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $25 under § 1026.52(b)(1)(ii)(A) and $35 under § 1026.52(b)(1)(ii)(B), through December 31, 2013.

B. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $26 under § 1026.52(b)(1)(ii)(A) and $37 under § 1026.52(b)(1)(ii)(B), through December 31, 2014.

C. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under § 1026.52(b)(1)(ii)(A) and $38 under § 1026.52(b)(1)(ii)(B), through December 31, 2015.

D. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under § 1026.52(b)(1)(ii)(A), through December 31, 2016. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $37 under § 1026.52(b)(1)(ii)(B), through June 26, 2016, and $38 under § 1026.52(b)(1)(ii)(B) from June 27, 2016, through December 31, 2016.

E. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under § 1026.52(b)(1)(ii)(A) and $38 under § 1026.52(b)(1)(ii)(B), through December 31, 2017.

F. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under § 1026.52(b)(1)(ii)(A) and $38 under § 1026.52(b)(1)(ii)(B), through December 31, 2018.

G. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $28 under § 1026.52(b)(1)(ii)(A) and $39 under § 1026.52(b)(1)(ii)(B), through December 31, 2019.

H. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $29 under § 1026.52(b)(1)(ii)(A) and $40 under § 1026.52(b)(1)(ii)(B), through December 31, 2020.

I. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $29 under § 1026.52(b)(1)(ii)(A) and $40 under § 1026.52(b)(1)(ii)(B), through December 31, 2021.

J. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $30 under § 1026.52(b)(1)(ii)(A) and $41 under § 1026.52(b)(1)(ii)(B), through May 13, 2024.

3. *Delinquent balance for charge card accounts.* Section 1026.52(b)(1)(ii)(C) provides that, when a charge card issuer that requires payment of outstanding balances in full at the end of each billing cycle has not received the required payment for two or more consecutive billing cycles, the card issuer may impose a late payment fee that does not exceed three percent of the delinquent balance. For purposes of § 1026.52(b)(1)(ii)(C), the delinquent balance is any previously billed amount that remains unpaid at the time the late payment fee is imposed pursuant to § 1026.52(b)(1)(ii)(C). Consistent with § 1026.52(b)(2)(ii), a charge card issuer that imposes a fee pursuant to § 1026.52(b)(1)(ii)(C) with respect to a late payment may not impose a fee pursuant to § 1026.52(b)(1)(ii)(B) with respect to the same late payment. The following examples illustrate the application of § 1026.52(b)(1)(ii)(C):

i. Assume that a charge card issuer requires payment of outstanding balances in full at the end of each billing cycle and that the billing cycles for the account begin on the first day of the month and end on the last day of the month. Also assume that the card issuer is not a smaller card issuer as defined in § 1026.52(b)(3). At the end of the June billing cycle, the account has a balance of $1,000. On July 5, the card issuer provides a periodic statement disclosing the $1,000 balance consistent with § 1026.7. During the July billing cycle, the account is used for $292 in transactions, increasing the balance to $1,292. At the end of the July billing cycle, no payment has been received and the card issuer imposes a $8 late payment fee consistent with § 1026.52(b)(1)(ii). On August 5, the card issuer provides a periodic statement disclosing the $1,300 balance consistent with § 1026.7. During the August billing cycle, the account is used for $200 in transactions, increasing the balance to $1,500. At the end of the August billing cycle, no payment has been received. Consistent with § 1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $39, which is 3% of the $1,300 balance that was due at the end of the August billing cycle. Section 1026.52(b)(1)(ii)(C) does not permit the card issuer to include the $200 in transactions that occurred during the August billing cycle.

ii. Same facts as in comment 52(b)(1)(ii)–3.i except that, on August 25, a $100 payment is received. Consistent with § 1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $36, which is 3% of the unpaid portion of the $1,300 balance that was due at the end of the August billing cycle ($1,200).

iii. Same facts as in comment 52(b)(1)(ii)–3.i except that, on August 25, a $200 payment is received. Consistent with § 1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $33, which is 3% of the unpaid portion of the $1,300 balance that was due at the end of the August billing cycle ($1,100). In the alternative, the card issuer may impose a late payment fee of $8 consistent with § 1026.52(b)(1)(ii). However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees.

4. *Smaller card issuers.* Section 1026.52(b)(1)(ii)(E) provides that a card issuer meeting the definition of smaller card issuer in § 1026.52(b)(3) may impose a fee for a late payment on an account if the dollar amount of the fee does not exceed the amount in § 1026.52(b)(1)(ii)(A) or (B), as applicable, notwithstanding the $8 limit on the amount of a late fee in § 1026.52(b)(1)(ii). Thus, assuming that the original historical safe harbor threshold amounts apply, a smaller card issuer may impose a late fee of $25 for a first late payment violation and a

late fee of $35 for a late payment violation that occurs during the same billing cycle or one of the next six billing cycles, provided that those amounts are consistent with § 1026.52(b)(2).

*52(b)(2) Prohibited Fees*

1. *Relationship to § 1026.52(b)(1).* A card issuer does not comply with § 1026.52(b) if it imposes a fee that is inconsistent with the prohibitions in § 1026.52(b)(2). Thus, the prohibitions in § 1026.52(b)(2) apply even if a fee is consistent with § 1026.52(b)(1)(i) or (ii). For example, even if a card issuer has determined for purposes of § 1026.52(b)(1)(i) that a $27 fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of a particular type of violation, § 1026.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than $27. Similarly, even if § 1026.52(b)(1)(ii) permits a card issuer to impose a $25 fee, § 1026.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than $25.

52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

1. *Late payment fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with a late payment is the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of that required minimum periodic payment. For example:

i. Assume that a $15 required minimum periodic payment is due on September 25. The card issuer does not receive any payment on or before September 25. On September 26, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on September 25 ($15). Thus, under § 1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

ii. Same facts as in comment 52(b)(2)(i)–1.i except that, on September 25, the card issuer receives a $10 payment. No further payments are received. On September 26, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is the full amount of the required minimum periodic payment due on September 25 ($15), rather than the unpaid portion of that payment ($5). Thus, under § 1026.52(b)(2)(i)(A), the amount of the late payment fee cannot exceed $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

iii. Assume that a $15 required minimum periodic payment is due on October 28 and the billing cycle for the account closes on October 31. The card issuer does not receive any payment on or before November 3. On November 3, the card issuer determines that the required minimum periodic payment due on November 28 is $50. On November 5, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on October 28 ($15), rather than the amount of the required minimum periodic payment due on November 28 ($50). Thus, under § 1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

2. *Returned payment fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due immediately prior to the date on which the payment is returned to the card issuer. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a returned payment fee that exceeds the amount of that required minimum periodic payment. However, if a payment has been returned and is submitted again for payment by the card issuer, there is no additional dollar amount associated with a subsequent return of that payment and § 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing an additional returned payment fee. For example:

i. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on March 25. The card issuer receives a check for $100 on March 23, which is returned to the card issuer for insufficient funds on March 26. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)). Furthermore, § 1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See* comment 52(b)(2)(ii)–1.

ii. Same facts as in comment 52(b)(2)(i)–2.i except that the card issuer receives the $100 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April 25 is $30. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15), rather than the amount of the required minimum periodic payment due on April 25 ($30). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)). Furthermore, § 1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See* comment 52(b)(2)(ii)–1.

iii. Same facts as in comment 52(b)(2)(i)–2.i except that, on March 28, the card issuer presents the $100 check for payment a second time. On April 1, the check is again returned for insufficient funds. Section 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing a returned payment fee based on the return of the payment on April 1.

iv. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on August 25. The card issuer receives a check for $15 on August 23, which is not returned. The card issuer receives a check for $50 on September 5, which is returned to the card issuer for insufficient funds on September 7. Section 1026.52(b)(2)(i)(B) does not prohibit the card issuer from imposing a returned payment fee in these circumstances. Instead, for purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on August 25 ($15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

3. *Over-the-limit fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with extensions of credit in excess of the credit limit for an account is the total amount of credit extended by the card issuer in excess of the credit limit during the billing cycle in which the over-the-limit fee is imposed. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing an over-the-limit fee that exceeds that amount. Nothing in § 1026.52(b) permits a card issuer to impose an over-the-limit fee if imposition of the fee is inconsistent with § 1026.56. The following examples illustrate the application of § 1026.52(b)(2)(i)(A) to over-the-limit fees:

i. Assume that the billing cycles for a credit card account with a credit limit of $5,000 begin on the first day of the month and end on the last day of the month. Assume also that, consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 1, the account has a $4,950 balance. On March 6, a $60 transaction is charged to the account, increasing the balance to $5,010. On March 25, a $5 transaction is charged to the account, increasing the balance to $5,015. On the last day of the billing cycle (March 31), the card issuer imposes an over-the-limit fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

ii. Same facts as in comment 52(b)(2)(i)–3.i except that, on March 26, the card issuer receives a payment of $20, reducing the balance below the credit limit to $4,995. Nevertheless, for purposes of § 1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, consistent with § 1026.52(b)(2)(i)(A), the card issuer may impose an over-the-limit fee of $15.

4. *Declined access check fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount

associated with declining payment on a check that accesses a credit card account is the amount of the check. Thus, when a check that accesses a credit card account is declined, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a fee that exceeds the amount of that check. For example, assume that a check that accesses a credit card account is used as payment for a $50 transaction, but payment on the check is declined by the card issuer because the transaction would have exceeded the credit limit for the account. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the declined check is the amount of the check ($50). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a fee that exceeds $50. However, the amount of this fee must also comply with § 1026.52(b)(1)(i) or (ii).

5. *Inactivity fees.* Section 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a fee with respect to a credit card account under an open-end (not home-secured) consumer credit plan based on inactivity on that account (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, § 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 fee when a credit card account under an open-end (not home-secured) consumer credit plan is not used for at least $2,000 in purchases over the course of a year. Similarly, § 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 annual fee on all accounts of a particular type but waiving the fee on any account that is used for at least $2,000 in purchases over the course of a year if the card issuer promotes the waiver or rebate of the annual fee for purposes of § 1026.55(e). However, if the card issuer does not promote the waiver or rebate of the annual fee for purposes of § 1026.55(e), § 1026.52(b)(2)(i)(B)(*2*) does not prohibit a card issuer from considering account activity along with other factors when deciding whether to waive or rebate annual fees on individual accounts (such as in response to a consumer's request).

6. *Closed account fees.* Section 1026.52(b)(2)(i)(B)(*3*) prohibits a card issuer from imposing a fee based on the closure or termination of an account. For example, § 1026.52(b)(2)(i)(B)(*3*) prohibits a card issuer from:

i. Imposing a one-time fee to consumers who close their accounts.

ii. Imposing a periodic fee (such as an annual fee, a monthly maintenance fee, or a closed account fee) after an account is closed or terminated if that fee was not imposed prior to closure or termination. This prohibition applies even if the fee was disclosed prior to closure or termination. *See also* comment 55(d)–1.

iii. Increasing a periodic fee (such as an annual fee or a monthly maintenance fee) after an account is closed or terminated. However, a card issuer is not prohibited from continuing to impose a periodic fee that was imposed before the account was closed or terminated.

7. *Declined transaction fees.* Section 1026.52(b)(2)(i)(B)(*1*) states that card issuers must not impose a fee when there is no dollar amount associated with the violation, such as for transactions that the card issuer declines to authorize. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b)(2)(i)(B)(*1*) prohibits a card issuer from imposing declined transaction fees in connection with the credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account. For example, if the prepaid card attempts to access credit from the covered separate credit feature accessible by the hybrid prepaid-credit card and the transaction is declined, § 1026.52(b)(2)(i)(B)(*1*) prohibits the card issuer from imposing a declined transaction fee, regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account. Fees imposed for declining a transaction that would have only accessed the asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit are not covered by § 1026.52(b)(2)(i)(B)(*1*).

52(b)(2)(ii) Multiple Fees Based on a Single Event or Transaction

1. *Single event or transaction.* Section 1026.52(b)(2)(ii) prohibits a card issuer from imposing more than one fee for violating the terms or other requirements of an account based on a single event or transaction. If § 1026.56(j)(1) permits a card issuer to impose fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction, those fees are not based on a single event or transaction for purposes of § 1026.52(b)(2)(ii). The following examples illustrate the application of § 1026.52(b)(2)(ii). Assume for purposes of these examples that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

i. Assume that the required minimum periodic payment due on March 25 is $20 and the card issuer is not a smaller card issuer pursuant to § 1026.52(b)(3). On March 26, the card issuer has not received any payment and imposes a late payment fee. Consistent with § 1026.52(b)(1)(ii) and (b)(2)(i), the card issuer may impose an $8 late payment fee on March 26. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing an additional late payment fee if the $20 minimum payment has not been received by a subsequent date (such as March 31).

A. On April 3, the card issuer provides a periodic statement disclosing that a $70 required minimum periodic payment is due on April 25. This minimum payment includes the $20 minimum payment due on March 25 and the $8 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Section 1026.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee based on the consumer's failure to make the $70 required minimum periodic payment on or before April 25. Accordingly, consistent with § 1026.52(b)(1)(ii) and (b)(2)(i), the card issuer may impose an $8 late payment fee on April 26.

B. On April 3, the card issuer provides a periodic statement disclosing that a $20 required minimum periodic payment is due on April 25. This minimum payment does not include the $20 minimum payment due on March 25 or the $8 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Because the card issuer has received the required minimum periodic payment due on April 25 and because § 1026.52(b)(2)(ii) prohibits the card issuer from imposing a second late payment fee based on the consumer's failure to make the $20 minimum payment due on March 25, the card issuer cannot impose a late payment fee in these circumstances.

ii. Assume that the required minimum periodic payment due on March 25 is $30 and the card issuer is not a smaller card issuer pursuant to § 1026.52(b)(3).

A. On March 25, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 27. Consistent with § 1026.52(b)(1)(ii) introductory text, (b)(1)(ii)(A), and (b)(2)(i)(A), the card issuer may impose a late payment fee of $8 or a returned payment fee of $25. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

B. Same facts as in comment 52(b)(2)(ii)–1.ii.A except that that card issuer receives the $50 check on March 27 and the check is returned for insufficient funds on March 29. Consistent with § 1026.52(b)(1)(ii) introductory text, (b)(1)(ii)(A), and (b)(2)(i)(A), the card issuer may impose a late payment fee of $8 or a returned payment fee of $25. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. If no payment is received on or before the next payment due date (April 25), § 1026.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee.

iii. Assume that the required minimum periodic payment due on July 25 is $30 and the card issuer is not a smaller card issuer pursuant to § 1026.52(b)(3). On July 10, the card issuer receives a $50 payment, which is not returned. On July 20, the card issuer receives a $100 payment, which is returned for insufficient funds on July 24. Consistent with § 1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25. Nothing in § 1026.52(b)(2)(ii) prohibits the imposition of this fee.

iv. Assume that the card issuer is not a smaller card issuer pursuant to § 1026.52(b)(3) and the credit limit for an account is $1,000 and that, consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 31, the

balance on the account is $970 and the card issuer has not received the $35 required minimum periodic payment due on March 25. On that same date (March 31), a $70 transaction is charged to the account, which increases the balance to $1,040. Consistent with § 1026.52(b)(1)(ii) introductory text, (b)(1)(ii)(A), and (b)(2)(i)(A), the card issuer may impose a late payment fee of $8 and an over-the-limit fee of $25. Section 1026.52(b)(2)(ii) does not prohibit the imposition of both fees because those fees are based on different events or transactions. No additional transactions are charged to the account during the March, April, or May billing cycles. If the account balance remains more than $35 above the credit limit on April 26, the card issuer may impose an over-the-limit fee of $35 pursuant to § 1026.52(b)(1)(ii)(B), to the extent consistent with § 1026.56(j)(1). Furthermore, if the account balance remains more than $35 above the credit limit on May 26, the card issuer may again impose an over-the-limit fee of $35 pursuant to § 1026.52(b)(1)(ii)(B), to the extent consistent with § 1026.56(j)(1). Thereafter, § 1026.56(j)(1) does not permit the card issuer to impose additional over-the-limit fees unless another over-the-limit transaction occurs. However, if an over-the-limit transaction occurs during the six billing cycles following the May billing cycle, the card issuer may impose an over-the-limit fee of $35 pursuant to § 1026.52(b)(1)(ii)(B).

v. Assume that the credit limit for an account is $5,000 and that, consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On July 23, the balance on the account is $4,950. On July 24, the card issuer receives the $100 required minimum periodic payment due on July 25, reducing the balance to $4,850. On July 26, a $75 transaction is charged to the account, which increases the balance to $4,925. On July 27, the $100 payment is returned for insufficient funds, increasing the balance to $5,025. Consistent with § 1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25 or an over-the-limit fee of $25. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vi. Assume that the required minimum periodic payment due on March 25 is $50 and the card issuer is not a smaller card issuer pursuant to § 1026.52(b)(3). On March 20, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 22. Consistent with § 1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25. On March 25, the card issuer receives a second check for $50, but the check is returned for insufficient funds on March 27. Consistent with § 1026.52(b)(1)(ii) introductory text, (b)(1)(ii)(A) and (B), and (b)(2)(i)(A), the card issuer may impose a late payment fee of $8 or a returned payment fee of $35. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vii. Assume that the required minimum periodic payment due on February 25 is $100 and the card issuer is not a smaller card issuer pursuant to § 1026.52(b)(3). On February 25, the card issuer receives a check for $100. On March 3, the card issuer provides a periodic statement disclosing that a $120 required minimum periodic payment is due on March 25. On March 4, the $100 check is returned to the card issuer for insufficient funds. Consistent with § 1026.52(b)(1)(ii) introductory text, (b)(1)(ii)(A), and (b)(2)(i)(A), the card issuer may impose a late payment fee of $8 or a returned payment fee of $25 with respect to the $100 payment. However, § 1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. On March 20, the card issuer receives a $120 check, which is not returned. No additional payments are received during the March billing cycle. Because the card issuer has received the required minimum periodic payment due on March 25 and because § 1026.52(b)(2)(ii) prohibits the card issuer from imposing a second fee based on the $100 payment that was returned for insufficient funds, the card issuer cannot impose a late payment fee in these circumstances.

52(b)(3) Smaller Card Issuer

52(b)(3)(i)

1. *Entire calendar year.* To meet the definition of smaller card issuer, a card issuer together with its affiliates must have fewer than one million open credit accounts for the entire preceding calendar year. Thus, for example, if a card issuer together with its affiliates had more than one million open credit card accounts from January through October of the preceding calendar year but had fewer than that threshold number in November and December, the card issuer is not a smaller card issuer in the next calendar year. Further, the card issuer is not a smaller card issuer until such time that the card issuer's number of open credit card accounts, together with those of its affiliates, remains below one million for an entire preceding calendar year.

52(b)(3)(ii)

1. *Meeting or exceeding threshold in current calendar year.* If a card issuer together with its affiliates had fewer than one million open credit card accounts for the entire preceding calendar year but meets or exceeds that number of open credit card accounts in the current calendar year, then the card issuer will no longer meet the definition of smaller card issuer and therefore may not impose a late fee pursuant to § 1026.52(b)(1)(ii)(E) as of 60 days after meeting or exceeding the threshold number of open credit card accounts. For purposes of imposing a late fee pursuant to the safe harbor provisions, the card issuer may impose a late fee of no more than $8 pursuant to § 1026.52(b)(1)(ii) as of the 60th day.

* * * * *

*Section 1026.60—Credit and Charge Card Applications and Solicitations*

* * * * *

60(a)(2) Form of Disclosures; Tabular Format

1. *Location of table.*

i. *General.* Except for disclosures given electronically, disclosures in § 1026.60(b) that are required to be provided in a table must be prominently located on or with the application or solicitation. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

ii. *Electronic disclosures.* If the table is provided electronically, the table must be provided in close proximity to the application or solicitation. Card issuers have flexibility in satisfying this requirement. Methods card issuers could use to satisfy the requirement include, but are not limited to, the following examples (whatever method is used, a card issuer need not confirm that the consumer has read the disclosures):

A. The disclosures could automatically appear on the screen when the application or reply form appears;

B. The disclosures could be located on the same web page as the application or reply form (whether or not they appear on the initial screen), if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

C. Card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

D. The disclosures could be located on the same web page as the application or reply form without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application or reply.

2. *Multiple accounts.* If a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account.

3. *Information permitted in the table. See* the commentary to § 1026.60(b), (d), and (e)(1) for guidance on additional information permitted in the table.

4. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, omit inapplicable headings and their corresponding boxes in the table. For example, if no foreign transaction fee is imposed on the account, the heading *Foreign transaction* and disclosure may be deleted from the table, or the disclosure form may contain the heading *Foreign transaction* and a disclosure showing *none.* There is an exception for the grace period disclosure; even if no grace period exists, that fact must be stated.

5. *Highlighting of annual percentage rates and fee amounts.*

i. *In general. See* Samples G–10(B) and G–10(C) of appendix G to this part for guidance on providing the disclosures described in § 1026.60(a)(2)(iv) in bold text. Other annual percentage rates or fee amounts disclosed in the table may not be in bold text. Samples G–10(B) and G–10(C) also provide guidance to issuers on how to disclose the rates and fees described in § 1026.60(a)(2)(iv) in a clear and conspicuous manner, by including these rates and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically in the table.

ii. *Maximum limits on fees.* Section 1026.60(a)(2)(iv) provides that any maximum limits on fee amounts must be disclosed in bold text. For example, assume that a card issuer is not a smaller card issuer as defined in § 1026.52(b)(3) and consistent with § 1026.52(b)(1)(ii), the card issuer's late payment fee will not exceed $8. The maximum limit of $8 for the late payment fee must be highlighted in bold. Similarly, assume an issuer will charge a cash advance fee of $5 or 3 percent of the cash advance transaction amount, whichever is greater, but the fee will not exceed $100. The maximum limit of $100 for the cash advance fee must be highlighted in bold.

iii. *Periodic fees.* Section 1026.60(a)(2)(iv) provides that any periodic fee disclosed pursuant to § 1026.60(b)(2) that is not an annualized amount must not be disclosed in bold. For example, if an issuer imposes a $10 monthly maintenance fee for a card account, the issuer must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis. In this example, the $10 fee disclosure would not be disclosed in bold, but the $120 annualized amount must be disclosed in bold. In addition, if an issuer must disclose any annual fee in the table, the amount of the annual fee must be disclosed in bold.

6. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a credit card application or solicitation electronically (other than as described under comment 60(a)(2)–6.ii), such as online at a home computer, the card issuer must provide the disclosures in electronic form (such as with the application or solicitation on its website) in order to meet the requirement to provide disclosures in a timely manner on or with the application or solicitation. If the issuer instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the card issuer's office, and accesses a credit card application or solicitation electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the card issuer to provide applications or solicitations to consumers), the issuer may provide disclosures in either electronic or paper form, provided the issuer complies with the timing and delivery (''on or with'') requirements of the regulation.

7. *Terminology.* Section 1026.60(a)(2)(i) generally requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in appendix G to this part; but *see* § 1026.5(a)(2) for terminology requirements applicable to § 1026.60 disclosures.

* * * * *

**Rohit Chopra,**

*Director, Consumer Financial Protection Bureau.*

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