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Proclamation 10524 of February 28, 2023

The President

American Red Cross Month, 2023

By the President of the United States of America

A Proclamation

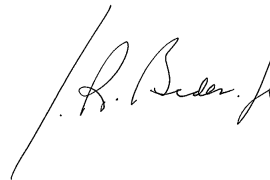
In the aftermath of the Civil War, Clara Barton founded the American Red Cross. Its national headquarters, just a few blocks from the White House, was built as a memorial to the women of the Civil War. For nearly 142 years, the employees, volunteers, and supporters of the American Red Cross have met loss and disaster with compassion and care. They remind us that we must leave no one behind. This month, we celebrate the ordinary citizens who perform extraordinary acts of service, and we honor the Red Cross for its commitment to making our country and world a better place.

Across America, I have seen the work of the Red Cross firsthand. When hurricanes make landfall and floodwaters rise, the Red Cross is ready to provide food, shelter, and emergency supplies. When wildfires spread and tornadoes uproot communities, volunteers arrive from around the country to help survivors heal, recover, and rebuild. We have also turned to the American Red Cross to respond to crises overseas in the wake of natural disasters and in preparation for emergencies before they happen. The old saying is still true today: The Red Cross is always there.

During American Red Cross Month, I encourage Americans to learn more about the steps involved in donating blood by visiting [redcross.org](https://www.redcross.org). If you can give blood, I hope you will. I also encourage Americans to learn or teach first aid and to participate in Sound the Alarm events to prevent home fires. It is in our Nation's DNA to lift each other up, especially on the frontlines of emergencies and disasters. I know that Americans will always answer the call—doing whatever it takes for as long as it takes to help out those in need.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America and Honorary Chair of the American Red Cross, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2023 as American Red Cross Month. I encourage all Americans to observe this month with relevant programs, ceremonies, and activities, and to support the work of service and relief organizations.

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

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping diagonal line extending from the top left towards the signature.

[FR Doc. 2023-04543

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Presidential Documents

Proclamation 10525 of February 28, 2023

Irish-American Heritage Month, 2023

By the President of the United States of America

A Proclamation

During Irish-American Heritage Month, I think of my great-great grandparents—the Blewitts of County Mayo and the Finnegans of County Louth. Like so many other Irish immigrants who sought a new beginning in the United States, they arrived on our shores with hearts full of hope and dreams of the future. With grit and determination, they worked hard. And as they built their lives, they helped build America—never forgetting where they came from, always remembering the courage and pride they brought with them from the old country, and passing these traits down to each new generation.

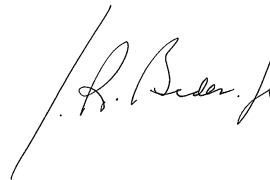
That pride lives on today in the hearts of Irish Americans across our Nation. It lives on in business owners, scientists, and labor leaders who hold dear the Irish belief that everyone deserves to be treated with dignity. And it runs deep in so many first responders, public servants, and brave service members who defend our lives and liberties—the same liberties that so many Irish immigrants and Irish Americans helped preserve and protect.

President John F. Kennedy once said, “Our two nations, divided by distance, have been united by history.” Today, the Republic of Ireland and the United States are also bound in our hope for the future—a future that is equal, just, and prosperous for all of our people. Together, our nations have stepped up to address COVID-19 and the climate crisis. We have spoken out for human rights around the world and supported the people of Ukraine as they defend themselves against Russia’s brutal war. And this year, we commemorate the 25th anniversary of the Good Friday Agreement that helped create a more peaceful and prosperous future for the people of Northern Ireland.

Ireland and the United States are forever bound together by our people and our passion. Everything between us runs deep. In the years ahead, I look forward to strengthening the partnership between our countries and the friendship between our people even further.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2023 as Irish-American Heritage Month. I call upon all Americans to celebrate the achievements and contributions of Irish Americans to our Nation with appropriate ceremonies, activities, and programs.

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

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping diagonal line extending upwards and to the left from the start of the signature.

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Presidential Documents

Proclamation 10526 of February 28, 2023

National Colorectal Cancer Awareness Month, 2023

By the President of the United States of America

A Proclamation

During National Colorectal Cancer Awareness Month, we call attention to the second leading cause of cancer deaths in America—by sharing information about risk factors, promoting life-saving early screenings, and improving access to affordable treatment. In remembrance of every life cut short by this devastating disease, my Administration is determined to end cancer as we know it.

When a loved one is diagnosed with cancer, every minute counts. But patients can be overwhelmed by a flood of medical information, and they too often struggle to afford life-saving care. Our country needs to do more to help patients and families navigate the cancer care system. We need to learn from patients' experiences, and we need to share data and knowledge to help prevent other families from encountering the same obstacles to prevention and care. When it comes to colorectal cancer, we must also focus our efforts on those most likely to develop this disease, including Americans over the age of 45; Black Americans; people with a family history of colorectal cancer; and people who smoke, consume alcohol, or are obese.

Because early detection drastically improves survival rates, the independent United States Preventive Services Task Force recommends regular screenings for all Americans who are older than 45 or have other risk factors. People should consult a doctor if they experience symptoms including blood in their stool, a change in bowel habits, stomach pain, bloating, persistent cramps, or unexplained weight loss. Vital screenings like colonoscopies can detect cancer early and remove precancerous growths, preventing the disease before it starts.

My Administration is working around the clock to develop new treatments that can turn this and other kinds of cancer from life-threatening diseases into chronic ones that people can live with and that can even cure certain forms of cancer. The First Lady and I reignited the Cancer Moonshot initiative that I began as Vice President, setting a new goal of cutting the Nation's cancer death rate in half in the next 25 years while better supporting patients and caregivers. To develop bold breakthroughs in preventing, diagnosing, and treating cancer and other deadly diseases, I established the Advanced Research Projects Agency for Health (ARPA-H), securing \$2.5 billion in funding with bipartisan support from the Congress. And last fall, I signed an Executive Order to help ensure that biotechnology invented in America is made in America, growing our economy and strengthening our supply chains for vital medications.

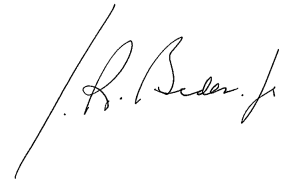
At the same time, we are continuing to make existing cancer care more affordable. The American Rescue Plan expanded the Affordable Care Act, which requires insurers to pay for cancer screenings and primary care visits and to cover cancer survivors and others who have preexisting conditions. Last year, I signed the Inflation Reduction Act, which will cap costs for prescription drugs—including life-saving cancer medicines—for seniors on Medicare at \$2,000 per year. My Administration has worked with the private sector to bring cancer screenings to more communities; develop and test new treatments; and share data, which can accelerate research and save

lives. My Administration is also promoting cancer prevention and healthy diets, which can reduce the risk of colorectal cancer. As part of our national strategy to end hunger and reduce diet-related diseases, we are working to provide healthy, free meals to millions more school kids; boost Medicaid and Medicare coverage for services like nutrition and obesity counseling; and make fruits and vegetables more affordable for low-income families.

The task ahead is great, but I am optimistic. Many thousands of families have shared their cancer stories with me over the years; each time, I am reminded how personal this pain is and how universal the dream of a cure continues to be. This common cause can unite this Nation and the world to join together and marshal the resources, brightest minds, and most dedicated advocates to finally end cancer once and for all.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2023 as National Colorectal Cancer Awareness Month. I encourage all citizens, government agencies, private businesses, non-profit organizations, and other groups to join in activities that will increase awareness and prevention of colorectal cancer. I also encourage Americans to visit [HealthCare.gov](https://www.healthcare.gov) and learn more about signing up for health coverage under the Affordable Care Act.

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

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Presidential Documents

Proclamation 10527 of February 28, 2023

Women's History Month, 2023

By the President of the United States of America

A Proclamation

During Women's History Month, we celebrate the countless women who have fought tirelessly and courageously for equality, justice, and opportunity in our Nation. We also reaffirm our commitment to advancing rights and opportunities for women and girls in the United States and around the world. We are mindful that we are building on the legacy of both recognized trailblazers and unsung heroines who have guided the course of American history and continue to shape its future.

The full participation of women is a foundational tenet of democracy. Women—often women of color—have been on the frontlines, fighting for and securing equal rights and opportunity throughout our country's history as abolitionists, civil rights leaders, suffragists, and labor activists. Women continue to lead as advocates for reproductive rights, champions of racial justice, and LGBTQI+ equality. Throughout history, these women have opened the doors of opportunity for subsequent generations of dreamers and doers. As community leaders, educators, doctors, scientists, child care providers, and more, women power our economy and lead our Nation. As first responders and service members, they stand watch over our lives and liberties. As innovators, entrepreneurs, and essential workers in every industry, they represent the very best of America.

But despite significant progress, women and girls continue to face systemic barriers to full and equal participation in our economy and society. Last year, the Supreme Court overturned *Roe v. Wade*, stripping away a constitutional right from the American people and the ability of millions of women to make decisions about their own bodies, putting their health and lives at risk. Disparities persist in economic security, health care, and caregiving responsibilities, especially for women and girls of color. Those who perform critical work, including those who care for our children and our families, are too often overlooked, underpaid, and undervalued.

Ours is the only Nation in the world established upon a profound but simple idea—that all people are created equal. My Administration is committed to upholding that idea and to making its promise real for every American. That is why I created the Gender Policy Council to advance gender equity and equality across the Federal Government. It is why I released the first-ever national gender strategy to promote the rights and opportunities of women at home and abroad, which outlines my Administration's commitment to equal access to education, economic security for women and families, health care, and freedom from gender-based violence. As we implement the Bipartisan Infrastructure Law, the CHIPS and Science Act, and the Inflation Reduction Act, we are working to reduce barriers so that women can access new jobs in sectors where they have been historically underrepresented. I have signed historic legislation to ensure equal protection for pregnant women and nursing mothers in the workplace. And I strengthened and reauthorized the Violence Against Women Act, a major milestone in our ongoing efforts to ensure all people can live free from violence. Finally, in December 2022, I was proud to sign the Respect for Marriage Act and defend the rights of LGBTQI+ and interracial couples.

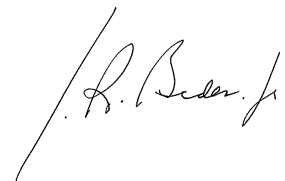
My Administration will continue to defend reproductive freedom to ensure that all Americans—regardless of their gender, race, ethnicity, sexual orientation, gender identity, or income—have the ability to make the choices that are right for themselves and their families. I have taken executive action to safeguard access to reproductive care, including medication abortion, help ensure women can receive emergency medical care, protect patients' privacy and access to accurate information about their reproductive rights, and combat discrimination in the health care system. I continue to call on the Congress to pass a Federal law restoring the protections of *Roe v. Wade* so all women in every State have the right to choose. And my Administration released the first Blueprint for Addressing the Maternal Health Crisis to save lives and address systemic discrimination that many women face every day in our health care system, including women of color, women in rural communities, and women with disabilities.

Leading our efforts is the most diverse group of women at the highest levels of Government in United States history, including Vice President Kamala Harris and a record number of female cabinet secretaries. Together with the most diverse set of judges ever nominated to the Federal bench—including Supreme Court Justice Ketanji Brown Jackson—women are seated at every table where decisions are being made.

This month, as we continue our work to advance gender equity and equality, let us celebrate the contributions of women throughout our history and honor the stories that have too often gone untold. Let us recognize that fundamental freedoms are interconnected: when opportunities for women are withheld, we all suffer; and when women's lives are improved, we all gain. Let us strive to create a Nation where every woman and girl knows that her possibilities know no bounds in America.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2023 as Women's History Month. I call upon all Americans to observe this month and to celebrate International Women's Day on March 8, 2023, with appropriate programs, ceremonies, and activities. I also invite all Americans to visit WomensHistoryMonth.gov to learn more about the vital contribution of women to our Nation's history.

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

A handwritten signature in dark ink, appearing to read "Joe Biden", is written over a horizontal line.

Rules and Regulations

Federal Register

Vol. 88, No. 42

Friday, March 3, 2023

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–0532; Special Conditions No. 25–835–SC]

Special Conditions: Airbus SAS A320–200 Series Model A320–251N, –252N, –253N, –271N, –272N, –273N Airplanes and A321–200 Series Model A321–251NX, –252NX, –253NX, –271NX, –272NX Airplanes; Flight Attendant Seat Mounted on Movable Interior Structure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus SAS (Airbus) A320–200 Series Model –251N, –252N, –253N, –271N, –272N, –273N (known as A320neo) airplanes and A321–200 Series Model –251NX, –252NX, –253NX, –271NX, –272NX (known as A321neo) airplanes. The airplanes 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 flight attendant seats mounted on movable lavatory doors. 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: This action is effective on Airbus on April 3, 2023.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Human Machine Interface, AIR–626, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th

Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email shannon.lennon@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2020, Airbus SAS applied for a change to Type Certificate No. A28NM for flight attendant seats mounted on movable lavatory doors in A320–200 Series Model A320–251N, –252N, –253N, –271N, –272N, and –273N (known as A320neo) airplanes and A321–200 Series Model A321–251NX, –252NX, –253NX, –271NX, and –272NX (known as A321neo) airplanes. These airplanes are twin-engine, transport category airplanes. The A320neo has a maximum passenger seating capacity of 179 and the A321neo has a maximum passenger seating capacity of 244.

The applicable airworthiness requirements do not contain adequate or appropriate safety standards for this new lavatory door-mounted flight attendant seat. Section 25.785 of title 14, Code of Federal Regulations (14 CFR) specifies certain requirements for flight attendant seats but did not consider flight attendant seats mounted on movable structure such as lavatory doors and, therefore, does not specifically address additional concerns associated with ensuring the flight attendant seats are safe to occupy when necessary. Therefore, special conditions are necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the A320neo and A321neo airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A28NM 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 Airbus A320neo and A321neo 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 Airbus A320neo and A321neo airplanes must comply with the fuel vent and 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 § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus A320neo and A321neo airplanes will incorporate the following novel or unusual design features:

Flight attendant seats mounted on movable lavatory doors.

Discussion

Airbus will install, in A320neo and A321neo airplanes, flight attendant seats on lavatory doors. The lavatory door-mounted flight attendant seat is intended to be occupied during all phases of flight, including takeoff and landing.

Flight attendant seats are typically floor-mounted or wall-mounted on a non-movable structure (e.g., mounted on monument walls) which is attached to the airplane structure. The installation of a flight attendant seat on movable structure, such as a lavatory door, introduces certain issues that must be addressed to ensure safety of the attendant seat occupant. Such considerations include ensuring that the lavatory door is closed (fixed) when the flight attendant seat is to be occupied and ensuring that the lavatory door lock mechanism is reliable after frequent use of the lavatory door. Additionally, the lavatory door, door locking mechanism, and door housing will need to withstand certain loading conditions as that structure is part of the load path

between seat structure and airplane structure.

Other issues include ensuring that the flight attendant seat is available to use when necessary, which requires a way to ensure the lavatory is not occupied when the flight attendant seat must be occupied. Also, additional maintenance requirements will need to be considered to establish the reliability of the lavatory door locking mechanism, as it is a feature that will be frequently used.

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

The FAA issued Notice of Proposed Special Conditions No. 25–22–03–SC for the Airbus A320–200 Series Model A320–251N, –252N, –253N, –271N, –272N, and –273N, and A321–200 Series Model A321–251NX, –252NX, –253NX, –271NX, and –272NX airplanes, which was published in the **Federal Register** on October 17, 2022 (87 FR 62739). The FAA received responses from two commenters—Air Line Pilots Association, International (ALPA); and The Boeing Company (Boeing). ALPA provided a general comment that they support the special conditions. Boeing provided four comments summarized as follows:

Comment Summary 1: Boeing suggested a revision of the text of proposed special condition (a) for purposes of identifying additional components of the flight attendant seat-system primary load path that must be shown to withstand the emergency landing dynamic loads including the lavatory door hinge and lavatory door-interfacing wall panels. Boeing states that the proposed special condition does not address the structural interface area surrounding the lavatory door attachment to the lavatory housing and that its suggested revision is consistent with guidance provided in section 9.c.(3)(b) of Advisory Circular 25.562–1B, “Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes,” for similar installations. Boeing also suggested a revision of the text of proposed special condition (a) for purposes of clarifying that both the flight attendant seat installation and lavatory attachment to the airplanes’ structure must meet the requirements of 14 CFR 25.561.

FAA Response: No change to this special condition is necessary. The proposed special condition (a) was intended to describe the lavatory

structure that must withstand the emergency landing dynamic loads prescribed in § 25.562 vs. the lavatory structure that must meet the requirements of § 25.561. It is not necessary for these special conditions to identify that the seat installation meet the requirements of § 25.561 because that requirement already exists via § 25.785(b) and is therefore, outside the scope of these special conditions. It is also sufficient to identify that the lavatory door-mounted flight attendant seat-system primary load path must meet the emergency landing dynamic loads without identifying all components of that load path because structural components such as the lavatory door, door hinge, and interfacing lavatory panels are readily recognized as part of the load path. The exception is the lavatory door locking mechanism. This is specifically emphasized in this special condition as it is a movable assembly that is expected to be frequently manipulated by the airplane occupants and, as such, a novel feature in the flight attendant seat load path.

Comment Summary 2 and 3: Boeing recommended a revision to special condition (b)(1) that would require a design feature that clearly indicates positive engagement of all latches or mechanisms required to secure the lavatory door, including a placard describing the required steps to secure and verify engagement of the door. Boeing also recommends a revision to special condition (c) that would require a placard near the flight attendant seat that instructs the flight attendant to perform a visual inspection of the lavatory interior to ensure the lavatory is not occupied before engaging the door and occupying the attendant seat. Boeing states that a placard should be included to ensure that the lavatory is not occupied when use of the flight attendant seat is necessary.

FAA Response: No changes to special conditions (b) or (c) are necessary. While the recommended design features may constitute an acceptable means of compliance, other means may be utilized that could also be acceptable. Therefore, it is not necessary or appropriate to require specific design features for these special conditions.

Comment Summary 4: Boeing recommended a revision to special condition (e) to require that the lavatory door hinge mechanism, along with the locking mechanism, must meet the requirements of § 25.561 and other foreseeable operating conditions in order to show that these mechanisms are reliable within their expected life cycle. This recommendation includes

requiring static testing beyond the life-cycle testing of the locking and hinge mechanisms to ensure adequate structural capability over the expected lifetime of the installation.

FAA Response: Special condition (e) is intended to ensure that the movable parts of the lavatory door assembly remain reliable within the expected life cycle of the installation. The lavatory door locking mechanism is specifically identified as it will be routinely manipulated by aircraft occupants as they utilize the lavatory. However, the door hinge is also a movable part that is applicable to this special condition even though it does not get repositioned in service like the lavatory door lock. For this reason the FAA agrees with the recommendation to include the lavatory door hinge within the text of special condition (e). While the FAA agrees that the approach of conducting static testing of the lavatory door hinge and locking mechanisms beyond the life-cycle testing constitutes an acceptable means of compliance, other means may be utilized that could also be acceptable. Therefore, it is not necessary to require this specific compliance approach in the special condition. Proposed special condition (e) is revised as follows:

The lavatory door locking and hinge mechanisms must be shown to withstand frequent use. Potential deterioration of moving parts must be addressed to show that the locking and hinge mechanisms are reliable within the established life cycle. Accordingly, instructions for continued airworthiness must also be defined for the locking and hinge mechanisms.

All other special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Airbus A320 Series Model –251N, –252N, –253N, –271N, –272N, –273N (known as A320neo) and A321 Series Model –251NX, –252NX, –253NX, –271NX, –272NX (known as A321neo) airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on A320 Series Model –251N, –252N, –253N, –271N, –272N, –273N (known as A320neo) and A321 Series Model –251NX, –252NX, –253NX, –271NX, –272NX (known as A321neo) 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 Airbus A320 Series Model –251N, –252N, –253N, –271N, –272N, –273N (known as A320neo) and A321 Series Model –251NX, –252NX, –253NX, –271NX, –272NX (known as A321neo).

(a) The lavatory door-mounted flight attendant seat-system primary load path, including the flight attendant seat, seat attachment means, the lavatory door, and lavatory door attachment to the lavatory housing—including the locking mechanism—must be shown to be capable of withstanding the emergency landing dynamic loads in accordance with § 25.562. The lavatory housing and the lavatory attachment to the airplane structure must comply with the requirements of § 25.561.

(b) Means must be provided to ensure that the flight attendant seat can only be used if the lavatory door is securely locked in the closed position.

(1) The procedures for establishing that the lavatory door is closed and locked prior to use of the flight attendant seat must become part of the cabin crew training.

(2) The effects of structural deformation of the lavatory door and lavatory door housing must be addressed to prevent unlocking or failure of the locking mechanism.

(c) Means must be provided to ensure that the lavatory is not occupied so that the flight attendant seat is available when necessary.

(d) Means must be provided to ensure that no one is inadvertently trapped inside the lavatory when the lavatory door is locked to facilitate use of the flight attendant seat.

(e) The lavatory door locking and hinge mechanisms must be shown to withstand frequent use. Potential deterioration of moving parts must be addressed to show that the locking and hinge mechanisms are reliable within their established life cycles. Accordingly, instructions for continued airworthiness must also be defined for the locking and hinge mechanisms.

Issued in Kansas City, Missouri, on February 28, 2023.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2023–04424 Filed 3–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2022–1253; Project Identifier MCAI–2022–00698–T; Amendment 39–22349; AD 2023–04–02]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Gulfstream Aerospace LP Model Gulfstream G280 airplanes. This AD was prompted by a determination that the existing wet runway performance tables in the airplane flight manual (AFM) may not provide an acceptable level of safety. This AD requires revising the existing AFM to incorporate new wet runway performance tables, as specified in a Civil Aviation Authority of Israel (CAAI) 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 7, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 7, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1253; 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 CAAI, P.O.

Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email aip@mot.gov.il. You may find this material on the CAAI website at caa.gov.il.

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at regulations.gov under Docket No. FAA–2022–1253.

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

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Gulfstream Aerospace LP Model Gulfstream G280 airplanes. The NPRM published in the **Federal Register** on October 5, 2022 (87 FR 60344). The NPRM was prompted by AD ISR–I–97–2022–04–9, dated May 1, 2022, issued by the Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel (CAAI AD ISR–I–97–2022–04–9) (also referred to as the MCAI). The MCAI states that the existing wet runway performance tables in the AFM may not provide an acceptable level of safety, and that the wet runway performance tables have been updated in the Performance section of the G280 AFM, Revision 10.

In the NPRM, the FAA proposed to require revising the existing AFM to incorporate new wet runway performance tables, as specified in CAAI AD ISR–I–97–2022–04–9. The FAA is issuing this AD to address the existing AFM wet runway performance tables that could allow the airplane to experience runway excursions or overruns during takeoff.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2022–1253.

Discussion of Final Airworthiness Directive**Comments**

The FAA received comments from one individual. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Produce Digital Version of AFM

The commenter noted that the FAA should change AFMs to a digital format so they can be updated as new ADs are created.

The FAA issues ADs to address unsafe conditions, including those involving the AFM. The question of whether AFMs should be produced in another format is beyond the scope of this AD.

Request for Clarification on Adequacy of Performance Tables

The commenter also remarked that an effort should be made to understand why wet runway performance tables do not have an acceptable level of safety. The commenter argued that a deficiency such as this should have been caught during the aircraft certification process.

Airplane certification and validation activities provide a baseline for safety. However, it is not possible to anticipate

all potential unsafe conditions on an airplane during the certification process. Once the airplane is in service, the FAA issues ADs in accordance with 14 CFR 39.5 when the agency subsequently finds that an unsafe condition exists in the airplane and the condition is likely to exist or develop in other airplanes of the same type design. The FAA has not changed this AD as a result of this comment.

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 comments 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 14 CFR Part 51

CAAI AD ISR-I-97-2022-04-9 specifies procedures for updating the Performance section of the G280 AFM to incorporate new wet runway tables. 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 would affect 195 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × \$85 per hour = \$85	\$0	\$85	\$16,575

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:

2023-04-02 Gulfstream Aerospace LP:
Amendment 39-22349; Docket No. FAA-2022-1253; Project Identifier MCAI-2022-00698-T.

(a) Effective Date

This airworthiness directive (AD) is effective April 7, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Gulfstream Aerospace LP Model Gulfstream G280 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a determination that the existing wet runway performance tables in the airplane flight manual (AFM) may not provide an acceptable level of safety. The FAA is issuing this AD to address the existing AFM wet runway performance tables that could allow the airplane to experience runway excursions or overruns during takeoff.

(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, Civil Aviation Authority of Israel (CAAI) AD ISR-I-97-2022-04-9, dated May 1, 2022 (CAAI AD ISR-I-97-2022-04-9).

(h) Exception to CAAI AD ISR-I-97-2022-04-9

Where CAAI AD ISR-I-97-2022-04-9 refers to its effective date, this AD requires using the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

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

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) Civil Aviation Authority of Israel (CAAI) AD ISR-I-97-2022-04-9, dated May 1, 2022.

(ii) [Reserved]

(3) For CAAI AD ISR-I-97-2022-04-9, contact Civil Aviation Authority of Israel (CAAI), P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972-3-9774665; fax 972-3-9774592; email aip@mot.gov.il. You may find this CAAI AD on the CAAI website at caa.gov.il.

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

availability of this material at the FAA, call 206-231-3195.

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

Issued on February 14, 2023.

Christina Underwood,

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

[FR Doc. 2023-04255 Filed 3-2-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-0168; Project Identifier MCAI-2022-00553-T; Amendment 39-22350; AD 2023-04-03]

RIN 2120-AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This AD was prompted by reports of cracks at the upper and lower fastener holes of a repair plate in the stubwing, which had been applied to repair heat damage. This AD requires a one-time inspection of the fuselage skin in the stubwing bay area to determine if a heat damage repair plate is installed, an inspection of repaired areas for cracking, and applicable corrective actions, 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 becomes effective March 20, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 20, 2023.

The FAA must receive comments on this AD by April 17, 2023.

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-2023-0168; 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 AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; telephone 206-231-3225; email Dan.Rodina@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-2023-0168; Project Identifier MCAI-2022-00553-T" 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 Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; telephone 206-231-3225; email Dan.Rodina@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022-0070, dated April 21, 2022 (EASA AD 2022-0070) (also referred to as the MCAI), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states that cracks have been reported at the upper and lower fastener holes of a repair plate, located within the boundaries of the stubwing, which had been applied to repair heat damage. The cracks were found about 32,000 flight cycles after the repair plate was installed—earlier than expected, suggesting reduced resistance to crack growth due to overheated aluminum. This condition, if not detected and corrected, could lead to reduced structural integrity of the airplane. You may examine the MCAI in the AD

docket at *regulations.gov* under Docket No. FAA-2023-0168.

Related Service Information Under 1 CFR Part 51

EASA AD 2022-0070 specifies procedures for a one-time inspection of the fuselage skin in the stubwing bay area to determine whether a heat damage repair plate is installed within the boundaries of the stubwing. EASA AD 2022-0070 also specifies procedures for a high-frequency eddy-current (HFEC) inspection for cracks of any repaired area, damage tolerance inspections, crack repair, and reporting of inspection results to Fokker. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022-0070 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022-0070 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022-0070 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the

heading of a particular section in EASA AD 2022-0070 does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA AD 2022-0070. Service information required by EASA AD 2022-0070 for compliance will be available at *regulations.gov* under Docket No. FAA-2023-0168 after this AD is published.

FAA's Justification 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.

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the forgoing reason(s), 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.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
9 work-hours × \$85 per hour = \$765	\$0	\$765

The FAA estimates the following costs to do on-condition HFEC inspections that would be required

based on the results of any required actions. The FAA has no way of

determining the number of aircraft that might need these inspections:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
17 work-hours × \$85 per hour = \$1,445	\$0	\$1,445

The FAA has received no definitive data on which to base the cost estimates for the damage tolerance inspections and repairs specified in this AD.

Paperwork Reduction Act

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. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under

that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023-04-03 Fokker Services B.V.:

Amendment 39-22350; Docket No. FAA-2023-0168; Project Identifier MCAI-2022-00553-T.

(a) Effective Date

This airworthiness directive (AD) is effective March 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks at the upper and lower fastener holes of a repair plate in the stubwing, which had been applied to repair heat damage, found earlier than expected. The FAA is issuing this AD to address reduced resistance to crack growth due to overheated aluminum. This condition, if not detected and corrected, could lead to 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 2022-0070, dated April 21, 2022 (EASA AD 2022-0070).

(h) Exceptions to EASA AD 2022-0070

(1) Where EASA AD 2022-0070 refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (5) of EASA AD 2022-0070 specifies to report inspection results to

Fokker Services B.V. within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(2)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(3) This AD does not adopt the "Remarks" section of EASA AD 2022-0070.

(i) 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 (j) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; telephone 206-231-3225; email Dan.Rodina@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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 2022-0070, dated April 21, 2022.

(ii) [Reserved]

(3) For EASA AD 2022-0070, 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 at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the

availability of this material at the FAA, call 206-231-3195.

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

Issued on February 15, 2023.

Christina Underwood,

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

[FR Doc. 2023-04254 Filed 3-2-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-0166; Project Identifier MCAI-2022-00576-T; Amendment 39-22341; AD 2023-03-16]

RIN 2120-AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborá Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 190-300 airplanes. This AD was prompted by failed lockwires on the attachment of the left-hand main landing gear (MLG) trunnion bearing to spar 2. This AD requires inspecting for damage of the left- and right-hand MLG trunnion bearing attaching parts, replacing damaged parts, and modifying the MLG trunnion bearing attaching parts, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective March 20, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 20, 2023.

The FAA must receive comments on this AD by April 17, 2023.

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

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0166; 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 AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For ANAC material incorporated by reference (IBR) in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246-190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203-6600; email pac@anac.gov.br; website anac.gov.br/en/. You may find this material on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

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

FOR FURTHER INFORMATION CONTACT:

Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206-231-3653; email Hassan.M.Ibrahim@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-2023-0166; Project Identifier MCAI-2022-00576-T" 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 Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206-231-3653; email hassan.m.ibrahim@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2022-04-02, effective May 3, 2022 (ANAC AD 2022-04-02) (also referred to as the MCAI), to correct an unsafe condition for certain Embraer S.A. Model ERJ 190-300 airplanes. The MCAI states that there was an occurrence of failed lockwires, having part number (P/N) MS 20995C32, on the attachment of the left-hand MLG trunnion bearing to spar 2 on a flight test airplane. These lockwires are

designed to safety one shear pin to the other, keeping the integrity of the assembly through the torque applied to the shear pins. The structure vibration could cause the rotation of the shear pins causing the lockwire failure and the shear pin migration, which can collapse the MLG structure during takeoff and landing operations. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2023-0166.

Related Service Information Under 1 CFR Part 51

ANAC AD 2022-04-02 specifies procedures for inspecting for damage of the left- and right-hand MLG trunnion bearing attaching parts, replacing any damaged parts and torquing shear pins, having P/N 196-32185-007 or P/N 196-32216-007, and modifying the MLG trunnion bearing attaching parts to spars 2 and 3. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in ANAC AD 2022-04-02 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating

this process with manufacturers and CAAs. As a result, ANAC AD 2022-04-02 is incorporated by reference in this AD. This AD requires compliance with ANAC AD 2022-04-02 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Service information required by ANAC AD 2022-04-02 for compliance will be available at *regulations.gov* under Docket No. FAA-2023-0166 after this AD is published.

FAA's Justification 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.

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the forgoing reason(s), 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.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
69 work-hours × \$85 per hour = \$5,865	\$7,333 per kit	Up to \$20,531.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–03–16 Embraer S.A. (Type Certificate Previously Held by Yaborá Indústria Aeronáutica S.A.; Embraer S.A.): Amendment 39–22341; Docket No. FAA–2023–0166; Project Identifier MCAI–2022–00576–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model ERJ 190–300 airplanes, certificated in any category, serial numbers 19020009 through 19020011 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by failed lockwires on the attachment of the left-hand main landing gear (MLG) trunnion bearing to spar 2 on a flight test airplane. These lockwires are designed to safety one shear pin to the other, keeping the integrity of the assembly through the torque applied to the shear pins. The FAA is issuing this AD to address this condition, which could result in structure vibration and possible rotation of the shear pins causing lockwire failure and shear pin migration, which could collapse the MLG structure during takeoff and landing operations.

(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, ANAC AD 2022–04–02.

(h) Exceptions to ANAC AD 2022–04–02

- (1) Where ANAC AD 2022–04–02 refers to its effective date, this AD requires using the effective date of this AD.
- (2) The "Alternative method of compliance (AMOC)" section of ANAC AD 2022–04–02 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

- (1) *Alternative Methods of Compliance (AMOCs)*: The Manager, 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 (j) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email hassan.m.ibrahim@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) Agência Nacional de Aviação Civil (ANAC) AD 2022–04–02, effective May 3, 2022.

(ii) [Reserved]

(3) For ANAC AD 2022–04–02, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email: pac@anac.gov.br; internet anac.gov.br/en/. You may find this IBR material on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

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

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

Issued on February 10, 2023.

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

[FR Doc. 2023–04253 Filed 3–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2022-1646; Project Identifier MCAI-2022-01135-T; Amendment 39-22348; AD 2023-04-01]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD-700-2A12 airplanes. This AD was prompted by report that the passenger door functional test engineering requirements (FTEs) were not fully accomplished on several airplanes. This AD requires measuring the passenger door steps, passenger door gaps, and passenger door stops rigging, and re-adjusting the door if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 7, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 7, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2022-1646; 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 service information identified in this final rule, contact Bombardier

Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-2999; email ac.yul@aero.bombardier.com; website bombardier.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, 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-2022-1646.

FOR FURTHER INFORMATION CONTACT:

Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228-7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD-700-2A12 airplanes. The NPRM published in the **Federal Register** on December 16, 2022 (87 FR 77040). The NPRM was prompted by AD CF-2022-48, dated August 18, 2022, issued by Transport Canada, which is the aviation authority for Canada (Transport Canada AD CF-2022-48) (also referred to as the MCAI). The MCAI states that non-conformities have been reported involving the passenger door FTEs. It has been found that the FTER was not fully accomplished on several airplanes with the assembled airplane in the weight-on-wheel condition, which could affect the rigging of the passenger door. Door mis-rigging could result in higher loads on the passenger door stops that could initiate cracks before the intended design service goal, and an in-flight opening of the passenger door.

In the NPRM, the FAA proposed to require measuring the passenger door steps, passenger door gaps, and passenger door stops rigging, and re-adjusting the door if necessary. The

FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2022-1646.

Discussion of Final Airworthiness Directive**Comments**

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

Conclusion

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 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 14 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 700-52-7511, dated July 22, 2022. This service information specifies procedures for measuring the passenger door steps and gaps, rigging of the passenger door stops, and corrective actions if the measurements are not within the specified 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 29 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 4 work-hours × \$85 per hour = \$340	\$0	\$340	Up to \$9,860.

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

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 30 work-hours × \$85 per hour = \$3,400	\$0	Up to \$3,400.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2023-04-01 Bombardier, Inc.: Amendment 39-22348; Docket No. FAA-2022-1646; Project Identifier MCAI-2022-01135-T.

(a) Effective Date

This airworthiness directive (AD) is effective April 7, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD-700-2A12 airplanes, certificated in any category, serial numbers 70006 through 70061 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code: 52, Doors.

(e) Unsafe Condition

This AD was prompted by a report that the passenger door functional test engineering requirements (FTEs) were not fully accomplished on several airplanes. The FAA is issuing this AD to ensure that the passenger door is properly rigged. The unsafe condition, if not addressed, could result in higher loads on the passenger door stops that could initiate cracks before the intended design service goal, and an in-flight opening of the passenger door.

(f) Compliance

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

(g) Requirements

Within 72 months after the effective date of this AD, measure the passenger door steps and gap values on each lateral side of the door at 8 points, and on the lower and upper sides of the door at 4 points, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 700-52-7511, dated July 22, 2022. Then accomplish the actions specified by paragraph (g)(1) or (2) of this AD, as applicable.

- (1) If any measurement is not within the specified limits, before further flight, re-

adjust the passenger door steps and gaps to obtain the acceptable (necessary) values in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 700-52-7511, dated July 22, 2022.

(2) If all of the measurements are within the specified limits, before further flight, with the door in the closed position, measure the passenger door stops gaps in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 700-52-7511, dated July 22, 2022. If any passenger door stops gaps measurement is not within the specified limits, before further flight, re-adjust the passenger door stops to obtain the acceptable (necessary) values in accordance with Part D of the Accomplishment Instructions of Bombardier Service Bulletin 700-52-7511, dated July 22, 2022.

(h) No Reporting Requirement

Although Bombardier Service Bulletin 700-52-7511, dated July 22, 2022, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

(1) Refer to Transport Canada AD CF-2022-48, dated August 18, 2022, for related information. This Transport Canada AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-1646.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228-7300; email 9-avs-nyaco-cos@faa.gov.

(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) Bombardier Service Bulletin 700-52-7511, dated July 22, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-2999; email ac.yul@aero.bombardier.com; website bombardier.com.

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

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

Issued on February 14, 2023.

Christina Underwood,

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

[FR Doc. 2023-04256 Filed 3-2-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2022-1243; Project Identifier MCAI-2022-00674-T; Amendment 39-22344; AD 2023-03-19]

RIN 2120-AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborá Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 170 airplanes. This AD was prompted by a report of

uncommanded setting of the barometric reference in both primary flight displays (PFDs) due to the architecture of data communication of the Control I/O modules, which interconnect the display controllers to the air data system. This AD requires installing updated Primus EPIC software, as specified in an Agência Nacional de Aviação Civil (ANAC) 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 7, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 7, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2022-1243; 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 ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246-190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203-6600; email pac@anac.gov.br; website anac.gov.br/en/. You may find this material on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at regulations.gov under Docket No. FAA-2022-1243.

FOR FURTHER INFORMATION CONTACT:

Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206-231-3653; email hassan.m.ibrahim@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 Embraer S.A. Model ERJ 170-100 LR, -100 STD, -100 SE, and -100 SU airplanes; and Model ERJ 170-200 LR, -200 SU, -200 STD, and -200 LL airplanes. The NPRM published in the **Federal Register** on September 30, 2022 (87 FR 59345). The NPRM was prompted by AD 2022-05-03, effective May 25, 2022 issued by ANAC, which is the aviation authority for Brazil (ANAC AD 2022-05-03) (also referred to as the MCAI). The MCAI states that there was a report of uncommanded setting of the barometric reference in both PFDs due to the architecture of data communication of the Control I/O modules, which interconnect the display controllers to the air data system.

In the NPRM, the FAA proposed to require installing updated Primus EPIC software, as specified in ANAC AD 2022-05-03. The FAA is issuing this AD to address the unsafe condition which could interfere with the decisions taken by the flightcrew during critical phases of flight, and possibly result in reduced controllability of the airplane.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2022-1243.

Related Rulemaking

This AD requires installing updated Primus EPIC software. ANAC AD 2022-05-03 specifies that accomplishment of that AD “covers the accomplishment of [terminates] ANAC AD 2019-10-02” (which corresponds to FAA AD 2020-05-22) Amendment 39-19872 (85 FR 15936, March 20, 2020) (AD 2020-05-22). Both AD 2020-05-22 and this AD require installing updated Primus EPIC software standards, and the FAA has determined that the actions in AD 2020-05-22 must be done prior to accomplishing the actions in this AD. Accomplishment of the actions in this AD on an airplane would then terminate all of the requirements of AD 2020-05-22 for that airplane only.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Horizon Air. The following presents the comment received on the NPRM and the FAA's response to each comment.

Request To Revise an Exception

Horizon Air requested that the FAA revise paragraph (h)(2) of this AD. The commenter noted that paragraph (h)(2)

of the proposed AD states: “The ‘Alternative methods of compliance (AMOC)’ section of ANAC AD 2022–05–03 does not apply to this AD.” Horizon Air asked that the proposed AD be revised to limit this exception to paragraph (c)(1) of ANAC AD 2022–05–03. Horizon Air noted that paragraphs (c)(2), (c)(2)(i), and (c)(2)(ii) of ANAC AD 2022–05–03 clarify that only steps labeled as Required for Compliance (RC), including sub-steps under a RC step and any figures identified in a RC step, must be done to comply with that AD. The commenter reasoned that excepting paragraphs (c)(2), (c)(2)(i) and (c)(2)(ii) of ANAC AD 2022–05–03 would unnecessarily mandate steps that are not required to correct the unsafe condition.

The FAA agrees with the commenter’s request, and notes that although the current service information does not have RC steps labeled, Embraer might

revise the service information to include RC steps in the future. Therefore, the FAA changed paragraph (h)(2) of this AD to state that paragraph (c)(1) of ANAC AD 2022–05–03 does not apply to this AD. The FAA also added paragraph (j)(3) of this AD to clarify the provisions related to complying with service information with RC steps labeled.

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, and any other changes described previously, 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

ANAC AD 2022–05–03 specifies procedures for installing updated Primus EPIC software. 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 will affect 668 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × \$85 per hour = \$680	\$0	\$680	\$454,240

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:

2023–03–19 Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria

Aeronáutica S.A.; Embraer S.A.):
Amendment 39–22344; Docket No. FAA–2022–1243; Project Identifier MCAI–2022–00674–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 7, 2023.

(b) Affected ADs

This AD affects AD 2020–05–22, Amendment 39–19872 (85 FR 15936, March 20, 2022) (AD 2020–05–22).

(c) Applicability

This AD applies to Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2022–05–03, effective May 25, 2022 (ANAC AD 2022–05–03).

(d) Subject

Air Transport Association (ATA) of America Code 31, Instruments.

(e) Unsafe Condition

This AD was prompted by a report of uncommanded setting of the barometric reference in both primary flight displays due to the architecture of data communication of the Control I/O modules, which interconnect the display controllers to the air data system. The FAA is issuing this AD to address this condition, which could interfere with the decisions taken by the flightcrew during

critical phases of flight, and possibly result in reduced controllability 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, ANAC AD 2022–05–03.

(h) Exceptions to ANAC AD 2022–05–03

(1) Where ANAC AD 2022–05–03 refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (c)(1) of ANAC AD 2022–05–03 does not apply to this AD.

(3) Where paragraph (d) of ANAC AD 2022–05–03 specifies you must use certain service information for software installation, this AD specifies to use that service information as applicable, except as provided in paragraphs (a)(1) and (2) of ANAC AD 2022–05–03.

(i) Terminating Action for AD 2020–05–22

Accomplishing the actions required by this AD on an airplane terminates all requirements of AD 2020–05–22 for that airplane only.

(j) 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 (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC)*: Except as specified by paragraph (j)(2) of this AD: if any service information contains steps that are labeled as RC, the provisions of paragraphs (j)(3)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled "RC Exempt," then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

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

(k) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email hassan.m.ibrahim@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) Agência Nacional de Aviação Civil (ANAC) AD 2022–05–03, effective May 25, 2022.

(ii) [Reserved]

(3) ANAC AD 2022–05–03, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email pac@anac.gov.br; website anac.gov.br/en/. You may find this ANAC AD on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

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

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

Issued on February 10, 2023.

Christina Underwood,

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

[FR Doc. 2023–04251 Filed 3–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1582; Project Identifier MCAI–2022–01232–T; Amendment 39–22342; AD 2023–03–17]

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 A350–941 and –1041 airplanes. This AD was prompted by an in-service inspection that found overhead storage compartment (OHSC) crash rods that were disconnected. This AD requires a one-time detailed inspection of the OHSC crash rods and, depending on findings, corrective actions, 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 7, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 7, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1582; 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 EASA 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.

- For Airbus service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No. 2, 31700 Blagnac Cedex, France;

telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com*; website *airbus.com*.

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1582.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@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 Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on December 15, 2022 (87 FR 76589). The NPRM was prompted by AD 2022–0186, dated September 13, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0186) (also referred to as the MCAI). The MCAI states that an in-service inspection found OHSC crash rods that were disconnected. The investigation

conducted by the manufacturer determined that this incorrect installation was due to human error in the final assembly line. This condition, if not corrected, could affect the structural integrity of the OHSC under emergency landing loads, which could lead to OHSC detachment, resulting in injury to occupants and blocking an escape path during an emergency evacuation.

In the NPRM, the FAA proposed to require a one-time detailed inspection of the OHSC crash rods and, depending on findings, corrective actions, as specified in EASA AD 2022–0186. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1582.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter who supported the NPRM without change.

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

EASA AD 2022–0186 specifies procedures for a one-time detailed inspection for any defect (*i.e.*, OHSC crash rod is disconnected or the quick connections are unlocked) of the OHSC crash rods, and, depending on findings, corrective actions (*i.e.*, installation or locking of the quick connections on the OHSC crash rods).

The FAA also reviewed Airbus Service Bulletin A350–53–P074, dated July 29, 2022, which identifies the affected manufacturer serial numbers.

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 **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × \$85 per hour = \$510	\$0	\$510	\$15,300

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

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × \$85 per hour = \$170	\$4	\$174

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under

that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or

develop on products identified in this rulemaking action.

Regulatory Findings

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:

2023–03–17 Airbus SAS: Amendment 39–22342; Docket No. FAA–2022–1582; Project Identifier MCAI–2022–01232–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 7, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, having manufacturer serial numbers identified in Airbus Service Bulletin A350–53–P074, dated July 29, 2022.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an in-service inspection that found overhead storage

compartment (OHSC) crash rods that were disconnected. The FAA is issuing this AD to address this incorrect installation, which could affect the structural integrity of the OHSC under emergency landing loads. The unsafe condition, if not addressed, could lead to OHSC detachment, resulting in injury to occupants and blocking an escape path during an emergency evacuation.

(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 2022–0186, dated September 13, 2022 (EASA AD 2022–0186).

(h) Exceptions to EASA AD 2022–0186

(1) Where EASA AD 2022–0186 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 2022–0186.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0186 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits, as described in 14 CFR 21.197 and 21.199, are not allowed.

(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 responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraphs (i) and (k)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests

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

(l) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email Dat.V.Le@faa.gov.

(m) 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) Airbus Service Bulletin A350–53–P074, dated July 29, 2022.

(ii) European Union Aviation Safety Agency (EASA) AD 2022–0186, dated September 13, 2022.

(3) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No. 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email continued-airworthiness.a350@airbus.com; website airbus.com.

(4) For EASA AD 2022–0186, 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.

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

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

Issued on February 10, 2023.

Christina Underwood,

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

[FR Doc. 2023–04252 Filed 3–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 587****Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 56A and 57A**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing two general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 56A and 57A, which were previously made available on OFAC's website.

DATES: GLs 56A and 57A were issued on February 3, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, 202-622-2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

This document and additional information concerning OFAC are available on OFAC's website: www.treas.gov/ofac.

Background

On February 3, 2022, OFAC issued GLs 56A and 57A to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR). At the time of issuance, OFAC made GLs 56A and 57A available on its website (www.treas.gov/ofac). The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL**Russian Harmful Foreign Activities Sanctions Regulations****31 CFR Part 587****GENERAL LICENSE NO. 56A****Authorizing Certain Services With Respect to the European Union**

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by (1) the determination of November 21, 2022 made pursuant to section 1(a)(ii) of Executive Order (E.O.) 14071 ("Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil

of Russian Federation Origin") related to the importation of crude oil, or (2) the determination of February 3, 2023 made pursuant to section 1(a)(ii) of E.O. 14071 ("Prohibitions on Certain Services as They Relate to the Maritime Transport of Petroleum Products of Russian Federation Origin") related to the importation of petroleum products, into the Republic of Bulgaria, the Republic of Croatia, or landlocked European Union Member States as described in Council Regulation (EU) 2022/879 of June 3, 2022, are authorized.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective February 3, 2023, General License No. 56, dated November 22, 2022, is replaced and superseded in its entirety by this General License No. 56A. Andrea M. Gacki, Director, Office of Foreign Assets Control.

Dated: February 3, 2023.

OFFICE OF FOREIGN ASSETS CONTROL**Russian Harmful Foreign Activities Sanctions Regulations****31 CFR Part 587****GENERAL LICENSE NO. 57A****Authorizing Certain Services Related to Vessel Emergencies**

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by (1) the determination of November 21, 2022 made pursuant to section 1(a)(ii) of Executive Order (E.O.) 14071 ("Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin") or (2) the determination of February 3, 2023 made pursuant to section 1(a)(ii) of E.O. 14071 ("Prohibitions on Certain Services as They Relate to the Maritime Transport of Petroleum Products of Russian Federation Origin") that are ordinarily incident and necessary to addressing vessel emergencies related to the health or safety of the crew or environmental protection, including safe docking or anchoring, emergency repairs, or salvage operations, are authorized.

(b) This general license does not authorize: (1) Any transactions related to the offloading of crude oil or petroleum products of Russian Federation origin, except for the offloading of crude oil or petroleum products that is ordinarily incident and necessary to address vessel emergencies authorized pursuant to paragraph (a) of this general license;

(2) Any transactions related to the sale of crude oil or petroleum products of Russian Federation origin; or

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective February 3, 2023, General License No. 57, dated November 22, 2022, is

replaced and superseded in its entirety by this General License No. 57A. Andrea M. Gacki, Director, Office of Foreign Assets Control. Dated: February 3, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023-04346 Filed 3-2-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket Number USCG-2022-0995]

RIN 1625-AA00

Safety Zones in Reentry Sites; Panama City, Pensacola, and Tallahassee, Florida

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones for the safe splashdown and recovery of reentry vehicles launched by Space Exploration Technologies Corporation (SpaceX) in support of National Aeronautics and Space Administration (NASA) missions. The temporary safety zones are located within the Coast Guard Sector Mobile area of responsibility (AOR) offshore of Panama City, Pensacola, and Tallahassee, Florida. This rule prohibits U.S.-flagged vessels from entering any of the temporary safety zones unless authorized by the Commanding Officer of Coast Guard Sector Mobile or a designated representative. Foreign-flagged vessels are encouraged to remain outside the safety zones. This action is necessary to protect vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations in the U.S. Exclusive Economic Zone (EEZ). It is also necessary to ensure the safe recovery of reentry vehicles, and any personnel involved in reentry services, after the splashdown. We received no public comments.

DATES: This rule is effective from March 3, 2023 through February 4, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0995 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 the Sector Mobile Waterways Division (dpw), U.S. Coast Guard; telephone: 251-441-5940, 251-441-5767, email SectorMobileWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AOR Area of Responsibility
 BNM Broadcast Notice to Mariners
 CFR Code of Federal Regulations
 DHS Department of Homeland Security
 EEZ Exclusive Economic Zone
 FAA Federal Aviation Administration
 FR Federal Register
 NASA National Aeronautics and Space Administration
 NM Nautical Mile
 NOE Notice of Enforcement
 NPRM Notice of Proposed Rulemaking
 § Section
 SMIB Safety Marine Information Bulletin
 SpaceX Space Exploration Technologies Corporation
 U.S.C. United States Code

II. Background Information and Regulatory History

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283) (Authorization Act) was enacted. Section 8343 (134 Stat. 4710) calls for the Coast Guard to conduct a two-year pilot program to establish and implement a process to establish safety zones to address special activities in the U.S. Exclusive Economic Zone (EEZ).¹ These special activities include space activities² carried out by United States (U.S.) citizens. Terms used to describe space activities, including *launch*, *reentry site*, and *reentry vehicle*, are defined in 51 U.S.C. 50902, and in this document.

The Coast Guard has long monitored space activities impacting the maritime domain and taken actions to ensure the safety of vessels and the public as needed during space launch operations.³ In conducting this activity, the Coast Guard engages with other government agencies, including the Federal Aviation Administration (FAA) and National Aeronautics and Space Administration (NASA), and private space operators, including Space Exploration Technologies Corporation (SpaceX). This engagement is necessary to ensure statutory and regulatory

obligations are met to ensure the safety of launch operations and waterway users.

During this engagement, the Coast Guard was informed of space reentry vehicles and recovery operations in the U.S. EEZ. Section 50902 of 51 U.S.C. defines “reentry vehicle” as a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact. SpaceX, a U.S. company, has identified three reentry sites⁴ within the U.S. EEZ of the Coast Guard District Eight area of responsibility (AOR) expected to be used for the splashdown⁵ and recovery of reentry vehicles. All of these sites are located in the Gulf of Mexico off the coast of Florida (FL).

On May 4, 2022, we published a temporary final rule in the **Federal Register** (87 FR 26273) for two anticipated reentry vehicle recovery missions within the Coast Guard District Eight AOR offshore of Panama City, Pensacola, and Tallahassee, FL from April 17, 2022 through May 15, 2022. Based on the date the Coast Guard was informed of the reentry, and the immediate need to establish the safety zone, the Coast Guard did not have sufficient time to publish a notice of proposed rulemaking (NPRM) for that rule. The Coast Guard additionally published recovery mission temporary final rules for the periods from August 22, 2022 through September 30, 2022 (87 FR 51253) and October 12, 2022 through November 10, 2022 (87 FR 61508).

On January 11, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** titled, “Safety Zones in Reentry Sites; Panama City, Pensacola, and Tallahassee, Florida.” (88 FR 1528) In the NPRM, we stated the purpose of the rulemaking was to create three temporary safety zones off the coast of FL that would ensure the protection of vessels and waterway users in the U.S. Exclusive Economic Zone (EEZ)⁶ from the potential hazards created by reentry vehicle splashdowns⁷ and recovery operations, and the safe recovery of reentry vehicles and personnel involved

in reentry services.⁸ The NPRM invited comments on the proposed rule. During the comment period that ended February 10, 20223, we received one comment.

With this temporary final rule, the Coast Guard is ensuring the three temporary safety zones created by this TFR are in place for the safe reentry vehicle splashdown and recovery of reentry vehicles missions launched by SpaceX in support of NASA missions, and privately chartered missions during the remaining period of the pilot program, which ends on February 4, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under section 8343 of the Authorization Act. The Sector Commander Sector Mobile has determined there are potential hazards in the U.S. EEZ created by reentry vehicle splashdowns and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services. The purpose of this rule is to ensure safety of vessels, reentry vehicles, personnel involved in reentry services and the navigable waters in the safety zone, whenever a splashdown occurs.

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** because delaying the effective date of the rule would be impracticable and contrary to the public interest. This rule is needed to ensure there are safety zones in place for upcoming recovery operations. Delaying the enforcement of this rule to allow a 30-day effective period would inhibit the Coast Guard’s ability to fulfill its mission to ensure the protection of vessels and waterway users in the U.S. EEZ from the potential hazards created by reentry vehicle splashdowns and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services.

IV. Discussion of Comments and the Rule

As noted above, we received one comment on the NPRM that was published on January 10, 2023. The commenter stated that a notice to the public of space recovery operations in the **Federal Register** alone, in their opinion, was insufficient. We concur with this opinion and that is why the Coast Guard has three different means of

¹ The Coast Guard defines the U.S. *exclusive economic zone* in 33 CFR 2.30(a). *Territorial sea* is defined in 33 CFR 2.22.

² *Space Activities* means space activities, including launch and reentry, as such terms are defined in section 50902 of Title 51, United States Code, carried out by United States citizens.

³ The term *launch* is defined in 51 U.S.C. 50902.

⁴ *Reentry site* means the location on Earth to which a reentry vehicle is intended to return (as defined in a license the FAA Administrator issues or transfers under this chapter).

⁵ *Splashdown* refers to the landing of a reentry vehicle into a body of water.

⁶ The Coast Guard defines the U.S. *exclusive economic zone* in 33 CFR 2.30(a). *Territorial sea* is defined in 33 CFR 2.22.

⁷ *Splashdown* refers to the landing of a reentry vehicle into a body of water.

⁸ *Reentry Services* means (1) activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and (2) the conduct of a reentry.

disseminating this information as prescribed in this rule.

The temporary safety zones are located within the Coast Guard Sector Mobile AOR offshore of Panama City, Pensacola, and Tallahassee, FL in the Gulf of Mexico. The temporary final rule prohibits U.S.-flagged vessels from entering any of the safety zones unless authorized by the Sector Commander of Coast Guard Sector Mobile or a designated representative. Because the safety zones are within the U.S. EEZ, only U.S.-flagged vessels would be subject to enforcement. However, all foreign-flagged vessels are encouraged to remain outside the safety zones.

The three temporary safety zones are located off the coast of FL in the Gulf of Mexico in the following areas: (1) Approximately 30 NM southwest from Pensacola; (2) 26 NM southwest from Panama City; and 40 NM south of Tallahassee. All three safety zones have an approximate area of 100 square miles and are in the shape of a square.

The coordinates for the safety zones are based on the furthest north, east, south, and west points of splashdown for the reentry vehicles and are determined from data and modeling by SpaceX and NASA. The coordinates take into account the trajectories of the reentry vehicles coming out of orbit, the potential risk to the public, and the proximity to medical facilities that meet NASA requirements. The specific coordinates for the three temporary safety zones are presented in the regulatory text at the end of this document.

To the extent feasible, the Sector Commander or a designated representative will inform the public of the activation of the three temporary safety zones by Notice of Enforcement (NOE) published in the **Federal Register** at least two days before the reentry vehicle splashdown. The NOE would identify the approximate date(s) during which a reentry vehicle splashdown and recovery operations would occur.

To the extent possible, twenty-four hours before a reentry vehicle splashdown and recovery operations, the Sector Commander or designated representative will inform the public that only one of the three safety zones would remain activated (subject to enforcement) until announced by Broadcast Notice to Mariners (BNM) on VHF-FM channel 16, and/or Safety Marine Information Broadcast (SMIB) (as appropriate) that the safety zone is no longer subject to enforcement. The specific temporary safety zone to be enforced would be based on varying mission and environmental factors,

including atmospheric conditions, sea state, weather, and orbital calculations.

The SMIB will include the geographic coordinates of the activated safety zone, pertinent dates and times of enforcement, and information related to potential hazards with a reentry vehicle splashdown and recovery operations associated with space activities, including marine environmental and public health hazards from hydrazine and other potential oil or hazardous substances.

When the safety zone is activated, the Sector Commander or a designated representative will be able to restrict U.S.-flagged vessel movement including but not limited to transiting, anchoring, or mooring within the safety zone to protect vessels from hazards associated with space activities. The activated safety zone will ensure the protection of vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations. This includes protection during the recovery of a reentry vehicle, and the protection of personnel involved in reentry services and space support vessels.⁹

After a reentry vehicle splashdown, the Sector Commander or a designated representative would grant general permission to come no closer than 3 NM within the activated safety zone from any reentry vehicle or space support vessel engaged in the recovery operations. The recovery operations are expected to last approximately one hour. That should allow for sufficient time to let any potential toxic materials clear the reentry vehicle, recovery of the reentry vehicle by the space support vessel and address any potential medical evacuations for any personnel involved in reentry services that were onboard the reentry vehicle.

Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the Sector Commander or designated representative would issue a BNM on VHF-FM channel 16 announcing the activated safety zone is no longer subject to enforcement. A photograph of a reentry vehicle and space support vessel expected to use the reentry sites are available in the docket.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking.

⁹ *Space Support Vessel* means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and scope of the temporary safety zones. The temporary safety zones are limited in size and location to only those areas where reentry vehicles splashdown and recovery operations occur. The safety zones are limited in scope, as vessel traffic would be able to safely transit around the activated safety zone which will only impact a small part of the U.S. EEZ within the Gulf of Mexico. The proposed rule involves the establishment of three temporary safety zones which would be activated two days before a reentry vehicle splashdown and recovery operations. Twenty-four hours before a reentry vehicle splashdown, one of the three temporary safety zones would remain active. After a reentry vehicle splashdown, general permission would be granted to come no closer than 3 NM within the activated safety zone. There is a danger associated with fumes from the reentry vehicle after it has splashed down. Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the activated safety zone would no longer be subject to enforcement. The activated safety zone would ensure the protection of vessels and waterway users from the potential hazards created by a reentry vehicle splashdown and recovery operations and the recovery of a reentry vehicle, personnel involved in reentry services, and space support vessel.

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 0 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.

The safety zone activation and thus restriction to the public is expected to be approximately two hours per capsule recovery, and we anticipate one splash down during the effective period of this rule. Vessels would be able to transit around the activated safety zone location during this recovery. We do not anticipate any significant economic impact resulting from activation of the safety zones.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishing of three temporary safety zones, which would be activated two days before a reentry vehicle splashdown and recovery operations. Twenty-four hours before a reentry vehicle splashdown, one of the three temporary safety zones would remain activated. If one of the safety zones remains activated, the safety zone will be enforced for approximately four hours prior to a reentry vehicle splashdown and remain activated until announced by BNM on VHF–FM channel 16, and/or SMIB (as appropriate) that the safety zone is no longer subject to enforcement. After a reentry vehicle splashdown, general permission would be granted to come no closer than 3 NM within the activated safety zone. Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the activated safety zone would no longer be subject to

enforcement. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; section 8343 of Pub. L. 116–283, 134 Stat. 3388, 4710; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T08–1000 to read as follows:

§ 165.T08–1000 Safety Zones; Panama City, Pensacola, and Tallahassee, Florida.

(a) *Location.* The coordinates used in this paragraph are based on the World Geodetic System (WGS) 1984. The following areas are safety zones:

(1) *Pensacola site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29°53'02" N	–087°35'46" W
Point 2	29°53'02" N	–087°24'14" W
Point 3	29°42'58" N	–087°24'14" W
Point 4	29°42'58" N	–087°35'46" W

(2) *Panama City site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point

4, connecting back to Point 1:

Point 1	29°47'46" N	–086°16'44" W
Point 2	29°47'46" N	–086°05'20" W
Point 3	29°37'48" N	–086°05'20" W
Point 4	29°37'48" N	–086°16'44" W

(3) *Tallahassee site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29°21'47" N	–084°17'46" W
Point 2	29°21'47" N	–084°06'18" W
Point 3	29°11'46" N	–084°06'18" W
Point 4	29°11'46" N	–084°17'46" W

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Captain of the Port Sector Mobile; Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating a Coast Guard vessel; Coast Guard Representatives in the Merrill Operations Center; and other officers designated by the Captain of the Port Sector Mobile or assisting the Captain of the Port Sector Mobile in the enforcement of the safety zones.

Reentry services means

(1) Activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and

(2) The conduct of a reentry.

Reentry vehicle means a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact.

Space support vessel means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

Splashdown means the landing of a reentry vehicle into a body of water.

(c) *Regulations.* (1) Because the safety zones described in paragraph (a) of this section are within the U.S. Exclusive Economic Zone, only U.S. flagged vessels are subject to enforcement. All foreign-flagged vessels are encouraged to remain outside the safety zones.

(2) In accordance with the general regulations in 33 CFR part 165, subpart C, no U.S. flagged vessel may enter the safety zones described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Mobile or a designated representative, except as provided in paragraph (d)(3).

(d) *Enforcement periods.* (1) To the extent possible, at least two days before a reentry vehicle splashdown, the Captain of the Port Sector Mobile or designated representative will inform the public of the activation of the three safety zones described in paragraph (a) of this section by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Safety Marine Information Broadcast (as appropriate) for at least two days before the splashdown.

(2) To the extent possible, twenty-four hours before a reentry vehicle splashdown, the Captain of the Port Sector Mobile or designated representative will inform the public that only one of the three safety zones described in paragraph (a) will remain activated until announced by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Safety Marine Information Broadcast (as appropriate) that the safety zone is no longer subject to enforcement.

(3) After a reentry vehicle splashdown, the Captain of the Port Sector Mobile or a designated representative will grant general permission to come no closer than three nautical miles of any reentry vehicle or space support vessel engaged in the recovery operations, within the activated safety zone described in paragraph (a) of this section.

(4) Once a reentry vehicle, and any personnel involved in reentry service, are removed from the water and secured onboard a space support vessel, the Captain of the Port Sector Mobile or designated representative will issue a Broadcast Notice to Mariners on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement.

Dated: February 24, 2023.

Ulysses S. Mullins,

Captain, U.S. Coast Guard, Commander, Coast Guard Sector Mobile.

[FR Doc. 2023–04338 Filed 3–2–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0676; FRL–10186–02–R6]

Air Plan Approval; New Mexico; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the

Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the New Mexico Environment Department (NMED) on October 13, 2016. The revision was submitted in response to a finding of substantial inadequacy and SIP call as published by EPA on June 12, 2015, concerning excess emissions during periods of startup, shutdown, and malfunction (SSM) events. EPA is approving the SIP revision and finds that such revision corrects the inadequacies identified in New Mexico's SIP in the June 12, 2015 SIP call.

DATES: This rule is effective on April 3, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2016–0676. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO₂ Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665–6691, Shar.alan@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our September 30, 2022 (87 FR 59373) proposal. In that document we proposed to approve a revision to the New Mexico SIP submitted on October 13, 2016, in response to EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we proposed to approve the removal of sections 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC of Part 7 Excess Emissions from the New Mexico SIP. We also proposed to determine that

such SIP revision corrects the substantial inadequacies with the New Mexico identified in the June 12, 2015 SIP call.

II. Response to Comments

The public comment period for our proposed approval and determination expired on October 30, 2022, and no adverse comments were received. We received one comment supporting removal of sections 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC of Part 7 Excess Emissions from the New Mexico SIP. Therefore, we are finalizing our action as proposed.

III. Final Action

The EPA is approving a revision to the New Mexico SIP submitted on October 13, 2016, in response to EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we are approving the removal of sections 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.6(B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC of Part 7 Excess Emissions from the New Mexico SIP. We are approving these revisions in accordance with section 110 of the Act. EPA is also determining that such SIP revision corrects the deficiencies in New Mexico's SIP identified in the June 12, 2015 SIP call.

IV. Environmental Justice Considerations

As stated in the proposal and for informational purposes only, EPA provided additional information regarding this action and potentially impacted populations. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”¹

EPA provided additional analysis of environmental justice associated with this action for the purpose of providing

information to the public in our September 30, 2022 proposal (87 FR 59373). As discussed in the proposal, this action is intended to ensure that all communities and populations across New Mexico, and downwind areas, including people of color and low-income and indigenous populations overburdened by pollution, receive the full human health and environmental protection provided by the CAA through the removal of affirmative defense provisions that have interfered with the enforcement structure of the CAA by raising inappropriate impediments to enforcement by states, the EPA, or citizens. There is nothing in the record which would indicate that this action will have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing the incorporation by reference of certain sections of the “20.2.7 NMAC” in 40 CFR 52.1620, as described in the Final Action above. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for removal from the New Mexico SIP, have been removed from incorporation by reference by EPA into that plan, are no longer federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and incorporation by reference will be removed in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

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

Is not a “significant regulatory action” subject to review by the Office of

Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

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

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

Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA offered consultation (by letter dated September 29, 2022) on our proposed rulemaking to tribal governments that may be affected by this action. We received no requests for formal tribal consultation.

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

¹ <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 30, 2023.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. In § 52.1620(c), the first table titled “EPA Approved New Mexico Regulations” is amended by revising the entry for “Part 7” to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
Part 7	Excess Emissions.	7/10/2008, 10/13/2016	9/14/2009, 74 FR 46910, 3/2023 [Insert Federal Register citation].	Sections 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC are no longer in SIP, 3/3/2023.
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[FR Doc. 2023–03887 Filed 3–2–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

[Docket No. CDC–2021–0119]

RIN 0920–AA79

Possession, Use, and Transfer of Select Agents and Toxins—Addition of SARS–CoV/SARS–CoV–2 Chimeric Viruses Resulting From Any Deliberate Manipulation of SARS–CoV–2 To Incorporate Nucleic Acids Coding for SARS–CoV Virulence Factors to the HHS List of Select Agents and Toxins

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

ACTION: Final rule.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) has amended the select agents and toxins regulations to add SARS–CoV/SARS–CoV–2 chimeric viruses resulting from any deliberate manipulation of SARS–CoV–2 to

incorporate nucleic acids coding for SARS–CoV virulence factors to the list of HHS select agents and toxins. With this final rule, regulated entities are required to obtain prior approval from CDC to conduct deliberate manipulation of SARS–CoV–2 to incorporate nucleic acids coding for SARS–CoV virulence factors because these chimeric viruses have the potential to pose a severe threat to public health and safety.

DATES: Effective March 3, 2023.

FOR FURTHER INFORMATION CONTACT:

Samuel S. Edwin Ph.D., Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–4, Atlanta, Georgia 30329. Telephone: (404) 718–2000. Email: lrstat@cdc.gov.

SUPPLEMENTARY INFORMATION: The final rule is organized as follows:

- I. Background and Legal Authority
- II. Summary of Public Comments and Response to Comments
- III. Required Regulatory Analyses
 - A. Executive Orders 12866 and 13563
 - B. The Regulatory Flexibility Act
 - C. Paperwork Reduction Act of 1995
 - D. E.O. 12988: Civil Justice Reform
 - E. E.O. 13132: Federalism
 - F. Plain Language Act of 2010

I. Background and Legal Authority

On November 17, 2021, HHS/CDC published an interim final rule (IFR) (86 FR 64075) that amended the select agents and toxins regulations to add SARS–CoV/SARS–CoV–2 chimeric viruses resulting from any deliberate manipulation of SARS–CoV–2 to incorporate nucleic acids coding for SARS–CoV virulence factors¹ to the list of HHS select agents and toxins. The IFR also required the regulated entity obtain prior approval from CDC to conduct deliberate manipulation of SARS–CoV–2 to incorporate nucleic acids coding for SARS–CoV virulence factors and vice versa, because these chimeric viruses have the potential to pose a severe threat to public health and safety.

Legal Authority:

¹ Virulence factors are genes or gene modifications that are associated with virulence. Virulence factors determine a pathogen's ability to replicate, modify host defenses, spread within the host and to other individuals, and produce products that are toxic to the host. These factors may impact infectivity, transmissibility, immunity, vaccine sensitivity, pathogenicity, and disease severity. Viral virulence factors (e.g., structures, molecules, and regulatory systems) can impact features of viral pathogenicity including infectivity, replication, host tropism, the ability to evade the host response, and/or resistance to medical countermeasures, among other viral characteristics.

HHS/CDC is promulgating this rule under the authority of sections 201–204 and 221 of Title II of Public Law 107–188(42 U.S.C. 262a).

Title II, Subtitle A, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, (42 U.S.C. 262a), requires HHS to regulate the possession, use, and transfer of biological agents or toxins that have the potential to pose a severe threat to public health and safety (select agents and toxins). Accordingly, HHS has promulgated regulations requiring individuals or entities that possess, use, or transfer select agents and toxins to register with CDC. See 42 CFR part 73.

II. Summary of Public Comments and Response to Comments

The IFR solicited public comments, based on the following criteria, regarding whether SARS-CoV/SARS-CoV-2 chimeric viruses resulting from any deliberate manipulation of SARS-CoV-2 to incorporate nucleic acids coding for SARS-CoV virulence factors should be regulated as a select agent:

- (1) The effect on human health of exposure to the agent;
- (2) The degree of contagiousness of the agent and the methods by which the agent is transferred to humans;
- (3) The availability and effectiveness of pharmacotherapies and immunizations to treat and prevent any illness resulting from infection by the agent; and
- (4) Any other criteria, including the needs of children and other vulnerable populations that the commenter considers appropriate.

In addition, HHS/CDC invited comments specifically on any virulence factors found in SARS-CoV that would increase virulence in SARS-CoV-2.

HHS/CDC received three comments regarding the IFR.

Comment: One commenter, from academia, asked whether there is a need to create a new rule specific to SARS-CoV/SARS-CoV-2 chimeras because the regulation of the chimeras is covered in the “Guidance on the Regulation of Select Agents and Toxin Nucleic Acids” document. The commenter also stated that they did not support the addition of SARS-CoV/SARS-CoV-2 chimeric viruses to the HHS select agents list because the action would be an incremental step that could result in decreased scientific advances and thus reduced preparedness at the detriment of public health broadly. Finally, the commenter stated that the IFR does not adhere to federal standards set forth for rulemaking, and the goals of the IFR can be accomplished using existing regulatory infrastructure.

Response: HHS/CDC made no changes based on the comment. The “Guidance on the Regulation of Select Agents and Toxin Nucleic Acids” document includes information provided by HHS/CDC to assist registered entities with achieving regulatory compliance with the select agent and toxin regulations. SARS-CoV-2 is not a select agent and, previously, the select agent and toxins regulations only applied to nucleic acids capable of producing infectious select virus, which would be the majority of the genome and not a gene in isolation. The select agent and toxins regulations did not apply to specific genes or nucleic acids in isolation or non-select agent viruses. The Guidance document includes information on complying with the regulations for regulated genetic material, not for unregulated material or the genetic components of unregulated material. Further, a guidance document does not have the force and effect of law.

The basis for listing SARS-CoV/SARS-CoV-2 chimeric viruses resulting from any deliberate manipulation of SARS-CoV-2 to incorporate nucleic acids coding for SARS-CoV virulence factors as an HHS select agent is that:

- Virulence factors from SARS-CoV including, but not limited to, those involved in inflammasome activation during infection could be introduced into SARS-CoV-2 and create a chimeric virus with increased virulence.
- There is significant potential risk of merging a select agent virus and pandemic virus and creating a chimeric virus with the transmissibility of SARS-CoV-2 and the pathogenicity of SARS-CoV.

Comment: Two commenters, one from academia and one from industry, requested more robust definitions or guidance to clarify “virulence factor” and “chimera” to explicitly define “virulence factors of concern.”

Response: HHS/CDC agreed with the commenters.

Virulence factors are genes or gene modifications that are associated with virulence. Virulence factors determine a pathogen’s ability to replicate, modify host defenses, spread within the host and to other individuals, and produce products that are toxic to the host. These factors may impact infectivity, transmissibility, immunity, vaccine sensitivity, pathogenicity, and disease severity.

SARS-CoV/SARS-CoV-2 chimeric viruses result from any intentional manipulation of SARS-CoV-2 to include nucleic acids coding for SARS-CoV virulence factors. They are select agents and entities are required to obtain prior approval from CDC’s

Division of Select Agents and Toxins (DSAT) to possess, use, or transfer these agents. Additionally, experiments to create these chimeric viruses must be submitted to the Federal Select Agent Program for prior approval.

Additional Guidance has also been developed that provides examples of virulence factors found in SARS-CoV/SARS-CoV-2 and provides examples of experiments that may meet the definition of a restricted experiment. Guidance can be found at the Supporting Materials tab of the docket and at www.selectagents.gov.

II. Required Regulatory Analyses

A. Executive Orders 12866 and 13563

HHS/CDC has examined the impacts of the final rule under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993) and Executive Order 13563, Improving Regulation and Regulatory Review, (76 FR 3821, January 21, 2011). Both Executive Orders direct agencies to evaluate any rule prior to promulgation to determine the regulatory impact in terms of costs and benefits to United States populations and businesses. Further, together, the two Executive Orders set the following requirements: quantify costs and benefits where the new regulation creates a change in current practice; qualitatively describe costs and benefits; choose approaches that maximize net benefits; and support regulations that protect public health and safety. HHS/CDC has analyzed the final rule as required by these Executive Orders and has determined that it is consistent with the principles set forth in the Executive Orders and the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). We anticipate that the rule will create minimal cost impact, but it could potentially result in benefits to the extent that it could reduce the probability of an accidental or intentional release of the SARS-CoV/SARS-CoV-2 chimeric viruses resulting from any deliberate manipulation of SARS-CoV-2 to incorporate nucleic acids coding for SARS-CoV virulence factors. Such an event is a low probability but potentially an extremely high-cost outcome. This rule has been determined to be a “significant regulatory action” as defined by Executive Order 12866, section 3(f). However, this rule is not an economically significant regulatory action, as it will not have an annual effect on the economy of \$100 million or more 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, or tribal governments or communities. This rule has been reviewed by the Office of Management and Budget (OMB) pursuant to Executive Orders 12866 and 13563.

This regulatory impact section presents the anticipated costs and benefits that are quantified where possible. Where quantification is not possible, a qualitative discussion is provided of the costs and/or benefits that HHS/CDC anticipates from this regulation.

Analysis of Costs and Benefits

Costs

As of September 7, 2022, CDC has not received any requests from already registered entities to amend their registration to work with this agent. In addition, CDC has not received any applications from new entities to register with CDC and work with this agent. Thus, as of this date, CDC has not observed any costs associated with the IFR or for this final rule. If an entity chooses to work with this agent in the future, the below estimates of costs and benefits would apply.

In the following analysis, HHS/CDC looked at two different types of entities that may incur additional costs because of this rulemaking. They are described below as: (1) A registered entity that applies to amend its registration to add the agent; or (2) An unregistered entity that seeks to register to work with the

agent. HHS/CDC also estimated the costs for CDC to work with an entity to amend its registration or to register because of this final rule. All costs and benefits for this analysis are reported in 2020 U.S. dollars. Further, HHS/CDC assumed that all costs would be incurred within a one-year time period corresponding to the expected period of time in which experiments with these chimeric viruses would be performed.

(1) A registered entity that applies to amend its registration for the agent.

As of September 7, 2022, none of the entities already registered with CDC to work with select agents and toxins have amended their registries to work with this agent. This final rule requires an entity to amend its registration using relevant portions of APHIS/CDC Form 1 (Registration for Possession, Use, and Transfer of Select Agents and Toxins). The estimated time to apply for an amendment using this form is one hour for one select agent (Table 1). To account for uncertainty in the estimate, a range of 75% to 125% of this estimate is used as the lower bound and the upper bound estimates, respectively. HHS/CDC used a median hourly respondent labor rate of \$49.83 for managerial staff (occupation code 11–1021 general and operations manager) as the upper bound estimate and \$16.98 for clerical staff (occupation code 43–9061 office clerks, general) as the lower bound estimate. These rates were obtained from the Bureau of Labor Statistics, 2020 Occupational Employment Statistics Survey by

Occupation (<http://www.bls.gov/oes/>). HHS/CDC assumed that the hourly burden would be evenly split between managerial staff and clerical staff as a base case. The hourly respondent labor rate for the base case was the average of these two figures (\$33.41 per hour). The base salary is multiplied by an overhead multiplier of 100% to account for non-wage benefits and other overhead costs for supporting each employee. The estimated cost per already registered entity to amend their registration for this agent was \$66.81 (range: \$25.47 to \$124.58).

The additional time for HHS/CDC's review of the amended registration for the already registered entities will also generate additional costs. HHS/CDC estimated that one staff at the GS–13 (step 5) level is required to review the amended registration application. The hourly wage of a Federal Employee at GS–13 (step 5) from the 2020 General Schedule (GS) locality pay table for Atlanta (where CDC has its headquarters), \$52.20 per hour, was used to estimate the hourly base salary (Table 1). The base salary is multiplied by an overhead multiplier of 100% to account for non-wage benefits and other overhead costs for supporting each employee. HHS/CDC estimated that the review of the amendment application takes two hours (range: 1.5 hours to 2.5 hours) for HHS/CDC. The cost of having HHS/CDC amend an entity's registration for the agent is estimated to be \$209 (range: \$157 to \$261).

TABLE 1—ESTIMATED COSTS PER ALREADY REGISTERED ENTITY TO AMEND THEIR REGISTRATION FOR THE AGENT
[2020 U.S. dollars]

	Base case	Lower bound	Upper bound
Entity			
Number of employees working on the amendment (A)	1	1	1
Hourly wage (B)	\$33.41	\$16.98	\$49.83
Overhead multiplier (C)	100%	100%	100%
Time required per staff (hours) (D)	1	0.75	1.25
Estimated costs per entity (E) = (A) × (B) × ((C) + 1) × (D)	\$66.81	\$25.47	\$124.58
HHS/CDC			
Number of staff required for the review of the amendment application (F)	1	1	1
Hourly wage (G)	\$52.20	\$52.20	\$52.20
Overhead multiplier (H)	100%	100%	100%
Time required for the amendment per staff (hour) (I)	2	1.5	2.5
Estimated costs per entity (J) = (F) × (G) × ((H) + 1) × (I)	\$209	\$157	\$261

(2) An unregistered entity will apply to register in order to work with the agent (The entity is NOT currently registered).

As of September 7, 2022, no unregistered entities notified CDC, as required by the IFR, that they plan to work with select agents and toxins and have amended their registries to work

with this agent. For unregistered entities, which will register for working with the agent, HHS/CDC expects per facility costs to vary based on the entity type, laboratory size, and biosafety level (BSL). The first-year cost per facility for a medium-size BSL–2³ research institute to register to work with the agent is estimated at \$59,600. This estimate from

the Regulatory Impact Analysis for the 2005 Select Agent Regulations Final Rule² was adjusted to 2020 U.S. dollars value using the Consumer Price Index

² Regulatory Impact Analysis, 42 CFR part 73: Possession, Use, and Transfer of Select Agents and Toxins Final Rule, Centers for Disease Control and Prevention, February 3, 2005.

(CPI) Inflation Calculator.³ This results in an adjusted value of \$78,994 for each additional registered, medium-size BSL-2/3 research institute laboratory (range: \$41,087 to \$936,528) (Table 2).

Two HHS/CDC staff, GS-12 (step 5) would perform the initial review of the application with the final review conducted by GS-13 (step 5). HHS/CDC estimated the upper bound hourly wage for a Federal Employee at the GS-13 (step 5) from the 2020 General Schedule (GS) locality pay table for Atlanta, \$52.20 per hour. The lower bound was estimated using the hourly wage for a GS-12 (step 5) employee, \$43.90 per hour (Table 2). The mean of these two wage rates was used as the base case. The base salary is multiplied by an overhead multiplier of 100% to account

for non-wage benefits and other overhead costs for supporting each employee. HHS/CDC estimated that the review of an application would take two hours (range: 1.5 hours to 2.5 hours). The estimated HHS/CDC cost per entity to review an application was \$384 (range: \$263 to \$522).

Registration also will require an inspection by CDC to assess the applicant's ability to comply with the select agents and toxins regulations. HHS/CDC assumed that two CDC investigators, GS-12 (step 5) or GS-13 (step 5) would travel to the laboratory and that the visit would require 3 days (1 day for outbound trip to the laboratory, 1 day for the investigation, and 1 day for the return trip) and 8 work hours per day inclusive of report

writing. The estimated travel costs were \$1,200 per trip for two CDC investigators. The total estimated costs associated with laboratory investigation per entity are \$5,183 (range: \$5,414 to \$6,211). The estimated total costs for CDC per registered entity are \$6,197 (range: \$5,678 to \$6,733) for application review and laboratory investigation.

HHS/CDC assumed that all costs associated with the final rule will occur during the first year after the final rule is published and that the final rule will not affect costs for registered entities in following years. This may result in an over-estimate of the costs to register an entity if that entity were to decide to continue to work with select agents and toxins in future years.

TABLE 2—ESTIMATED COSTS PER ENTITY, WHICH WILL REGISTER TO WORK WITH THE AGENT
[2020 U.S. dollars]

	Base case	Lower bound	Upper bound
Entity			
Estimated costs for registration per entity (A) ⁴	\$78,994	\$41,087	\$936,528
HHS/CDC			
Application review (time) costs per entity.			
Number of staff required for the review of the application (B)	2	2	2
Hourly wage (C)	\$48.05	\$43.90	\$52.20
Overhead multiplier (D)	100%	100%	100%
Time required for the application per staff (hour) (E)	2	1.5	2.5
Estimated costs associated with a registration application review (F) = (B) × (C) × ((D) + 1) × (E)	\$384	\$263	\$522
Lab investigation costs per entity.			
Number of staff required for the lab investigation (G)	2	2	2
Hourly wage (H)	\$48.05	\$43.90	\$52.20
Overhead multiplier (I)	100%	100%	100%
Time required for the amendment per staff (hour) (J)	24	24	24
Estimated time costs for lab investigation per entity (K) = (G) × (H) × ((I) + 1) × (J) ..	\$4,613	\$4,214	\$5,011
Number of trips required per lab investigation (L)	1	1	1
Travel-associated costs per trip (M)	\$1,200	\$1,200	\$1,200
Travel-associated costs per lab investigation (N) = (L) × (M)	\$1,200	\$1,200	\$1,200
Estimated costs associated with lab investigation (O) = (K) + (N)	\$5,813	\$5,414	\$6,211
Estimated total costs for HHS/CDC per entity (P) = (F) + (O)	\$6,197	\$5,678	\$6,733

As of September 7, 2022, none of the entities already registered with CDC to work with select agents and toxins have amended their registries to work with this agent. The base case is the assumption for the final rule that only

one registered entity would amend their registration for the agent and no unregistered entities would undergo the registration process to work with this agent. The lower bound is the same as the base case. For the upper bound,

HHS/CDC assumed that two registered entities would amend their registration to work with this agent and one unregistered entity would undergo the registration process to work with this agent (Table 3).

TABLE 3—NUMBERS OF ENTITIES THAT WILL BE AFFECTED BY THE FINAL RULE

	Base case	Lower bound	Upper bound
Registered entities, which want to amend the registration for the agent	1	1	2
Unregistered entities, which want to be registered for the agent	0	0	1

³ https://www.bls.gov/data/inflation_calculator.htm.

⁴ The estimates from the Regulatory Impact Analysis for the 2005 Select Agent Regulations

Final Rule (Regulatory Impact Analysis, 42 CFR Part 73: Possession, Use, and Transfer of Select Agents and Toxins Final Rule, Centers for Disease Control and Prevention, February 3, 2005) was

adjusted to 2020 U.S. dollars value using the Consumer Price Index (CPI) Inflation Calculator (https://www.bls.gov/data/inflation_calculator.htm).

The total costs associated with the final rule for the entities working with this agent are estimated at \$67 (range: \$25 to \$936,777) (Table 4).

TABLE 4—TOTAL ESTIMATED COSTS FOR ENTITIES TO WORK WITH THE SARS-CoV/SARS-CoV-2 CHIMERIC VIRUSES ASSOCIATED WITH THE FINAL RULE
[2020 U.S. dollars]

	Base case	Lower bound	Upper bound
Registered entities, which want to amend their registrations to work with the agent			
Number of entities (A)	1	1	2
Estimated costs per entity (B)	\$67	\$25	\$125
Estimated costs (C) = (A) × (B)	\$67	\$25	\$249
Unregistered entities, which would pursue registration to work with this agent			
Number of entities (D)	0	0	1
Estimated costs per entity (E)	\$78,994	\$41,087	\$936,528
Estimated costs (F) = (D) × (E)	\$0	\$0	\$936,528
Total estimated costs for entities to comply with HHS/CDC requirements to work with this agent (G) = (C) + (F)	\$67	\$25	\$936,777

The total estimated costs for HHS/CDC to review applications to amend registrations or to register unregistered entities to work with this agent, which are associated with the final rule are \$209 (range: \$156 to \$7,255) (Table 5).

TABLE 5—TOTAL ESTIMATED COSTS FOR HHS/CDC TO REVIEW ENTITIES' APPLICATIONS TO AMEND THEIR REGISTRATIONS OR TO REGISTER UNREGISTERED ENTITIES TO WORK WITH THE SARS-CoV/SARS-CoV-2 CHIMERIC VIRUSES ASSOCIATED WITH THE FINAL RULE
[2020 U.S. dollars]

	Base case	Lower bound	Upper bound
Registered entities, which want to amend the registration for the agent			
Number of entities (A)	1	1	2
Estimated costs per entity (B)	\$209	\$157	\$261
Estimated costs (C) = (A) × (B)	\$209	\$157	\$522
Unregistered entities, which want to be registered for the agent			
Number of entities (D)	0	0	1
Estimated costs per entity (E)	\$6,197	\$5,678	\$6,733
Estimated costs (F) = (D) × (E)	\$0	\$0	\$6,733
Total estimated costs for HHS/CDC (G) = (C) + (F)	\$209	\$156	\$7,255

Summary of Costs

In summary, the total estimated costs associated with the final rule are \$276 (range: \$182 to \$944,032) (Table 6). All

costs are one-time costs, and the follow-up costs are assumed to be minimal. The upper bound cost estimate includes the cost to register an unregistered

entity to work with select agents and toxins, which may not be pursued. Even this upper bound estimate is less than \$1 million.

TABLE 6—SUMMARY OF TOTAL ESTIMATED COSTS ASSOCIATED WITH THE FINAL RULE TO ADD THE SARS-CoV/SARS-CoV-2 CHIMERIC VIRUSES RESULTING FROM ANY DELIBERATE MANIPULATION OF SARS-CoV-2 TO INCORPORATE NUCLEIC ACIDS CODING FOR SARS-CoV VIRULENCE FACTORS TO HHS/CDC'S LIST OF SELECT AGENTS AND TOXINS
[2020 U.S. dollars]

	Base case	Lower bound	Upper bound
Total estimated costs to entities working with the agent (A)	\$67	\$25	\$936,777
Total estimated costs to HHS/CDC (B)	209	157	7,255
Total estimated costs (C) = (A) + (B)	276	182	944,032

Benefits:

The agents and toxins placed on the HHS/CDC select list have the potential to pose severe threats to public health and safety. The benefits of the HHS/CDC rule derive from the strengthened prevention against the accidental or

intentional release of SARS-CoV/SARS-CoV-2 chimeric viruses resulting from any deliberate manipulation of SARS-CoV-2 to incorporate nucleic acids coding for SARS-CoV virulence factors. The provisions of this rule will reduce the risk of human exposure to

these chimeric viruses by ensuring that laboratory facilities employ adequate security and safety measures including:

(1) Develop and implement a written biosafety plan and measures in place that are commensurate with the risk of the agent given its intended use,

(2) Develop and implement a written security plan and measures in place that are sufficient to safeguard the agent against unauthorized access, theft, loss, or release,

(3) Develop and implement a written incident response plan based upon a site-specific risk assessment,

(4) Have an adequate training program for handling select agents, and

(5) Maintain an inventory of select agents.

The benefits to public health and safety from the implementation of the rule result from the strengthened prevention of either accidental or intentional release of the modification of a non-select agent with nucleic acids from a select agent, however, the benefits are difficult to quantify. The cost of such an event in morbidity and mortality could be very high. In addition, a release of such a chimera or chimeric virus that is composed of the modification of a non-select agent with nucleic acids from a select agent may require a complicated and expensive emergency response effort. This effort could include extensive public health measures, such as quarantine, preventative treatment, and diagnostic testing for large numbers of potentially exposed persons, and extensive decontamination. Substantial costs could be incurred by hospitals and other medical facilities and institutions of government at all levels. A release, or widespread fear of one, also would create significant secondary effects. It could disrupt business, transportation, and many other aspects of normal behavior, on both a short-term and potentially a long-term basis.

HHS/CDC is unable to predict the potential infectiousness or virulence of the SARS-CoV/SARS-CoV-2 chimeric

viruses that are regulated according to the provisions of this final rule. However, implementation of the final rule will provide a means of determining where the modification of a non-select agent with nucleic acids from a select agent is taking place; ensure that transfer, storage, and use of the agent can be tracked; provide for the screening of personnel with access to such agent; and require that entities in possession of such agent develop and implement effective means of biosafety and physical security. The benefit of these provisions is a reduced likelihood of either an accidental or intentional release of the agent and the consequent avoidance of costs associated with such a release.

This final rule addresses a risk associated with substantial economic consequences. The likelihood of these negative outcomes under a baseline scenario of no further regulatory action are low but also highly uncertain and difficult to characterize. Based on this analysis, HHS/CDC believes the expected benefits of this final rule are likely to exceed the estimated costs associated with this final rule.

B. The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

We have examined the impacts of the final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Based on our current knowledge of who may possess

this agent, we certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

This regulatory action is not a major rule as defined by section 804 of the SBREFA. This final rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

C. Paperwork Reduction Act of 1995

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in the current regulations are approved by the Office of Management and Budget (OMB) under OMB Control Number 0920–0576, expiration date 1/31/2024. This rulemaking includes a request for a nonmaterial/non-substantive change to account for small, potential increases in burden for a limited number of entities to submit amendments to their registrations.

We estimate that only one to five registered entities may add the select agent to their registration or transfer the select agent to another registered entity. Therefore, we calculate that there is no increase in the number of respondents that need to apply for registration. This represents a non-material/non-substantive change in burden for respondents to this approved information collection. The burden is outlined in the table below.

Section	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Section 7	Application for Registration	3	1	5	15

D. E.O. 12988: Civil Justice Reform

This rule has been reviewed under E.O. 12988, Civil Justice Reform. Once the rule was in effect, HHS/CDC notes that: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

E. E.O. 13132: Federalism

HHS/CDC has reviewed this final 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.”

F. Plain Language Act of 2010

Under the Plain Language Act of 2010 (Pub. L. 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/CDC has attempted to use plain language in announcing this rule consistent with the Federal Plain Writing Act guidelines.

List of Subjects in 42 CFR Part 73

Biologics, Packaging and containers, Penalties, Reporting and Recordkeeping requirements, Transportation.

■ For the reasons stated above in the preamble, HHS/CDC adopts the interim final rule which was effective November 17, 2021 (86 FR 64075) as final without change. In accordance with the interim final rule, SARS-CoV/SARS-CoV-2 chimeric viruses resulting from any deliberate manipulation of SARS-CoV-2 to incorporate nucleic acids coding for SARS-CoV virulence factors are an HHS select agent. Any individual or entity that possesses SARS-CoV/SARS-CoV-2 chimeric viruses on or after November 17, 2021 must provide notice to CDC regarding their possession and must secure the agent against theft, loss, release, or unauthorized access; and by November 17, 2021, an individual or entity that intends to continue to possess, use, or transfer this agent is required to either register in accordance with 42 CFR part 73 or amend their current registration in accordance with 42 CFR 73.7(h) and meet all of the requirements of select agent regulations (42 CFR part 73). Further, experiments that involve the creation of SARS-CoV/SARS-CoV-2 chimeric viruses resulting from any deliberate manipulation of SARS-CoV-2 to incorporate nucleic acids coding for SARS-CoV virulence factors or vice versa are restricted experiments and require prior approval in accordance with 42 CFR 73.13(a)(3).

Dated: February 27, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023-04323 Filed 3-2-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 220216-0049; RTID 0648-XC694]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 50 Feet Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by for catcher vessels less than 50 feet (15.2 meters (m)) length overall using hook-and-line (HAL) gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2023 total allowable catch (TAC) apportioned to catcher vessels less than 50 feet length overall using HAL gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 28, 2023, through 1200 hours, A.l.t., June 10, 2023.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7241.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2023 Pacific cod TAC apportioned to catcher vessels less than 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA is 1,026 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022) and inseason adjustment (87 FR 80088, December 29, 2022).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2023 Pacific cod TAC apportioned to catcher vessels less than 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 976 mt and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting

directed fishing for catcher vessels less than 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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 closure of Pacific cod by catcher vessels less than 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 27, 2023.

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: February 27, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023-04366 Filed 2-28-23; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 88, No. 42

Friday, March 3, 2023

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC–2018–0296]

RIN 3150–AK32

Renewing Nuclear Power Plant Operating Licenses—Environmental Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its environmental protection regulations by updating the Commission's 2013 findings on the environmental effect of renewing the operating license of a nuclear power plant. The NRC proposes to redefine the number and scope of the environmental issues that must be addressed during the review of each application for license renewal. As part of this update, the NRC has prepared draft Revision 2 to NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (LR GEIS), to account for new information and to address the impacts of initial license renewals, which the previous versions considered, as well as first subsequent license renewals. The draft revised LR GEIS provides the technical basis for this proposed rule. The NRC is providing an opportunity for interested parties to submit comments on this proposed rule, the draft revised LR GEIS, and associated draft guidance.

DATES: Submit comments by May 2, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2018–0296. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: Dawn.Forder@nrc.gov. For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Yanely Malave-Velez, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1519, email: Yanely.Malave-Velez@nrc.gov, Jennifer Davis, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3835, email: Jennifer.Davis@nrc.gov, or Kevin Folk, Office of Nuclear Material Safety and Safeguards, telephone 301–415–6944, email: Kevin.Folk@nrc.gov. All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Purpose of the Regulatory Action

The Atomic Energy Act of 1954, as amended (AEA) authorizes the NRC to issue licenses to operate commercial nuclear power plants for up to 40 years. The AEA and the NRC's regulations allow for the renewal of these licenses for up to an additional 20 years for each renewal term, which could either be an initial license renewal (initial LR) or subsequent license renewal (SLR). There are no limitations in the AEA or the NRC's regulations restricting the number of times a license may be renewed. The NRC's review of a license renewal application proceeds along two independent regulatory tracks: one for safety issues and another for environmental issues. The NRC's regulations for the license renewal

safety review are set forth in part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), "Requirements for Renewal of Operating Licenses for Nuclear Power Plants." The NRC's environmental protection regulations are set forth in 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

The license renewal application includes both general and technical information that demonstrates that an applicant is in compliance with the NRC's regulations in 10 CFR part 54. During the safety review, the license renewal applicant must demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the current licensing basis for the period of extended operation. Information in the application must be sufficiently detailed to permit the NRC staff to complete its review and develop the safety finding.

Separate from the safety analysis, the applicant prepares an evaluation of the potential impacts to the environment of facility operation for an additional 20 years, which the NRC uses to inform its environmental analysis. Under the NRC's environmental protection regulations in 10 CFR part 51, which implements the National Environmental Policy Act (NEPA), renewal of a nuclear power plant operating license requires the preparation of an environmental impact statement (EIS). To support the preparation of these EISs, the NRC issued a rule in 1996 (61 FR 28467) and a supporting analysis in NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (LR GEIS). The LR GEIS defines which impacts would essentially be the same at all nuclear power plants or a subset of plants (*i.e.*, generic or Category 1 issues) and which impacts could be different at different plants and would require a plant-specific analysis to determine the impacts (Category 2 issues). The determinations are codified in Table B–1, "Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants," of appendix B to subpart A of 10 CFR part 51 (hereafter referred to as "Table B–1").¹ For each license

¹ As stated in the introductory paragraph of appendix B to subpart A of 10 CFR part 51, the

Continued

renewal application, those impacts that require a plant-specific analysis must be analyzed by the applicant in its environmental report and by the NRC in a supplemental environmental impact statement (SEIS) to NUREG-1437. The 1996 rule was amended in 2013 (78 FR 37281) by the issuance of an updated rule and publication of LR GEIS, Revision 1. In 2014, the NRC issued a final rule that addressed the generic determination of the environmental impacts of continued storage of spent nuclear fuel beyond a reactor's licensed life for operation (79 FR 56238). That rule amended 10 CFR part 51 by revising the findings of two environmental issues listed in Table B-1.

This proposed rule would further redefine the number and scope of the environmental issues that must be addressed by the NRC and applicants during license renewal environmental reviews. These changes are based primarily on the lessons learned and knowledge gained from initial LR and SLR reviews performed by the NRC since development of the 2013 LR GEIS. The changes also address Commission direction in Staff Requirements Memorandum (SRM)-SECY-22-0024, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32, NRC-2018-0296)," by thoroughly evaluating SLR in this review and update. In addition, new scientific research, public comments, changes in environmental regulations and impacts methodology, and other new information were considered in evaluating the significance of impacts associated with license renewal.

B. Major Provisions

In the 2013 rule, there were 78 environmental issues, 17 of which required a plant-specific analysis (Category 2 issues) during license renewal environmental reviews. In this proposed rule, there are 80 environmental issues, 20 of which require a plant-specific analysis. The following points summarize the primary proposed changes to the NRC's requirements in part 51:

1. Several issues were consolidated, including some issues that were combined with other related Category 1 or Category 2 issues.

2. One new Category 1 issue was added: "Greenhouse gas impacts on climate change."

3. One issue was changed from Category 2 to Category 1: "Severe accidents."

4. Two new Category 2 issues were added: "Climate change impacts on environmental resources" and "National Marine Sanctuaries Act: sanctuary resources."

5. One Category 2 issue was divided into three separate Category 2 issues: "Endangered Species Act: federally listed species and critical habitats under U.S. Fish and Wildlife jurisdiction," "Endangered Species Act: federally listed species and critical habitats under National Marine Fisheries Service jurisdiction," and "Magnuson-Stevens Act: essential fish habitat."

C. Costs and Benefits

The NRC prepared a draft regulatory analysis to determine the expected quantitative and qualitative costs and benefits of the proposed rule and associated guidance. The draft regulatory analysis concluded that the proposed rule and associated guidance would result in undiscounted total net savings of \$91.4 million to the industry and \$31.7 million to the NRC.

The draft regulatory analysis also reflected qualitative factors to be considered in the NRC's rulemaking decision. Qualitative factors include regulatory stability, predictability, and clarity in the licensing process. The proposed rule would reduce the cost to the industry of preparing environmental reports for license renewal applications by focusing resources on plant-specific analyses. The NRC would also recognize similar reductions in cost and be able to better focus its resources on plant-specific environmental issues during reviews of reactor license renewal applications.

For more information, see the draft regulatory analysis (available as indicated in Section XV, Availability of Documents, of this document).

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2018-0296 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2018-0296.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- **Technical Library:** The Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, is open by appointment only. Interested parties may make appointments to examine documents by contacting the NRC Technical Library by email at Library.Resource@nrc.gov between 8:00 a.m. and 4:00 p.m. ET, Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>)

Commission has assessed the environmental impacts associated with granting a renewed operating license for a nuclear power plant to a licensee who holds either an operating license or construction permit as of June 30, 1995.

www.regulations.gov). Please include Docket ID NRC–2018–0296 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

NUREG–1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants,” (LR GEIS) is intended to streamline the NRC’s license renewal environmental review by documenting a systematic approach that the NRC uses to evaluate the environmental impacts of renewing the operating licenses of commercial nuclear power plants. The LR GEIS also provides the technical basis for Table B–1, in appendix B to subpart A, and the Commission’s other license renewal regulations in 10 CFR part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.” This Background section provides an overview of the environmental review process and the rulemaking history related to the license renewal process under which a power reactor licensee may apply for a renewal of its operating license.

A. Environmental Review—Current 10 CFR Part 51 Regulations

As a Federal agency, the NRC must comply with the National Environmental Policy Act (NEPA) by assessing the potential environmental effects of a proposed agency action before approving or disapproving that proposed action. The regulations implementing the NRC’s NEPA review are found in 10 CFR part 51.

Under NEPA, Federal agencies prepare an environmental impact statement (EIS) for any major Federal action significantly affecting the quality

of the human environment. In addition, the Commission has identified at § 51.20 certain categories of NRC proposed actions that require the preparation of an EIS, including the renewal of a license to operate a nuclear power reactor.² For each plant-specific review, the NRC prepares a supplemental environmental impact statement (SEIS) to the LR GEIS.

The NRC’s provisions at § 51.53(c) require an applicant for renewal of a nuclear power plant license to submit with its application a separate document entitled “Applicant’s Environmental Report—Operating License Renewal Stage” that describes in detail the affected environment around the plant, the modifications directly affecting the environment or any plant effluents and any planned refurbishment activities. In addition, the report must address the environmental impacts of alternatives and any other matters described in § 51.45, which include the following: (1) the impact of the proposed action on the environment, (2) any adverse environmental impacts that cannot be avoided, (3) alternatives to the proposed action, (4) the relationship between local short-term uses of the environment and maintenance and enhancement of long-term productivity, and (5) any irreversible or irretrievable commitments of resources. Within its environmental report, the applicant is required to include analyses of the environmental impacts of the proposed action, including the impacts of refurbishment activities, if any, associated with license renewal and the impacts of operation during the renewal term, for those issues identified as Category 2 issues in appendix B to subpart A of 10 CFR part 51. Additionally, the applicant is required to provide any new and significant information of which it is aware in its environmental report. If there is no new and significant information for a Category 1 issue, the applicant can rely on that Category 1 generic finding and analyses in the LR GEIS. The applicant’s environmental report informs the NRC’s independent evaluation.

Before making a decision on a renewed license application for a nuclear power plant, the NRC is required to prepare and distribute, for public comment, a draft SEIS. The draft SEIS assesses the potential environmental impacts that may result from continued nuclear power plant operation and any proposed refurbishment activities during the

renewal term (initial license renewal (initial LR) or subsequent license renewal (SLR)). In preparing the draft SEIS, the NRC staff will rely on the findings in Table B–1 for Category 1 issues and analyze the potential environmental impacts of the proposed action (license renewal) on the affected environment and specific environmental resources (e.g., groundwater) for Category 2 issues. Additionally, the NRC will consider any potentially new and significant information for Category 1 issues and for uncategorized issues. An environmental issue may remain uncategorized where the impact level remains unknown or uncertain, such as any activity or aspect associated with the nuclear power plant operations that can act upon the environment in a manner or an intensity not previously recognized or quantified. Within each environmental resource area, the NRC staff will analyze issues that correspond to specific, potential environmental impacts at the specific site (e.g., within the groundwater resource area, groundwater quality degradation resulting from water withdrawals). In the draft SEIS, the NRC staff also will evaluate alternatives to the proposed action.

After analyzing the potential environmental impacts for each issue, the NRC assigns one of the following three significance levels to describe its evaluation of those impacts on that issue in either the LR GEIS or a plant-specific SEIS:

SMALL—The environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission’s regulations are considered **SMALL**.

MODERATE—The environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource.

LARGE—The environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource.

In assessing the significance of environmental impacts for some environmental resources (e.g., federally protected ecological resources and historic properties that require interagency consultation with Federal agencies or Indian Tribes³), the NRC

² The term *Nuclear reactor* is defined in § 50.2, “Definitions.”

³ Per 36 CFR 800.2(c)(2)(ii), the agency official will consult with any Indian Tribe or Native

assigns the appropriate impact level (other than SMALL, MODERATE, or LARGE) in accordance with the terminology used in the relevant statutes and their implementing regulations.

The NRC will document its environmental review and analysis through the preparation of a draft SEIS that will be published for public comment in the **Federal Register**, with a minimum 45-day comment period, in accordance with § 51.73. Further, as provided in § 51.74, the NRC will distribute the draft SEIS to the U.S. Environmental Protection Agency (EPA), other Federal agencies that have a special expertise or jurisdiction with respect to any potential environmental impact that may be relevant to the proposed action, the applicant, and appropriate State, Tribal, and local agencies and clearinghouses.

Following the public comment period, the NRC will analyze any comments received, revise its environmental analyses as appropriate, and then prepare the final

SEIS in accordance with the requirements of § 51.91. Under § 51.93, the NRC will distribute the final SEIS to many of the same entities as the draft SEIS and to each commenter. The NRC also will publish a notice of availability for the final SEIS in the **Federal Register**. As set forth in § 51.102 and following the preparation and distribution of the final SEIS, the NRC will prepare and issue the record of decision, which is a concise, publicly available statement that documents the agency's decision, as informed by the final SEIS and final safety evaluation report. The requirements for a record of decision are described in § 51.103, and include stating the NRC's decision (*e.g.*, the approval or disapproval of the license renewal application), identifying the alternatives (including the proposed action) considered by the agency, and a statement as to whether the NRC has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm from the alternative selected and if not, to explain why those measures were not adopted. Further, the record of the decision will include a determination by the NRC as to whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal

for energy planning decisionmakers would be unreasonable, which is the purpose and need of license renewal.

B. Rulemaking History

In 1986, the NRC initiated a program to develop license renewal regulations and associated regulatory guidance in anticipation of receiving applications for the renewal of nuclear power plant operating licenses. In 1996, the NRC published a final rule that amended the environmental protection regulations in 10 CFR part 51 to include provisions for applicants seeking to renew an operating license for up to an additional 20 years (61 FR 28467; June 5, 1996). The 1996 final rule was based upon the analyses and findings of a May 1996 NRC environmental impact statement, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," NUREG-1437 (the "1996 LR GEIS").

Based upon the findings of the 1996 LR GEIS, the 1996 final rule identified those license renewal environmental issues for which a generic analysis had been determined to be appropriate (Category 1 issues). Similarly, based upon the findings of the 1996 LR GEIS, the 1996 final rule identified those environmental impacts for which a site- or plant-specific analysis was required, both by the applicant in its environmental report and by the NRC in its SEIS (Category 2 issues). The 1996 final rule, among other amendments to 10 CFR part 51, added appendix B to subpart A of 10 CFR part 51, "Environmental Effect of Renewing the Operating License of a Nuclear Power Plant." Appendix B included Table B-1 which summarized and codified the findings of the 1996 LR GEIS.

In preparing the 1996 LR GEIS, the Commission based its generic assessment on the following factors:

(1) License renewal will involve nuclear power plants for which the environmental impacts of operation are well understood as a result of lessons learned and knowledge gained from operating experience and completed license renewals.

(2) Activities associated with license renewal are expected to be within this range of operating experience; thus, environmental impacts can be reasonably predicted.

(3) Changes in the environment around nuclear power plants are gradual and predictable.

The 1996 LR GEIS improved the efficiency of the license renewal process in the following ways: (1) providing an evaluation of the types of environmental impacts that may occur from renewing commercial nuclear power plant

operating licenses, (2) identifying and assessing impacts that are expected to be generic (*i.e.*, the same or similar) at all nuclear power plants or plants with specified plant or site characteristics, and (3) defining the number and scope of environmental impacts that need to be addressed in plant-specific SEISs to the 1996 LR GEIS.

As identified in the 1996 final rule, a Category 1 issue is an issue that meets the following criteria: (1) the environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic; (2) a single significance level (*i.e.*, small, moderate, or large) has been assigned to the impacts (except for certain issues discussed below in more detail); and (3) mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are not likely to be sufficiently beneficial to warrant implementation. A Category 2 issue is defined as an issue where one or more of Category 1 criteria cannot be met, and therefore, additional plant-specific review is required.

As stated in the 1996 final rule, the NRC recognized that environmental issues might change over time and that additional issues may need to be considered. As further stated in the introductory text to Table B-1, the NRC indicated that it intended to review the material in Table B-1 on a 10-year basis.

On December 18, 1996 (61 FR 66537), the NRC amended the 1996 final rule to incorporate minor clarifying and conforming changes and to add language omitted from Table B-1.

In 1999, the NRC amended 10 CFR part 51, including Table B-1, to expand the generic findings pertaining to the environmental impacts resulting from transportation of fuel and waste to and from a single nuclear power plant (64 FR 48496; September 3, 1999). This final rule also incorporated rule text consistent with the 1996 LR GEIS to address local traffic impacts attributable to the continued operations of a nuclear power plant during the license renewal term.

In 2013, the NRC completed the first 10-year review and update of the 1996 LR GEIS and published a final rule (78 FR 37281; June 20, 2013) that amended Table B-1 by updating the Commission's 1996 findings on the environmental impacts related to the renewal of nuclear power plant operating licenses and other NRC environmental protection regulations (*e.g.*, 10 CFR 51.53, which sets forth the

Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. The term "Indian Tribes" refers to Federally recognized Tribes as acknowledged by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

contents of the applicant's environmental report, 10 CFR 51.75, and 10 CFR 51.95). The 2013 final rule redefined the number and scope of the environmental issues that must be addressed by the NRC and applicants during license renewal environmental reviews. These changes were primarily based on lessons learned and knowledge gained from license renewal environmental reviews conducted by the NRC since 1996. Together with the final rule, the NRC issued a revised LR GEIS, NUREG-1437 Revision 1 (the "2013 LR GEIS"), as well as Revision 1 of Regulatory Guide (RG) 4.2, Supplement 1, "Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications," and Revision 1 to NUREG-1555, Supplement 1, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants: Operating License Renewal."

On July 31, 2013 (78 FR 46255), the NRC amended the 2013 final rule to incorporate minor clarifying and conforming changes and revise the statutory authority that was cited in the authority citation for the final rule.

In 2014, the NRC published a final rule titled "Continued Storage of Spent Nuclear Fuel" that revised the generic determination regarding the environmental impacts of the continued storage of spent nuclear fuel beyond a reactor's licensed life for operation and prior to ultimate disposal (79 FR 56238; September 14, 2014). The continued storage final rule also made conforming amendments to the determinations of environmental effects of renewing the operating license of a nuclear power plant. These changes addressed issues related to the onsite storage of spent nuclear fuel, both for the license renewal term and for the period after the licensed life for reactor operations, and offsite radiological impacts of spent nuclear fuel and high-level waste disposal. Specifically, the continued storage final rule revised two environmental issues in Table B-1: (1) "Onsite storage of spent fuel" and (2) "Offsite radiological impacts of spent nuclear fuel and high-level waste disposal."

In August 2020, the NRC issued a notice of intent to review and potentially update the 2013 LR GEIS ⁴ (i.e., the scoping notice) in the **Federal Register** (85 FR 47252; August 4, 2020). The comment period began in August

2020 and ended in November 2020. The scoping notice provided the public with an opportunity to submit comments and participate in the environmental scoping process, as defined in § 51.26. Specifically, the NRC invited the public to review the results of the NRC staff's preliminary review of the LR GEIS, including a proposal to address SLR in the LR GEIS, and asked the public to provide comments and suggestions for other areas that should be updated. The NRC conducted four webinars where the staff received comments from the public. All comments provided during the 2020 scoping period were considered in preparing the draft revised LR GEIS and are publicly available. The official transcripts and the scoping summary report are available as indicated in the "Availability of Documents" section of this proposed rule.

In July 2021, the staff submitted SECY-21-0066, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC-2018-0296)," to request Commission approval to initiate a rulemaking to amend Table B-1 and update the 2013 LR GEIS and associated guidance. The rulemaking plan also proposed to remove the word "initial" from § 51.53(c)(3), which, as described above, governs license renewal applicant's environmental reports; this change would have included applicants for SLR in the section's scope. The plan would have also made corresponding changes to the LR GEIS and the associated guidance.

In February 2022, the Commission issued SRM-SECY-21-0066, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC-2018-0296)." The Commission disapproved the staff's recommendation and directed the staff to develop a rulemaking plan that aligned with the Commission Order CLI-22-03, and recent decisions in Turkey Point, CLI-22-02, and Peach Bottom, CLI-22-04, regarding the NEPA analysis of SLR applications. These orders concluded that the staff did not conduct an adequate NEPA analysis for the SLR period and further stated that the staff cannot exclusively rely on the LR GEIS for Category 1 issues in SLR environmental reviews. The SRM also directed the staff to include in the rulemaking plan a proposal to remove the word "initial" from § 51.53(c)(3) and to revise the LR GEIS and Table B-1 and associated guidance to fully account for one term of SLR. The SRM also directed the staff to provide options for a future

rulemaking effort regarding the 10-year regulatory update.

In March 2022, the staff submitted SECY-22-0024, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC-2018-0296)," to request Commission approval to initiate a rulemaking that would align with the Commission Order CLI-22-03 and recent decisions in Orders CLI-22-02 and CLI-22-04 regarding the NEPA analysis of SLR applications, as well as to remove the word "initial" from § 51.53(c)(3) and to revise the LR GEIS and Table B-1 and associated guidance to fully account for one term of SLR. The staff also proposed to update the LR GEIS to consider new technical data from completed environmental reviews, changes to environmental laws and regulations, and other information.

In April 2022, the Commission issued SRM-SECY-22-0024, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC-2018-0296)," approving the staff's recommendation to proceed with rulemaking.

In April 2022, the staff submitted SECY-22-0036, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—10-Year Environmental Regulatory Update (NRC-2022-0087)" that provided options for a future rulemaking effort to incorporate further changes to the LR GEIS as part of the 10-year regulatory update to amend Table B-1. Because the current rulemaking would address all necessary issues, the staff recommended that a future rulemaking for updating the LR GEIS and Table B-1 be deferred, to begin no sooner than FY 2031. The staff further recommended that the current update to the LR GEIS constitute the update for this review cycle.

In June 2022, the Commission issued SRM-SECY-22-0036 approving the staff's recommendation.

III. Discussion

A. Proposed Amendments

The proposed amendments to 10 CFR part 51 would revise the existing requirements for environmental reviews of applications for a license renewal of operating nuclear power plants. The proposed amendments would codify the updated generic conclusions of the draft revised LR GEIS for those issues for which a generic conclusion regarding the potential environmental impacts of issuing an initial or subsequent renewed license for a nuclear power plant can be reached. These conclusions have been updated to specifically account for one

⁴ Unless stated otherwise, references to the 2013 LR GEIS include the changes made to two environmental issues in Table B-1 as a part of the 2014 Continued Storage of Spent Nuclear Fuel final rule. These changes are discussed in Section 1.7.2 of the draft revised LR GEIS.

term of SLR as well as initial LR and other new information since the last LR GEIS update. These issues are identified as Category 1 issues in the draft revised LR GEIS. The Category 1 issues identified and described in the draft revised LR GEIS may be applied to any initial LR or SLR application for operating nuclear power plants covered by the LR GEIS and have been determined to have a SMALL impact for all plants or a subset of plants. Table B–1 in appendix B to subpart A of 10 CFR part 51 summarizes and codifies the Commission’s findings for all Category 1 issues. The revisions to Table B–1 account for one term of SLR; reflect lessons learned, knowledge gained, and experience from license renewal environmental reviews performed since development of the 2013 LR GEIS; consider changes to applicable laws and regulations; and factor in new scientific data and methodology with respect to the assessment of potential environmental impacts of nuclear power plant license renewal. In addition, the proposed amendments include conforming changes to the provisions of § 51.53(c)(3) and § 51.95. These proposed changes are intended to maintain the accuracy of the LR GEIS and ensure that future environmental reviews meet the “hard look” standard to fully account for the environmental impacts of initial LR and SLR, as documented in the draft revised LR GEIS.

B. Environmental Impacts To Be Reviewed

In the draft revised LR GEIS, the NRC reevaluated the Category 1 generic findings and determined that many of the environmental impacts of continued nuclear power plant operations and refurbishment during the renewal term (initial LR or SLR) would be SMALL. However, license renewal applicants in their environmental reports and the NRC staff in the SEIS would still need to evaluate whether new and significant information exists that would require a plant-specific analysis for that issue. See Section III.C of this document for a more detailed discussion of the process used in the draft revised LR GEIS.

In the draft revised LR GEIS, the NRC identified a total of 80 environmental issues that may be associated with operation and refurbishment during the renewal term. Chapter 4 of the draft revised LR GEIS describes the impact findings and impact significance level of SMALL, MODERATE, or LARGE, or a range where applicable, for each Category 1 and Category 2 issue. Of the 80 issues, the NRC identified 59 environmental issues as Category 1

issues. Applicants and the NRC staff would be required to rely on the generic finding for each Category 1 issue as supported by the analysis in the draft revised LR GEIS, which would be codified in the proposed Table B–1.

The draft revised LR GEIS identifies 20 environmental issues as Category 2 issues. These issues cannot be evaluated generically and must be evaluated by the applicant, in its environmental report, and the NRC staff, in the draft SEIS, using plant-specific information. For example, for the issue, “Surface water use conflicts (plants with cooling ponds or cooling towers using makeup water from a river),” the staff found in the draft revised LR GEIS that impacts could be of small or moderate significance based on site-specific factors that exacerbate consumptive water use by a nuclear power plant. The factors include increased water demand due to population growth; changes in water demand by industrial, agricultural, or other users of the same water source; drought and river low-flow conditions, and reduced water availability over time due to climate change. Therefore, the potential for water use conflicts must be addressed on a plant-specific basis.

For one environmental issue, “Electromagnetic fields (EMF),” the draft revised LR GEIS identified the category as “N/A” (not applicable). Studies of 60-Hz EMFs have not uncovered consistent evidence linking harmful effects with field exposures. Because the state of the science is currently inadequate, no generic conclusion on human health impacts is possible. If, in the future, the Commission finds that a general agreement has been reached by appropriate Federal health agencies that there are adverse health effects from EMFs, the Commission will then treat this issue in a manner similar to a Category 2 issue and require applicants to submit plant-specific reviews of these health effects in their environmental report. Until such time, applicants are not required to submit information on this issue.

C. Draft Revised Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants

This revision evaluates the environmental issues and findings of the 2013 LR GEIS and updates the analysis and assumptions to fully account for both initial LR and SLR. Lessons learned, knowledge gained, and experience from license renewal environmental reviews performed by the NRC since development of the 2013 LR GEIS provided a significant source of

new information for this assessment. This review included an examination of previous site-specific considerations of potential new and significant information for Category 1 issues. In addition, new scientific research, changes in environmental regulations and impact methodology, and other new information were considered in evaluating the significance of impacts associated with initial LR and SLR. Public comments on previous plant-specific license renewal reviews were analyzed to assess the existing environmental issues and identify new ones. The purpose of this evaluation was to review the findings presented in the 2013 LR GEIS and to ensure that the analysis and assumptions support SLR environmental reviews. In doing so, the NRC considered the need to modify, add to, or delete any of the 78 environmental issues in the 2013 LR GEIS and codified in Table B–1. After this evaluation, the staff identified 80 impact issues for detailed consideration in this draft LR GEIS revision. No environmental issues identified in Table B–1 and evaluated in the 2013 LR GEIS were eliminated, but certain issues were consolidated, and one issue was subdivided into three separate issues. Two new Category 2 issues and one new Category 1 issue were added.

Environmental issues in the draft revised LR GEIS are arranged by resource area in the same manner as the 2013 LR GEIS. In the draft revised LR GEIS, the environmental impacts of continued nuclear power plant operations during the license renewal term (initial LR or SLR) and associated refurbishment activities are addressed in each resource area. This analysis provides the technical basis for the 80 identified environmental issues. Additionally, the NRC staff also considered a range of replacement energy alternatives to the proposed action (license renewal) as described in the draft revised LR GEIS. This discussion of potential alternatives will inform the site-specific alternatives analyses in the SEISs. The draft revised LR GEIS considers and evaluates the 80 environmental issues within the context of the following environmental resource (*i.e.*, subject matter) areas: (1) land use and visual resources, (2) air quality and noise, (3) geologic environment, (4) water resources (surface water and groundwater resources), (5) ecological resources (terrestrial resources, aquatic resources, and federally protected ecological resources), (6) historic and cultural resources, (7) socioeconomic, (8) human health (radiological and nonradiological hazards and postulated

accidents), (9) environmental justice, (10) waste management and pollution prevention (radioactive and nonradioactive waste and spent nuclear fuel), (11) greenhouse gas emissions and climate change, (12) cumulative effects, and (13) impacts common to all alternatives (uranium fuel cycle and termination of nuclear power plant operations and decommissioning). The proposed rule revises Table B–1 in appendix B to subpart A of 10 CFR part 51 to reflect the changes in the draft revised LR GEIS.

In the draft revised LR GEIS, the general analytical approach used by the NRC staff to evaluate potential environmental impacts was to: (1) describe the nuclear power plant activity or aspect of plant operations or refurbishment that could affect a resource; (2) identify the resource that is affected; (3) evaluate past license renewal reviews and other available information; (4) assess the nature and magnitude of the potential environmental impact on the affected resource for both initial LR and SLR; (5) characterize the significance of the effects; (6) determine whether the results of the analysis apply to all nuclear power plants or to a specific subset of plants, or whether a plant-specific analysis is required—*i.e.*, whether the impact issue is Category 1 (generic) or Category 2 (plant-specific); and (7) consider additional mitigation measures for adverse impacts. Identification of environmental impacts (or issues) was conducted in an iterative rather than a stepwise manner. For example, after information was collected and level of significance was reviewed, the staff reexamined impacts to determine if any issues should be removed, added, consolidated, or divided.

The Commission would like to emphasize that in complying with the NRC's environmental regulations under § 51.53(c)(3)(iv), as required by NEPA, applicants are required to provide any new and significant information regarding the environmental impacts of license renewal of which the applicant is aware, including for Category 1 issues and for uncategorized issues. The proposed amendments would not change this requirement.

The draft revised LR GEIS retains the 2013 LR GEIS definitions for Category 1 and Category 2 issues. The draft revised LR GEIS discusses six major types of changes to the categorization of issues:

(1) *New Category 1 Issue*: This would be a Category 1 issue not previously listed in the 2013 LR GEIS. The applicant would not need to assess this issue in its environmental report. Under

§ 51.53(c)(3)(iv), however, the applicant is responsible for disclosing in the environmental report any “new and significant information” of which the applicant is aware. The NRC has addressed the environmental impacts of these Category 1 issues generically for all plants in the draft revised LR GEIS.

(2) *New Category 2 Issue*: This would be a Category 2 issue not previously listed in the 2013 LR GEIS. For the new Category 2 issue, the applicant would have to conduct an analysis of the potential environmental impacts related to that issue and include it in the environmental report. The analysis must include a discussion of (i) the possible actions to mitigate any adverse impacts associated with license renewal and (ii) the environmental impacts of alternatives to license renewal.

(3) *Existing Issue Category Change from Category 2 to Category 1*: This would be an issue that was considered as Category 2 in the 2013 LR GEIS and would now be considered as Category 1 in the draft revised LR GEIS. An applicant would no longer be required to conduct a plant-specific analysis on the environmental impacts associated with this issue. Consistent with the requirements of § 51.53(c)(3)(iv), an applicant would only be required to describe in its environmental report any “new and significant information” of which it is aware.

(4) *Consolidation of an Existing Category 1 Issue into an Existing Category 2 issue*: This would be an issue where an existing Category 1 issue in the 2013 LR GEIS has a similar scope as an existing Category 2 issue and has been consolidated into the Category 2 issue. Therefore, for the new, consolidated Category 2 issue, the applicant would have to conduct a plant-specific analysis of the potential environmental impacts related to that issue and include it in the environmental report. The analysis must include a discussion of (i) the possible actions to mitigate any adverse impacts associated with license renewal and (ii) the environmental impacts of alternatives to license renewal.

(5) *Consolidation of One or More Existing Category 1 Issues into an Existing Category 1 Issue*: This would be an issue that was considered Category 1 in the 2013 LR GEIS and would remain so. The issue has been revised by consolidating similar aspects of one or more Category 1 issues, in whole or in part, into the existing Category 1 issue and which affect the same environmental resources. Consistent with the requirements of § 51.53(c)(3)(iv), an applicant would only be required to describe in its

environmental report any “new and significant information” of which it is aware.

(6) *Subdividing an Existing Category 2 Issue into Multiple Category 2 Issues*: This would be an existing Category 2 issue in the 2013 LR GEIS that has been divided into multiple, new Category 2 issues in order to more clearly address specific categories of environmental resource impacts. For the new, separate Category 2 issues, the applicant would have to conduct analyses of the potential environmental impacts related to each separate issue, as applicable, and include it in the environmental report. The analyses must include a discussion of (i) the possible actions to mitigate any adverse impacts associated with license renewal and (ii) the environmental impacts of alternatives to license renewal.

D. Proposed Actions and Basis for Changes to 10 CFR Part 51

Appendix B to Subpart A of 10 CFR Part 51

This proposed rule revises the introductory paragraph in appendix B to subpart A of 10 CFR part 51, to indicate the applicability to initial LR and one term of SLR and to update the findings on environmental issues with the data supported by the analyses in the proposed NUREG–1437, Revision 2.

The proposed rule would also modify the language of the introductory paragraph to clarify that Table B–1 is applicable to nuclear power plant licensees holding an operating license, construction permit, or combined license as of June 30, 1995.

The proposed rule renames the title of Table B–1, “Summary of NEPA Issues for License Renewal of Nuclear Power Plants,” as “Summary of Findings on Environmental Issues for Initial and One Term of Subsequent License Renewal of Nuclear Power Plants,” to spell out the applicability to initial LR and SLR environmental reviews.

The draft revised LR GEIS, which is being concurrently issued for public comment, provides a summary change table comparing the 78 environmental issues in the 2013 LR GEIS with the 80 environmental issues in the draft revised LR GEIS. The proposed rule amends Table B–1 to reflect the changes made in the draft revised LR GEIS. As documented in the draft revised LR GEIS, for each of the 80 environmental issues, the scope has been expanded to fully account for the impacts of continued nuclear power plant operations and any refurbishment encompassing the initial LR or SLR

term. The changes to Table B–1 are described below:

(i) Land Use

(1) *Onsite Land Use*, (2) *Offsite Land Use*, and (3) *Offsite Land Use in Transmission Line Right-of-Ways (ROWs)*—“Onsite land use,” “Offsite land use,” and “Offsite Land Use in Transmission Line Right-of-Ways (ROWs)” are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(ii) Visual Resources

(4) *Aesthetic Impacts*—“Aesthetic impacts” is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(iii) Air Quality

(5) *Air Quality Impacts*—The proposed rule would rename “Air quality impacts (all plants)” as “Air quality impacts”; it is a Category 1 issue. The proposed rule makes minor clarifying changes and revisions to the order of the topics discussed in the finding column of Table B–1 for this issue.

(6) *Air Quality Effects of Transmission Lines*—“Air Quality Effects of Transmission Lines” is a Category 1 issue. The proposed rule would make minor clarifying changes to the finding column of Table B–1 for this issue.

(iv) Noise

(7) *Noise Impacts*—“Noise impacts” is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(v) Geologic Environment

(8) *Geology and Soils*—“Geology and Soils” is a Category 1 issue. The proposed rule would make minor clarifying changes to the finding column of Table B–1 for this issue.

(vi) Surface Water Resources

(9) *Surface Water Use and Quality (Non-Cooling System Impacts)*, (10) *Altered Current Patterns at Intake and Discharge Structures*, (11) *Altered Salinity Gradients*, (12) *Altered Thermal Stratification of Lakes*, (13) *Scouring Caused by Discharged Cooling Water*, (14) *Discharge of Metals in Cooling System Effluent*, (15) *Discharge of Biocides, Sanitary Wastes, and Minor Chemical Spills*, and (16) *Surface Water Use Conflicts (Plants with Once-Through Cooling Systems)*—“Surface water use and quality (non-cooling system impacts),” “Altered current patterns at intake and discharge structures,” “Altered salinity gradients,” “Altered thermal

stratification of lakes,” “Scouring caused by discharged cooling water,” “Discharge of metals in cooling system effluent,” “Discharge of biocides, sanitary wastes, and minor chemical spills,” and “Surface water use conflicts (plants with once-through cooling systems)” are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(17) *Surface Water Use Conflicts (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River)*—“Surface water use conflicts (plants with cooling ponds or cooling towers using makeup water from a river)” is a Category 2 issue. There are no changes to the finding column of Table B–1 for this issue.

(18) *Effects of Dredging on Surface Water Quality*—“Effects of dredging on surface water quality” is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(19) *Temperature Effects on Sediment Transport Capacity*—“Temperature effects on sediment transport capacity” is a Category 1 issue. The proposed rule would make minor clarifying changes to the finding column of Table B–1 for this issue.

(vii) Groundwater Resources

(20) *Groundwater Contamination and Use (Non-Cooling System Impacts)*—“Groundwater contamination and use (non-cooling system impacts)” is a Category 1 issue. The proposed rule would make minor clarifying changes to the finding column of Table B–1 for this issue.

(21) *Groundwater Use Conflicts (Plants That Withdraw Less than 100 Gallons per Minute [gpm])*—“Groundwater use conflicts (plants that withdraw less than 100 gallons per minute [gpm])” is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(22) *Groundwater Use Conflicts (Plants That Withdraw More than 100 Gallons per Minute [gpm])* and (23) *Groundwater Use Conflicts (Plants with Closed-Cycle Cooling Systems That Withdraw Makeup Water from a River)*—“Groundwater use conflicts (plants that withdraw more than 100 gallons per minute [gpm])” and “Groundwater use conflicts (plants with closed-cycle cooling systems that withdraw makeup water from a river)” are Category 2 issues. There are no changes to the finding column of Table B–1 for these issues.

(24) *Groundwater Quality Degradation Resulting from Water Withdrawals*—“Groundwater quality degradation resulting from water

withdrawals” is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(25) *Groundwater Quality Degradation (Plants with Cooling Ponds)*—The proposed rule would combine a Category 1 issue, “Groundwater quality degradation (cooling ponds in salt marshes),” and a Category 2 issue, “Groundwater quality degradation (cooling ponds at inland sites),” and name it “Groundwater quality degradation (plants with cooling ponds).” The combined issue is a Category 2 issue. The two issues are combined because both issues consider the possibility of groundwater quality and beneficial use becoming degraded as a result of the migration of contaminants discharged to cooling ponds. Also, for the first issue, “Groundwater quality degradation (cooling ponds in salt marshes),” the NRC staff found that the issue was relevant to only two nuclear power plants. The combined issue reflects lessons learned and knowledge gained and new and significant information from the Turkey Point SLR review that showed that cooling ponds can impact groundwater and surface water in ways not previously considered. This combined issue also considers the environmental effects of saltwater intrusion and encroachment on adjacent surface water and groundwater quality.

As described in the draft revised LR GEIS, the NRC staff had previously determined that plants relying on cooling ponds in salt marsh settings were expected to have a small impact on groundwater quality. However, new information indicates that the impacts of groundwater quality degradation for plants using cooling ponds in either coastal (salt marsh) settings or at inland sites could be greater than small (*i.e.*, small or moderate), depending on site-specific differences in the cooling pond’s construction and operation; water quality; site hydrogeologic conditions (including the interaction of surface water and groundwater); and the location, depth, and pump rate of any water supply wells contributing to or impacted by outflow or seepage from a cooling pond. Therefore, the combined issue is a Category 2 issue. The proposed rule revises the finding column of Table B–1 accordingly.

(26) *Radionuclides Released to Groundwater*—“Radionuclides released to groundwater” is a Category 2 issue. There are no changes to the finding column of Table B–1 for this issue.

(viii) Terrestrial Resources

(27) *Non-Cooling System Impacts on Terrestrial Resources*—The proposed

rule would rename “Effects on terrestrial resources (non-cooling system impacts)” as “Non-cooling system impacts on terrestrial resources.” The issue is a Category 2 issue. The proposed rule makes clarifying changes to the finding column of Table B–1 for this issue to more precisely describe the scope of issues and resources considered and for consistency with other ecological resources (e.g., aquatic and terrestrial) issues.

(28) *Exposure of Terrestrial Organisms to Radionuclides*—“Exposure of terrestrial organisms to radionuclides” is a Category 1 issue. The proposed rule would make minor clarifying changes to the finding column of Table B–1 for this issue.

(29) *Cooling System Impacts on Terrestrial Resources (Plants with Once-Through Cooling Systems or Cooling Ponds)*—“Cooling system impacts on terrestrial resources (plants with once-through cooling systems or cooling ponds)” is a Category 1 issue. This issue concerns the potential impacts of once-through cooling systems and cooling ponds at nuclear power plants on terrestrial resources during the license renewal term (initial LR or SLR). Cooling system operation can alter the ecological environment in a manner that affects terrestrial resources. Such alterations may include thermal effluent additions to receiving water bodies; chemical effluent additions to surface water or groundwater; impingement of waterfowl; disturbance of terrestrial plants and wetlands associated with maintenance dredging; disposal of dredged material; and erosion of shoreline habitat.

Thermal effluents discharged from once-through cooling systems and cooling ponds can contribute to localized elevated water temperatures in receiving bodies that may affect the distributions of some terrestrial plants and animals in adjacent riparian or wetland habitats. Thermal effluents to waters of the United States are regulated through National Pollutant Discharge Elimination System (NPDES) permits to limit the effects of such discharges on the ecological environment. In addition, wetland and riparian plant communities present near nuclear power plants have been influenced by many years of facility operation, and these communities have acclimated to local conditions.

Along with thermal effluents, nonradiological chemical contaminants may be present in cooling system discharges. The NPDES permits also limit the allowable concentrations of contaminants in liquid effluent to

minimize impacts on the ecological environment.

Groundwater quality can be degraded by nonradiological contaminants present in cooling ponds and cooling canals. The NRC staff found that this issue was identified only at one operating nuclear power plant, where the movement of hypersaline water did not have discernable ecological impacts.

The impingement of waterfowl at cooling water intakes has been observed at some nuclear power plants. These plants have changed operational procedures, such as periodically cleaning zebra mussels off intake structures, or have changed intake structure designs to minimize impacts on waterfowl.

Maintenance dredging near cooling system intakes or outfalls physically disturb or alter wetland or riparian habitats. Dredging and disposal of dredged material would likely require the nuclear power plant operator to obtain a Clean Water Act (CWA) Section 404 permit from the U.S. Army Corps of Engineers; best management practices and conditions associated with these permits would minimize impacts on the ecological environment.

The NRC determined that the effects of once-through cooling systems and cooling ponds on terrestrial resources would be minor and would neither destabilize nor noticeably alter any important attribute of populations of plants or animals during the initial LR or SLR term. The proposed rule would revise the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(30) *Cooling Tower Impacts on Terrestrial Plants*—The proposed rule would rename “Cooling tower impacts on vegetation (plants with cooling towers)” as “Cooling tower impacts on terrestrial plants”; it is a Category 1 issue. This issue concerns the potential impacts of cooling tower operation on terrestrial plants during the license renewal term. Terrestrial habitats near cooling towers can be exposed to particulates, such as salt, and can experience increased humidity, which can deposit water droplets or ice on vegetation; these effects can lead to structural damage and changes in plant communities.

The NRC determined that the effects of cooling towers on terrestrial plants would be minor and would neither destabilize nor noticeably alter any important attribute of plant populations during the license renewal term (initial LR or SLR). The proposed rule would revise the finding column of Table B–1

for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(31) *Bird Collisions with Plant Structures and Transmission Lines*—“Bird collisions with plant structures and transmission lines” is a Category 1 issue. This issue concerns the risk of birds colliding with plant structures and transmission lines during the license renewal term. Tall structures on nuclear power plant sites, such as cooling towers, meteorological towers, and transmission lines, create collision hazards for birds that can result in injury or death.

The NRC determined that the risk of bird collisions with site structures would remain the same for a given nuclear power plant during the license renewal term (initial LR or SLR). Because the number of associated bird mortalities is small for any species, it is unlikely that losses would threaten the stability of local or migratory bird populations or result in a noticeable impairment of the function of a species within the ecosystem. The proposed rule would revise the finding column of Table B–1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(32) *Water Use Conflicts with Terrestrial Resources (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River)*—“Water use conflicts with terrestrial resources (plants with cooling ponds or cooling towers using makeup water from a river)” is a Category 2 issue. This issue concerns water use conflicts that may arise at nuclear power plants with cooling ponds or cooling towers that withdraw makeup water from a river and how those conflicts could affect terrestrial resources during the license renewal term.

Nuclear power plant cooling systems may compete with other users relying on surface water resources, including downstream municipal, agricultural, or industrial users. For plants using cooling towers, while the volume of surface water withdrawn is substantially less than once-through systems for a similarly sized nuclear power plant, the makeup water needed to replenish the consumptive loss of water to evaporation can be significant. Cooling ponds also require makeup water. Water use conflicts with terrestrial resources, especially riparian communities, could occur when water that supports these resources is diminished by a combination of anthropogenic uses.

The NRC identified water use conflicts with terrestrial resources at only one nuclear power plant. That nuclear power plant operator developed and implemented a water level management plan, which effectively mitigated the effects that downstream riparian communities might experience from the plant's cooling water withdrawals.

The NRC determined that water use conflicts during the license renewal term (initial LR or SLR) depend on numerous site-specific factors, including the ecological setting of the plant; the consumptive use of other municipal, agricultural, or industrial water users; and the plants and animals present in the area. Water use conflicts with terrestrial resources would be small at most nuclear power plants with cooling ponds or cooling towers that withdraw makeup from a river but may be moderate or large at some plants.

The proposed rule would revise the finding column of Table B-1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(33) *Transmission Line Right-Of-Way (ROW) Management Impacts on Terrestrial Resources*—"Transmission line right-of-way (ROW) management impacts on terrestrial resources" is a Category 1 issue. This issue concerns the effects of transmission line ROW management on terrestrial plants and animals during the license renewal term (initial LR or SLR).

Utilities maintain transmission line ROWs so that the ground cover is composed of low-growing herbaceous or shrubby vegetation and grasses. Noise and general human disturbance during ROW management can temporarily disturb wildlife and affect their behaviors. Most nuclear power plants maintain procedures to minimize or mitigate the potential impacts of ROW management. The scope of transmission lines relevant to license renewal include only the lines that connect the nuclear power plant to the first substation that feeds into the regional power distribution system. Typically, the first substation is located on the nuclear power plant property within the primary industrial-use area or other developed portion of the plant site. Therefore, effects on terrestrial plants and animals are generally negligible.

The proposed rule would revise the finding column of Table B-1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(34) *Electromagnetic Field Effects on Terrestrial Plants and Animals*—The proposed rule would rename "Electromagnetic fields on flora and fauna (plants, agricultural crops, honeybees, wildlife, livestock)" as "Electromagnetic field effects on terrestrial plants and animals" for clarity; it is a Category 1 issue. This issue concerns the effects of electromagnetic fields (EMFs) generated by electric transmission lines at nuclear power plants on terrestrial plants and animals, including agricultural crops, honeybees, wildlife, and livestock, during the license renewal term (initial LR or SLR). Studies investigating the effects of EMFs produced by operating transmission lines up to 1,100 kV have generally not detected any ecologically significant impact on terrestrial plants and animals. Plants and animals near transmission lines have been exposed to many years of transmission line operation and associated EMFs. The scope of transmission lines relevant to license renewal include only the lines that connect the nuclear power plant to the first substation that feeds into the regional power distribution system. Therefore, the effects of EMFs on terrestrial plants and animals are generally negligible.

The proposed rule would revise the finding column of Table B-1 for this issue to more clearly describe the scope of issues and resources considered and for consistency with other ecological resource issues.

(ix) Aquatic Resources

(35) *Impingement Mortality and Entrainment of Aquatic Organisms (Plants with Once-Through Cooling Systems or Cooling Ponds)*—The proposed rule would combine a Category 2 issue, "Impingement and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds)" and the impingement component of a Category 1 issue, "Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses," into one Category 2 issue, "Impingement mortality and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds)." This issue pertains to impingement mortality and entrainment of finfish and shellfish at nuclear power plants with once-through cooling systems and cooling ponds during the license renewal term (initial LR or SLR). This includes plants with helper cooling towers that are seasonally operated to reduce thermal load to the receiving water body, reduce entrainment during peak spawning

periods, or reduce consumptive water use during periods of low river flow.

In the draft revised LR GEIS, the NRC renamed the issue to include impingement mortality, rather than simply impingement. This change is consistent with the EPA's 2014 CWA Section 316(b) regulations and the EPA's assessment that impingement reduction technology is available, feasible, and has been demonstrated to be effective. Additionally, the EPA's 2014 CWA Section 316(b) regulations establish best technology available (BTA) standards for impingement mortality based on the fact that survival is a more appropriate metric for determining environmental impact than simply looking at total impingement. Therefore, the draft revised LR GEIS also consolidates the impingement component of the "Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses" issue, for plants with once-through cooling systems or cooling ponds, into this issue.

As a result of the 2014 CWA Section 316(b) regulations, nuclear power plants must submit detailed information about their cooling water intake systems as part of NPDES permit renewal applications to inform the permitting authority's BTA determination. Some nuclear power plants have received final BTA determinations under the 2013 CWA Section 316(b) regulations. Many others have submitted the required information and are awaiting final determinations. The NRC expects that most operating nuclear power plants will have final BTA determinations within the next several years.

When available, the NRC relies on the expertise and authority of the NPDES permitting authority with respect to the impacts of impingement mortality and entrainment. Therefore, if the NPDES permitting authority has made BTA determinations for a nuclear power plant pursuant to CWA Section 316(b) and that plant has implemented any associated requirements or those requirements would be implemented before the license renewal period, then the NRC assumes that adverse impacts on the aquatic environment would be minimized. In such cases, the NRC concludes that the impacts of either impingement mortality, entrainment, or both would generally be small over the course of the initial LR or SLR term. In cases where the NPDES permitting authority has not made BTA determinations, the NRC analyzes the potential impacts of impingement mortality, entrainment, or both using a weight-of-evidence approach and

determines the level of impact (small, moderate, or large) that the aquatic environment is likely to experience over the course of the license renewal term.

The potential effects of impingement mortality and entrainment during the license renewal term depend on numerous plant-specific factors, including the ecological setting of the plant; the characteristics of the cooling system; and the characteristics of the fish, shellfish, and other aquatic organisms present in the area (*e.g.*, life history, distribution, population trends, management objectives, etc.). Additionally, whether the NPDES permitting authority has made BTA determinations pursuant to CWA Section 316(b) and whether the nuclear power plant operator has implemented any associated requirements is also a relevant factor.

(36) *Impingement Mortality and Entrainment of Aquatic Organisms (Plants with Cooling Towers)*—The proposed rule would combine a Category 1 issue, “Impingement and entrainment of aquatic organisms (plants with cooling towers),” and the impingement component of a Category 1 issue, “Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses,” into one Category 1 issue, “Impingement mortality and entrainment of aquatic organisms (plants with cooling towers).” The issue pertains to impingement mortality and entrainment of finfish and shellfish at nuclear power plants with cooling towers that operate on a fully closed-cycle mode.

In the draft revised LR GEIS, the NRC changed the title of this issue to include impingement mortality, rather than simply impingement. This change is consistent with the EPA’s 2014 CWA Section 316(b) regulations and because assessing survival of impinged organisms is a more appropriate metric for determining environmental impact than simply looking at total impingement. Therefore, this draft revised LR GEIS also consolidates into this issue the impingement component of the issue of “Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses,” for plants with cooling towers.

In the 2013 LR GEIS, the NRC found that that impingement and entrainment of finfish and shellfish at plants with cooling towers operated in a fully closed-cycle mode did not result in noticeable effects on finfish or shellfish populations within source water bodies, and this impact was not expected to be an issue during the license renewal term. This finding is further supported

by the EPA’s 2014 CWA Section 316(b) regulations for existing facilities, which state that the operation of a closed-cycle recirculating system is an essentially preapproved technology for achieving impingement mortality BTA.

The 2013 LR GEIS considered that impingement may result in sublethal effects that could increase the susceptibility of fish or finfish to predation, disease, or parasitism. However, only once-through cooling systems were anticipated to be of concern for this issue as the lower volume of water required by nuclear power plants with cooling towers that operate in a fully closed-cycle mode would minimize this potential effect. The NRC does not expect secondary effects of impingement to be of concern during the license renewal term (initial LR or SLR) at nuclear power plants with cooling towers, and sublethal effects of entrainment do not apply.

In considering the effects of impingement mortality and entrainment of closed-cycle cooling systems on aquatic ecology, the NRC evaluated the same issues that were evaluated for nuclear power plants with once-through cooling systems or cooling ponds. No significant impacts on aquatic populations have been reported at any existing nuclear power plants with cooling towers operating in a closed-cycle mode. As part of obtaining BTA determinations under CWA 316(b), permitting authorities may require some nuclear power plant licensees to implement additional plant-specific controls to reduce impingement mortality and entrainment. Implementation of such controls would further reduce or mitigate impingement mortality and entrainment during the license renewal term. The NRC determined that the impacts of impingement mortality and entrainment on aquatic organisms during the license renewal term (initial LR or SLR) would be small for nuclear power plants with cooling towers operated in a fully closed-cycle mode. Therefore, the combined issue is a Category 1 issue. The proposed rule would revise the finding column of Table B–1 accordingly.

(37) *Entrainment of Phytoplankton and Zooplankton*—The proposed rule would rename “Entrainment of phytoplankton and zooplankton (all plants)” as “Entrainment of phytoplankton and zooplankton”; it is a Category 1 issue. The NRC found that the effects of entrainment of phytoplankton and zooplankton would be minor and would neither destabilize nor noticeably alter any important attribute of populations of these

organisms in source water bodies during the license renewal term (initial LR or SLR) of any nuclear power plants. As part of obtaining the BTA entrainment determinations under Section 316(b) of the CWA (33 U.S.C. 1251 *et seq.*), permitting authorities may require some nuclear power plants to implement additional site-specific controls to reduce entrainment. Implementation of such controls would further reduce or mitigate entrainment of phytoplankton and zooplankton.

The proposed rule would revise the finding column of Table B–1 for this issue to clarify the scope of issues and resources considered and indicate that the entrainment of phytoplankton and zooplankton would be mitigated through adherence to NPDES permit conditions established pursuant to CWA Section 316(b).

(38) *Effects of Thermal Effluents on Aquatic Organisms (Plants with Once-Through Cooling Systems or Cooling Ponds)*—The proposed rule would rename “Thermal impacts on aquatic organisms (plants with once-through cooling systems or cooling ponds)” as “Effects of thermal effluents on aquatic organisms (plants with once-through cooling systems or cooling ponds)” for clarity and consistency with other ecological resource titles; it is a Category 2 issue.

This issue pertains to acute, sublethal, and community-level effects of thermal effluents on finfish and shellfish from operation of nuclear power plants with once-through cooling systems and cooling ponds during the license renewal term (initial LR or SLR). The NRC determined that the effects of thermal effluents on aquatic organisms would be small at many nuclear power plants with once-through cooling systems or ponds, but that these impacts could be moderate or large at some plants. The potential effects of thermal effluent discharges depend on numerous site-specific factors, including the ecological setting of the plant, the characteristics of the cooling system and effluent discharges, and the characteristics of the fish, shellfish, and other aquatic organisms present in the area. Additionally, whether the NPDES permitting authority has granted a CWA Section 316(a) variance is also a relevant factor.

The proposed rule would revise the finding column of Table B–1 for this issue to clarify the scope of issues and resources considered and for consistency with other ecological resources issues.

(39) *Effects of Thermal Effluents on Aquatic Organisms (Plants with Cooling Towers)*—The proposed rule would

rename “Thermal impacts on aquatic organisms (plants with cooling towers)” as “Effects of thermal effluents on aquatic organisms (plants with cooling towers)” for clarity and consistency with other ecological resource issue titles; it is a Category 1 issue.

This issue pertains to acute, sublethal, and community-level effects of thermal effluents on finfish and shellfish from operation of nuclear power plants with cooling towers operated in a fully closed-cycle mode. The NRC found that the effects of thermal effluents on aquatic organisms at plants with cooling towers would be minor and would neither destabilize nor noticeably alter any important attributes of aquatic populations in receiving water bodies. As part of obtaining a variance under CWA Section 316(a), permitting authorities may impose conditions concerning thermal effluent discharges at some nuclear power plants. Implementation of such conditions would further reduce or mitigate thermal impacts during the license renewal term (initial LR or SLR).

The proposed rule would revise the finding column of Table B–1 for this issue to clarify the scope of issues and resources considered and for consistency with other ecological resources issues.

(40) *Infrequently Reported Effects of Thermal Effluents*—The proposed rule would combine two Category 1 issues, “Infrequently reported thermal impacts (all plants)” and “Effects of cooling water discharge on dissolved oxygen, gas supersaturation, and eutrophication,” with the thermal effluent component of a Category 1 issue, “Losses from predation, parasitism, and disease among organisms exposed to sublethal stresses,” into one Category 1 issue, “Infrequently reported effects of thermal effluents.” This issue pertains to interrelated and infrequently reported effects of thermal effluents, to include cold shock, thermal migration barriers, accelerated maturation of aquatic insects, and proliferated growth of aquatic nuisance species, as well as the effects of thermal effluents on dissolved oxygen, gas supersaturation, and eutrophication. This issue also considers sublethal stresses associated with thermal effluents that can increase the susceptibility of exposed organisms to predation, parasitism, or disease. As discussed below, these effects are not a concern for license renewal (initial LR or SLR).

At nuclear power plants, cold shock can occur during refueling outages, reductions in power generation level, or other situations that would quickly

reduce the amount of cooling capacity required at the plant. The 1996 LR GEIS reported that cold shock events have only rarely occurred at nuclear power plants. No cold shock events have been reported since the events described in the 1996 LR GEIS occurred, and no noticeable or detectable impacts on aquatic populations have been reported at any existing nuclear power plants.

Thermal effluents have the potential to create migration barriers if the thermal plume covers an extensive cross-sectional area of a river and temperatures within the plume exceed a species’ physiological tolerance limit. This impact has been examined at several nuclear power plants, but it has not been determined to result in observable effects.

The 1996 and 2013 LR GEISs determined that the heated effluents of nuclear power plants could accelerate the maturation of aquatic insects in freshwater systems and cause premature emergence. The maturation and emergence of aquatic insects are often closely associated with water temperature regimes. To date, thermal effluents of nuclear power plants have resulted in no noticeable or detectable impacts on the life cycles of aquatic insects.

The 1996 and 2013 LR GEISs also determined that heated effluents could proliferate the growth of aquatic nuisance organisms. Aquatic nuisance species are organisms that disrupt the ecological stability of infested inland (e.g., rivers and lakes), estuarine, or marine waters. No noticeable or detectable impacts on aquatic populations have been reported at any existing nuclear power plants related to this issue. The NRC has identified no other concerns about nuisance aquatic organisms associated with nuclear power plant thermal effluents.

Aerobic organisms, such as fish, require oxygen, and the concentration of dissolved oxygen in a water body is one of the most important ecological water quality parameters. The thermal effluent discharges of nuclear power plants have the potential to stress aquatic organisms by simultaneously increasing these organisms’ need for oxygen and decreasing oxygen availability. Although the thermal effluents of nuclear power plants may contribute to reduced dissolved oxygen in the immediate vicinity of the discharge point, as the effluent disperses, diffusion and aeration from turbulent movement introduces additional oxygen into the water. No noticeable or detectable impacts on aquatic populations have been reported at any

existing nuclear power plants related to oxygen availability.

Rapid heating of cooling water can also affect the solubility and saturation point of other dissolved gases, including nitrogen, resulting in a state where condenser cooling water becomes supersaturated with gases. Once the supersaturated water is discharged in the receiving water body, dissolved gas levels equilibrate as the effluent cools and mixes with ambient water. This process is of concern if aquatic organisms remain in the supersaturated effluent for a long enough period to become equilibrated to the increased pressure associated with the effluent. If these organisms then move into water of lower pressure too quickly when, for example, swimming out of the thermal effluent or diving to depths, the dissolved gases within the affected tissues may come out of solution and form embolisms (bubbles). The resulting condition is known as gas bubble disease, and fish mortality from gas bubble disease has been observed at one nuclear power plant. That nuclear power plant operator installed a barrier net to prevent fish from entering the discharge canal, and no such events occurred again following implementation of this mitigation. No noticeable or detectable impacts on aquatic populations have been reported at any other nuclear power plants related to gas supersaturation.

An early concern about nuclear power plant discharges was that thermal effluents would cause or speed eutrophication by stimulating biological productivity in receiving water bodies. Several nuclear power plants that conducted long-term monitoring to investigate this potential effect did not detect any evidence of eutrophication.

Fish and shellfish that are exposed to the thermal effluent of a nuclear power plant may experience stunning, disorientation, or injury. These sublethal effects can subsequently affect an organism’s susceptibility to predation, parasitism, or disease. Since the publication of the 2013 LR GEIS, the NRC has determined that thermal effects on aquatic organisms at four nuclear power plants could be small to moderate during the license renewal term. At three of the four plants (i.e., Braidwood, LaSalle, and Turkey Point), these impacts were limited to species confined to cooling pond environments. In the fourth example (Peach Bottom), the adverse effects were found to be confined to a narrow band of shallow water habitat downstream of the discharge canal during the summer months. However, increased susceptibility to predation, parasitism,

or disease or predation resulting from exposure to thermal effluent was not found to be responsible for these small to moderate findings. Rather, these effects were attributed to other acute (*i.e.*, heat shock) or community-level effects (*i.e.*, reduced habitat availability or quality and reduced species diversity over time) of thermal effluents evaluated as part of the former Category 2 issue, “Thermal impacts on aquatic organisms (plants with once-through cooling systems or cooling ponds),” which would be renamed in this proposed rule.

As described in the draft revised LR GEIS, the NRC determined that the infrequently reported effects of thermal effluents would be minor and would neither destabilize nor noticeably alter any important attribute of aquatic populations in receiving water bodies of any nuclear power plants during the license renewal term (initial LR or SLR). As part of obtaining a variance under CWA Section 316(a), permitting authorities may impose conditions through the NPDES permit process concerning thermal effluent discharges at some nuclear power plants. Implementation of such conditions would further reduce or mitigate thermal impacts during the license renewal term. The NRC concluded that infrequently reported effects of thermal effluents during the license renewal term would be small for all nuclear power plants. Therefore, the combined issue is a Category 1 issue. The proposed rule would revise the finding column of Table B–1 accordingly.

(41) *Effects of Nonradiological Contaminants on Aquatic Organisms*—“Effects of nonradiological contaminants on aquatic organisms” is a Category 1 issue. This issue concerns the potential effects of nonradiological contaminants on aquatic organisms that could occur as a result of nuclear power plant operations during the license renewal term (initial LR or SLR). This issue was originally of concern because some nuclear power plants used heavy metals in condenser tubing that could leach from the tubing and expose aquatic organisms to these contaminants. Heavy metals have not been found to be of concern other than a few instances of copper contamination, and in all cases, the nuclear power plants eliminated leaching by replacing the affected piping.

In addition to heavy metals, nuclear power plants often add biocides to cooling water to kill algae, bacteria, macroinvertebrates, and other organisms that could cause buildup in plant systems and structures. Nuclear power

plants typically maintain site procedures that specify when and how to treat the cooling water system with such chemicals and best management practices to minimize impacts on the ecological environment. The NPDES permits mitigate potential effects of chemical effluents by limiting the allowable concentrations in effluent discharges to ensure the protection of the aquatic community within the receiving water body.

The NRC determined that the effects of nonradiological contaminants on aquatic organisms would be minor and would neither destabilize nor noticeably alter any important attribute of populations of these organisms in source water bodies during license renewal terms of any nuclear power plants. Continued adherence of nuclear power plants to chemical effluent limitations established in NPDES permits would minimize the potential impacts of nonradiological contaminants on the aquatic environment. The proposed rule would revise the finding column of Table B–1 for this issue, to more clearly describe the scope of issues and resources considered and for consistency with other ecological resources issues.

(42) *Exposure of Aquatic Organisms to Radionuclides*—“Exposure of aquatic organisms to radionuclides” is a Category 1 issue. The proposed rule would make minor clarifying changes to the finding column of Table B–1 for this issue.

(43) *Effects of Dredging on Aquatic Resources*—The proposed rule would rename “Effects of dredging on aquatic organisms” as “Effects of dredging on aquatic resources”; it is a Category 1 issue. This issue concerns the effects of dredging on aquatic resources conducted to maintain the function or reliability of plant cooling systems during the license renewal term (initial LR or SLR).

Any dredging performed would be infrequent and would require the nuclear power plant operators to obtain permits from the U.S. Army Corps of Engineers under CWA Section 404. Best management practices and conditions associated with these permits would minimize impacts on the ecological environment.

The NRC determined that the effects of dredging on aquatic resources would be minor and would neither destabilize nor noticeably alter any important attribute of the aquatic environment during license renewal term at any nuclear power plant. The NRC assumes that nuclear power plant operators would continue to implement site environmental procedures and would

obtain any necessary permits for dredging activities. Implementation of such controls would further reduce or mitigate potential effects. The proposed rule would revise the finding column of Table B–1 for this issue, to more clearly describe the scope of issues and resources considered and for consistency with other ecological resources issues.

(44) *Water Use Conflicts with Aquatic Resources (Plants with Cooling Ponds or Cooling Towers Using Makeup Water from a River)*—“Water use conflicts with aquatic resources (plants with cooling ponds or cooling towers using makeup water from a river)” is a Category 2 issue. This issue concerns water use conflicts that may arise at nuclear power plants with cooling ponds or cooling towers that use makeup water from a river and how those conflicts could affect aquatic resources during the license renewal term (initial LR or SLR). This issue also applies to nuclear power plants with hybrid cooling systems.

Nuclear power plant cooling systems may compete with other users relying on surface water resources, including downstream municipal, agricultural, or industrial users. Water use conflicts with aquatic resources could occur when water that supports these resources is diminished by a combination of anthropogenic uses. To date, the NRC has identified water use conflicts with aquatic resources at only one nuclear power plant. The NRC concluded that water use conflicts would be small to moderate for this nuclear power plant. The plant operator developed and implemented a water level management plan which successfully mitigated water use conflicts. The NRC has identified no concerns about water use conflicts with aquatic resources at any other nuclear power plant with cooling ponds or cooling towers. The NRC concluded that water use conflicts with aquatic resources would be small at most nuclear power plants with cooling ponds or cooling towers that withdraw makeup water from a river but may be moderate at some plants.

Water use conflicts during the license renewal term (initial LR or SLR) would depend on numerous site-specific factors including the ecological setting of the nuclear power plant; the consumptive use of other municipal, agricultural, or industrial water users; and the aquatic resources present in the area. The proposed rule would revise the finding column of Table B–1 for this issue, to more clearly describe the scope of issues and resources considered and

for consistency with other ecological resources issues.

(45) *Non-Cooling System Impacts on Aquatic Resources*—The proposed rule would rename “Effects on aquatic resources (non-cooling system impacts)” as “Non-cooling system impacts on aquatic resources”; it is a Category 1 issue. This issue concerns the effects of nuclear power plant operations on aquatic resources that are unrelated to the operation of the cooling system. Such activities include landscape and grounds maintenance, stormwater management, and ground-disturbing activities that could directly disturb aquatic habitat or cause runoff or sedimentation.

Many nuclear power plant operators have developed site or fleet-wide environmental review procedures that help workers identify and avoid impacts on the ecological environment when performing site activities. These procedures generally include checklists to help identify potential effects and required permits and best management practices to minimize the affected area. Proper implementation of environmental procedures and BMPs would minimize or mitigate potential effects on aquatic resources during the license renewal term. Many activities that could affect aquatic habitats would also require nuclear power plants to obtain Federal permits under CWA Section 404, which would include conditions to minimize or mitigate impacts on affected waterways.

The NRC determined that the effects of site activities unrelated to cooling system operation would be minor and would neither destabilize nor noticeably alter any important attribute of the aquatic environment during the license renewal term of any nuclear power plants. The NRC assumes that nuclear power plants would continue to implement site environmental procedures and would obtain any necessary permits for activities that could affect waterways or aquatic features. The proposed rule would revise the finding column of Table B–1 for this issue, to more clearly describe the scope of issues and resources considered and for consistency with other ecological resources issues.

(46) *Impacts of Transmission Line Right-Of-Way (ROW) Management on Aquatic Resources*—“Impacts of transmission line right-of-way (ROW) management on aquatic resources” is a Category 1 issue. This issue concerns the effects of transmission line ROW management on aquatic plants and animals during the license renewal term.

The transmission lines relevant to license renewal include only the lines that connect the nuclear power plant to the first substation that feeds into the regional power distribution system. Typically, the first substation is located on the nuclear power plant property within the primary industrial-use area and the in-scope transmission lines for license renewal tend to occupy only industrial-use or other developed portions of nuclear power plant sites. Therefore, effects on aquatic plants and animals are generally negligible.

Most nuclear power plants maintain procedures to minimize or mitigate the potential impacts of ROW management. The NRC determined that the transmission line ROW maintenance impacts on aquatic resources during the license renewal term (initial LR or SLR) would be small for all nuclear power plants. The proposed rule would revise the finding column of Table B–1 for this issue, to more clearly describe the scope of issues and resources considered and for consistency with other ecological resources issues.

(x) Federally Protected Ecological Resources

(47) *Endangered Species Act: Federally Listed Species and Critical Habitats Under U.S. Fish and Wildlife Jurisdiction*—The proposed rule would divide a Category 2 issue, “Threatened, endangered, and protected species, critical habitat and essential fish habitat,” into three separate Category 2 issues, for clarity and consistency with the separate Federal statutes and interagency consultation requirements that the NRC must consider with respect to Federally protected ecological resources. When combined, the scope of the three issues is the same as the scope of the former “Threatened, endangered, and protected species, critical habitat and essential fish habitat” issue discussed in the 2013 LR GEIS.

The first of the three issues, “Endangered Species Act: federally listed species and critical habitats under U.S. Fish and Wildlife jurisdiction,” concerns the potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term on federally listed species and critical habitats protected under the Endangered Species Act (ESA) and under the jurisdiction of the U.S. Fish and Wildlife Service (FWS).

Under the ESA, the FWS is responsible for listing and managing terrestrial and freshwater species and designating critical habitat for these species. Continued operation of a nuclear power plant during the license

renewal term could affect these species and their habitat. Listed species are likely to occur near all operating nuclear power plants. However, the potential for a given species to occur in the action area of a specific nuclear power plant depends on the life history, habitat requirements, and distribution of the species and the ecological environment present on or near the plant site.

The NRC may be required to consult with FWS under ESA Section 7(a)(2); such consultations are required for license renewal actions that “may affect” federally listed species and critical habitats and to ensure that the actions do not jeopardize the continued existence of those species or destroy or adversely modify those habitats.

The potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term depends upon numerous site-specific factors, including the ecological setting of the plant; the listed species and critical habitats present in the action area; and the plant-specific factors related to operations, including water withdrawal, effluent discharges, and refurbishment and other ground-disturbing activities. Listing status is not static, and FWS frequently issues new rules to list or delist species and designate or remove critical habitats. Therefore, a generic determination of potential impacts on listed species and critical habitats under FWS jurisdiction during a nuclear power plant’s license renewal term (initial LR or SLR) is not possible. The NRC would perform a plant-specific impact assessment for each license renewal environmental review to determine the potential effects on these resources and consult with the FWS, as appropriate. Consequently, this is a Category 2 issue.

(48) *Endangered Species Act: Federally Listed Species and Critical Habitats Under National Marine Fisheries Service Jurisdiction*—The second of the three issues from the prior Category 2 issue on federally protected species, “Endangered Species Act: federally listed species and critical habitats under National Marine Fisheries Service jurisdiction,” concerns the potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term on federally listed species and critical habitats protected under the ESA and under the jurisdiction of the National Marine Fisheries Service (NMFS).

Under the ESA, NMFS is responsible for listing and managing marine and anadromous species and designating critical habitat of these species. Continued operation of a nuclear power

plant and any refurbishment during the license renewal term could affect these species and their habitat. The potential for a given species to occur in the action area of a specific nuclear power plant depends on the life history, habitat requirements, and distribution of that species and the ecological environment present on or near the power plant site. In general, listed species and critical habitats under NMFS jurisdiction are only of concern at nuclear power plants that withdraw or discharge from estuarine or marine waters. However, anadromous listed species under NMFS jurisdiction may be seasonally present in the action area of plants located within freshwater reaches of rivers well upstream of the saltwater interface.

The potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term depend on numerous site-specific factors, including the ecological setting of the plant; the listed species and critical habitats present in the action area; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and refurbishment and other ground-disturbing activities. Section 7(a)(2) of the ESA requires that Federal agencies consult with NMFS for actions that “may affect” federally listed species and critical habitats. Additionally, listing status is not static, and NMFS frequently issue new rules to list or delist species and designate or remove critical habitats. Therefore, a generic determination of potential impacts on listed species and critical habitats under NMFS jurisdiction during a nuclear power plant’s license renewal term (initial LR or SLR) is not possible. The NRC would perform a plant-specific impact assessment for each license renewal environmental review to determine the potential effects on these resources and consult with NMFS, as appropriate. Consequently, this is a Category 2 issue.

(49) *Magnuson-Stevens Act: Essential Fish Habitat*—The last of the three issues from the prior Category 2 issue on federally protected species, “Magnuson-Stevens Act: essential fish habitat,” concerns the potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term on essential fish habitat (EFH) protected under the Magnuson-Stevens Fishery Conservation and Management Act (*i.e.*, Magnuson-Stevens Act (MSA)).

Under the MSA, the Fishery Management Councils, in conjunction with NMFS, designate areas of EFH and manage marine resources within those areas. Within EFH, habitat areas of

particular concern (HAPCs) may be designated if the area meets certain additional criteria. Continued operation of a nuclear power plant and any refurbishment during the license renewal term could affect EFH, including HAPCs. The NRC may be required to consult with NMFS under MSA Section 305(b). In cases where adverse effects on EFH are possible, the NRC has engaged NMFS in EFH consultation as part of the plant-specific license renewal environmental review and obtained EFH conservation recommendations.

The potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term depends upon numerous site-specific factors, including the ecological setting of the plant; the EFH present in the action area, including HAPCs; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and any other activities that may affect aquatic habitats during the license renewal term. Section 305(b) of the MSA requires that Federal agencies consult with NMFS for actions that may adversely affect EFH. Additionally, EFH status is not static. The NMFS and the Fishery Management Councils frequently update management plans for EFH species and issue new rules to designate or modify EFH and HAPCs. Therefore, a generic determination of potential impacts on EFH during a nuclear power plant’s license renewal term (initial LR or SLR) is not possible. The NRC would perform a plant-specific impact assessment as part of each license renewal environmental review to determine the potential effects on these resources and consult with NMFS, as appropriate. Consequently, this is a Category 2 issue.

(50) *National Marine Sanctuaries Act: Sanctuary Resources*—The proposed rule would add this as a new Category 2 issue, “National Marine Sanctuaries Act: sanctuary resources,” to evaluate the concerns of the potential effects of continued nuclear power plant operation and any refurbishment during the license renewal term on sanctuary resources protected under the National Marine Sanctuaries Act (NMSA).

Under the NMSA, the National Oceanic and Atmospheric Administration’s (NOAA) Office of National Marine Sanctuaries (ONMS) designates and manages the National Marine Sanctuary System. Marine sanctuaries may occur near nuclear power plants located on or near marine waters as well as the Great Lakes. Currently, five operating nuclear power

plants are located near designated or proposed national marine sanctuaries.

The potential impacts on marine sanctuaries are broad-ranging because such resources include any living or nonliving resource of a national marine sanctuary. With respect to ecological sanctuary resources, potential effects of particular concern include the following: (1) impingement (including entrapment) and entrainment, (2) thermal effects, (3) exposure to radionuclides and other contaminants, (4) reduction in available food resources due to impingement mortality and entrainment or thermal effects on prey species, and (5) effects associated with maintenance dredging. Additionally, the magnitude and significance of such impacts can be greater for sanctuary resources because—by virtue of being part of a national marine sanctuary—these resources are more sensitive to environmental stressors. Based on the foregoing, a generic determination of potential impacts on sanctuary resources during a nuclear power plant’s license renewal term (initial LR or SLR) is not possible.

Depending on the NRC’s effect determinations, the NRC may be required to consult with ONMS under NMSA Section 304(d). The NMSA consultation is required when a Federal agency determines that an action “is likely to destroy, cause the loss of, or injure” a sanctuary resource. Federal actions subject to consultation may be inside or outside the boundary of a national marine sanctuary.

In summary, the potential effects of continued nuclear power plant operation during the license renewal term depends upon numerous site-specific factors, including the ecological setting of the plant; the sanctuary resources present in the action area; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and any other activities that may affect sanctuary resources during the license renewal term. Section 304(d) of the NMSA requires that Federal agencies consult with the ONMS for actions that may injure sanctuary resources. Additionally, national marine sanctuary status is not static. The geographic extent of existing sanctuaries may change or expand in the future, and NOAA is likely to designate new sanctuaries as additional areas of conservation need are identified and assessed. Therefore, a generic determination of potential impacts on sanctuary resources during a nuclear power plant’s license renewal term (initial LR or SLR) is not possible. The NRC would perform a site-specific

impact assessment as part of each license renewal environmental review to determine the potential effects on these resources and consult with NMFS, as appropriate. Consequently, this new issue is being established as a plant-specific, or Category 2, issue.

(xi) Historic and Cultural Resources

(51) *Historic and Cultural Resources*—“Historic and cultural resources” is a Category 2 issue. The proposed rule would revise the finding column of Table B–1 for this issue to make clarifying changes and include a discussion of impacts on cultural resources that are not eligible for or listed in the National Register of Historic Places that would also need to be considered during plant-specific license renewal environmental reviews.

(xii) Socioeconomics

(52) *Employment and Income, Recreation and Tourism*—“Employment and income, recreation and tourism” is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(53) *Tax Revenue*—The proposed rule would rename “Tax revenues” as “Tax revenue”; it is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(54) *Community Services and Education*, (55) *Population and Housing*, and (56) *Transportation*—“Community services and education,” “Population and housing,” and “Transportation” are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(xiii) Human Health

(57) *Radiation Exposures to Plant Workers* and (58) *Radiation Exposures to the Public*—“Radiation exposures to plant workers” and “Radiation exposures to the public” are Category 1 issues. There are no changes to the finding column of Table B–1 for these issues.

(59) *Chemical Hazards*—The proposed rule would rename “Human health impact from chemicals” as “Chemical hazards” for clarity and to reflect the fact that chemicals can have environmental effects beyond human health. Chemical hazards can have immediate human health effects as well as potential environmental impacts from nuclear power plant discharges and chemical spills. This issue is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(60) *Microbiological Hazards to Plant Workers*—“Microbiological hazards to plant workers” is a Category 1 issue.

There are no changes to the finding column of Table B–1 for this issue.

(61) *Microbiological Hazards to the Public*—The proposed rule would rename “Microbiological hazards to the public (plants with cooling ponds or canals or cooling towers that discharge to a river)” as “Microbiological hazards to the public” because this issue is a concern wherever receiving waters are accessible to the public and as changes in microbial populations and in the public use of water bodies might occur over time. Specifically, members of the public could be exposed to microorganisms in thermal effluents at nuclear power plants that use cooling ponds, lakes, or canals and discharge to any waters of the United States accessible to the public. This issue is a Category 2 issue. The proposed rule would revise the finding column of Table B–1 for this issue for clarity and to indicate that thermophilic microorganisms are a concern wherever waters receiving thermal effluents are accessible to the public.

(62) *Electromagnetic Fields (EMFs)*—The proposed rule would rename “Chronic effects of electromagnetic fields (EMFs)” as “Electromagnetic fields (EMFs)” for clarity because this issue considers effects beyond those that are chronic in nature. This issue is an uncategorized issue. There are no changes to the finding column of Table B–1 for this issue.

(63) *Physical Occupational Hazards*—“Physical occupational hazards” is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(64) *Electric Shock Hazards*—“Electric shock hazards” is a Category 2 issue. There are no changes to the finding column of Table B–1 for this issue.

(xiv) Postulated Accidents

(65) *Design-Basis Accidents*—“Design-basis accidents” is a Category 1 issue. There are no changes to the finding column of Table B–1 for this issue.

(66) *Severe Accidents*—The proposed rule would reclassify the Category 2 “Severe accidents” issue as a Category 1 issue. In the 2013 LR GEIS, the issue of severe accidents was classified as a Category 2 issue to the extent that only alternatives to mitigate severe accidents must be considered for all nuclear power plants where the licensee had not previously performed a severe accident mitigation alternatives (SAMA) analysis for the plant. In the draft revised LR GEIS, the NRC notes that this issue will be resolved generically for the vast majority, if not all, expected license

renewal applicants because the applicants who will likely reference the LR GEIS have previously completed a SAMA analysis. The NRC provides a technical basis further supporting this conclusion in Appendix E of the draft revised LR GEIS. Although the NRC does not anticipate any license renewal applications for nuclear power plants for which a previous severe accident mitigation design alternative or SAMA analysis has not been performed, alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives and would be the functional equivalent of a Category 2 issue requiring site-specific analysis.

In license renewal applications, both internal and external events were considered for impacts from reactor accidents at full power when assessing SAMAs. The impacts of all new information in the draft revised LR GEIS were found to not contribute sufficiently to the environmental impacts to warrant further SAMA analysis because the likelihood of finding cost-effective significant plant improvements is small. This further analysis confirms the Commission’s expectation that further SAMA analysis would not be necessary for plants that have already completed one.

With regard to the severe accident impact finding, the NRC reviewed information from SEISs for both initial LR and SLR reviews completed since development of the 2013 LR GEIS and identified no new information or situations that would result in different impacts for this issue. The NRC’s review of new information determined that the overall risk posed by severe accidents is less than originally stated in the 1996 LR GEIS by a significant margin. Therefore, the NRC concluded that the probability-weighted consequences of severe accidents during the initial LR or SLR terms are small. The proposed rule revises the finding column in Table B–1 for this issue to reflect the fact that the probability-weighted consequences of severe accidents remain small.

(xv) Environmental Justice

(67) *Impacts on Minority Populations, Low-Income Populations, and Indian Tribes*—The proposed rule would rename “Minority and low-income populations” as “Impacts on minority populations, low-income populations, and Indian Tribes”⁵ to reflect the scope

⁵ The term “Indian Tribes” refers to Federally recognized Tribes as acknowledged by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a). Environmental justice communities can also include State-recognized Tribes, those that self-

of environmental justice concerns addressed in this issue. Continued reactor operations during the license renewal term and refurbishment activities at a nuclear power plant could affect land, air, water, and ecological resources, which could result in human health or environmental effects. Consequently, minority and low-income populations and Indian Tribes could be disproportionately affected. The environmental justice impact analysis determines whether human health or environmental effects from continued reactor operations and refurbishment activities at a nuclear power plant would disproportionately affect a minority population, low-income population, or Indian Tribe and whether these effects may be high and adverse.

The NRC determined that environmental justice impacts during the license renewal term (initial LR or SLR) are unique to each nuclear power plant. Therefore, the issue is a Category 2 issue. The proposed rule would revise the finding column of Table B-1 for this issue to add Indian Tribes and subsistence consumption to the scope of the finding and to make other minor clarifications.

(xvi) Waste Management

(68) *Low-Level Waste Storage and Disposal*, (69) *Onsite Storage of Spent Nuclear Fuel*, (70) *Offsite Radiological Impacts of Spent Nuclear Fuel and High-Level Waste Disposal*, (71) *Mixed-Waste Storage and Disposal*, and (72) *Nonradioactive Waste Storage and Disposal*—“Low-level waste storage and disposal,” “Onsite storage of spent nuclear fuel,” “Offsite radiological impacts of spent nuclear fuel and high-level waste disposal,” “Mixed-waste storage and disposal,” and “Nonradioactive waste storage and disposal” are Category 1 issues. There are no changes to the finding column of Table B-1 for these issues.

(xvii) Greenhouse Gas Emissions and Climate Change

(73) *Greenhouse Gas Impacts on Climate Change*—The proposed rule would add a new Category 1 issue, “Greenhouse gas impacts on climate change,” that evaluates the greenhouse gas (GHG) impacts on climate change associated with continued operation and refurbishment. The issue of greenhouse gas emissions on climate change was not considered in the 2013 LR GEIS and is not listed in the current Table B-1. At the time of publication of

the 2013 LR GEIS, insufficient data existed to support a classification of the contribution of nuclear power plant GHG emissions on climate change, either as a generic or site-specific issue. The 2013 LR GEIS, however, included a discussion summarizing the life cycle impacts of nuclear power plant GHG emissions and climate change. Furthermore, following the issuance of Commission Order CLI-09-21, the NRC began to evaluate the direct and cumulative effects of GHG emissions and their contribution to climate change in environmental reviews for license renewal applications.

Nuclear power plants, by their very nature, do not combust fossil fuels to generate electricity and, therefore, have inherently low GHG emissions. However, nuclear power plant operations do have some GHG emission sources including diesel generators, pumps, diesel engines, boilers, refrigeration systems, electrical transmission and distribution systems, as well as mobile sources (e.g., worker vehicles and delivery vehicles). Any refurbishment activities undertaken at the nuclear power plant site could also produce GHGs due to emissions from motorized equipment, construction vehicles, and worker vehicles. Collectively, these GHG emissions when compared to different GHG emission inventories for other facilities, are minor.

The NRC concluded that the impacts of GHG emissions on climate change from continued operation during the license renewal term (initial LR or SLR) and any refurbishment activities would be small for all nuclear power plants. Therefore, this is a new Category 1 issue.

(74) *Climate Change Impacts on Environmental Resources*—The proposed rule would add this new Category 2 issue, “Climate change impacts on environmental resources,” that evaluates the impacts of climate change on environmental resources that are affected by continued nuclear power plant operations and any refurbishment during the license renewal term. Climate change is an environmental trend (i.e., reflected in changes in climate indicators, such as precipitation, air and water temperature, sea level rise over time) that could result in changes in the affected environment, irrespective of license renewal. The issue of climate change impacts was not identified as either a generic or site-specific issue in the 2013 LR GEIS. However, the 2013 LR GEIS briefly described the environmental impacts that could occur on resources areas (land use, air quality, water resources,

etc.) that may also be affected by license renewal. In site-specific initial LR and SLR SEISs prepared since development of the 2013 LR GEIS, the NRC considered climate change impacts for those resources that could be incrementally affected by license renewal as part of the cumulative impact analysis.

As part of a comprehensive environmental review to meet its obligations under NEPA, the NRC must consider the impacts of climate change on environmental resource conditions that could also be affected by continued nuclear power plant operation and any refurbishment as a result of the proposed action (license renewal). License renewal environmental reviews conducted by the NRC have found that climate change effects on affected resources (e.g., water availability, sea level rise) can be equal to or greater than any direct effects associated with continued nuclear power plant operations during the license renewal term. Observed climate change has not been uniform across the United States. The accrued effects of climate change on environmental resource conditions can vary greatly based on site-specific conditions and thus are plant-specific rather than generic in nature. In support of safe plant operation and in conformance with environmental permitting requirements, nuclear power plant licensees maintain systems and collect meteorological, water temperature, and other data that can inform the NRC’s environmental review with respect to the impacts of climate change on environmental resource conditions.

The impacts of climate change on environmental resources that are affected by continued nuclear power plant operations and refurbishment during the license renewal term (initial LR or SLR) are location-specific and cannot be evaluated generically. The effects of climate change can vary regionally and climate change information at the regional and local scale is necessary to assess the impacts on the human environment for a specific location. The NRC would need to perform a site-specific impact assessment as part of each license renewal environmental review. Therefore, this is a new Category 2 issue that cuts across multiple resource areas, similar to the cumulative effects issue, which is currently in Table B-1.

(xviii) Cumulative Effects

(75) *Cumulative Effects*—The proposed rule would rename “Cumulative impacts” as “Cumulative effects”; it is a Category 2 issue. The

identify as Indian Tribes, and tribal members. Tribal members can be part of an environmental justice community that has different interests and concerns than a Tribal government.

proposed rule would make minor editorial and clarification changes to the finding column of Table B-1 for this issue to be consistent with the definition of cumulative effects as provided in the Council on Environmental Quality's revised regulation at 40 CFR 1508.1(g)(3).

(xix) Uranium Fuel Cycle

(76) *Offsite Radiological Impacts—Individual Impacts from Other than the Disposal of Spent Fuel and High-Level Waste*, (77) *Offsite Radiological Impacts—Collective Impacts from Other than the Disposal of Spent Fuel and High-Level Waste*, (78) *Nonradiological Impacts of the Uranium Fuel Cycle*, and (79) *Transportation*—“Offsite radiological impacts—individual impacts from other than the disposal of spent fuel and high-level waste,” “Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste,” “Nonradiological impacts of the uranium fuel cycle,” and “Transportation” are Category 1 issues. There are no changes to the finding column of Table B-1 for these issues.

(xx) Termination of Nuclear Power Plant Operations and Decommissioning

(80) *Termination of Plant Operations and Decommissioning*—“Termination of plant operations and decommissioning” is a Category 1 issue. There are no changes to the finding column of Table B-1 for this issue.

The proposed rule would also revise the footnotes to Table B-1 as follows:

Footnote 1 would be revised to update the reference to the current revision of the LR GEIS.

Footnote 2 would be revised to indicate that for the “Offsite radiological impacts of spent nuclear fuel and high-level waste disposal” issue, there is no single significance level to the impact.

Footnote 7 would be added to indicate that for the “Severe accidents” issue, alternatives to mitigate severe accidents must be considered for all plants that have not already considered such alternatives and would be the functional equivalent of a Category 2 issue.

Section 51.53(c)(3), “Postconstruction Environmental Reports

The proposed rule would revise the introductory paragraph of Section 51.53(c)(3) to replace the words “an initial renewed license” with the words “a license renewal covered by Table B-1” to reflect that the regulation governing postconstruction environmental reports for license renewal applies to applicants seeking

either an initial or subsequent renewed license following this update to the LR GEIS. Additionally, the proposed rule would revise the phrase “and holding an operating license, construction permit, or combined license as of June 30, 1995” to read “for a nuclear power plant for which an operating license, construction permit, or combined license was issued as of June 30, 1995,” in order to clarify that Watts Bar Nuclear Units 1 and 2, for which construction permits were issued by that date but are no longer held by the licensee, are within the scope of the LR GEIS and Table B-1. The revised phrasing more clearly indicates that holders of renewed licenses for nuclear power plants that previously held operating licenses, construction permits, or combined licenses within the scope of the LR GEIS remain within its scope during the license renewal term.

The proposed rule would revise Section 51.53(c)(3)(ii)(B) for clarity and consistency with the methodology in CWA Sections 316(a) and (b), including the 2014 CWA Section 316(b) regulations which establish the BTA criteria based on impingement mortality, rather than total impingement.

The proposed rule would revise Section 51.53(c)(3)(ii)(D) to delete the words “is located at an inland site and,” to reflect the consolidation of two issues from the 2013 LR GEIS: “Groundwater quality degradation (plants with cooling ponds in salt marshes),” a Category 1 issue, and “Groundwater quality degradation (plants with cooling ponds at inland sites),” a Category 2 issue. The consolidated Category 2 issue in the draft revised LR GEIS, “Groundwater quality degradation (plants with cooling ponds)” reflects new information that cooling ponds can impact water quality at both inland and at coastal sites as a result of the migration of contaminants discharged to cooling ponds.

The proposed rule would revise Section 51.53(c)(3)(ii)(E) for clarity and consistency with the proposed changes related to Federally protected ecological resources in Table B-1 and the draft revised LR GEIS. The changes in this paragraph correspond to the changes in Table B-1 where a Category 2 issue, “Threatened, endangered, and protected species, critical habitat and essential fish habitat” was divided into three issues, for clarity and consistency with the separate Federal statutes and interagency consultation requirements that the NRC must consider with respect to Federally protected ecological resources. Also included is a change reflecting the addition of a new Category 2 issue, “National Marine Sanctuaries

Act: sanctuary resources,” which addresses the NRC consultation requirements under the Act.

The proposed rule would revise Section 51.53(c)(3)(ii)(G) for consistency with proposed changes to the Category 2 issue, “Microbiological hazards to the public.” The updated finding for this issue states that public health is a concern wherever receiving waters associated with nuclear power plant thermal effluents are accessible to the public.

The proposed rule would revise Section 51.53(c)(3)(ii)(K) for clarity and consistency with the specific requirements of Section 106 of the NHPA, including the reference to NEPA, to reflect the requirement that Federal agencies must consider the potential effects of their actions on the affected human environment, which includes aesthetic, historic, and cultural resources.

The proposed rule would revise Section 51.53(c)(3)(ii)(N) for clarity and consistency with the proposed changes in Table B-1 and the draft revised LR GEIS by adding consideration of Indian Tribes and revises the terminology to refine the scope of environmental justice concerns.

The proposed rule would revise Section 51.53(c)(3)(ii)(O) for consistency with the revised terminology for “cumulative effects” provided by the Council on Environmental Quality.

The proposed rule would add a new Section 51.53(c)(3)(ii)(Q), for consistency with the proposed changes in Table B-1 and the draft revised LR GEIS which includes the addition of a new Category 2 issue, “Climate change impacts on environmental resources.” The proposed change addresses the assessment of the effects of changes in climate on environmental resources areas and any mitigation measures implemented by the nuclear power plant operator to address climate change impacts. The new issue was identified to improve the efficiency of reviews, address lessons learned from plant-specific reviews and information provided in public comments, and to reflect analyses already being performed by the NRC staff in environmental reviews, consistent with the Commission direction provided in CLI-09-21.

Section 51.95, “Postconstruction Environmental Impact Statements”

The proposed rule would revise Section 51.95(c), “Operating license renewal stage,” to remove the date of issuance of NUREG-1437. This change is made for clarity and to ensure that the

regulation refers to the latest revision of the LR GEIS.

IV. Availability of Guidance for Comment and Specific Request for Comment

The NRC is seeking advice and recommendations from the public on this proposed rule. We are particularly interested in comments and supporting rationale from the public on the following:

A. Guidance Documents

The NRC is issuing for comment two revised draft guidance documents, draft regulatory guide (DG), DG-4027, "Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications,"⁶ and draft NUREG-1555, Supplement 1, Revision 2, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal," to support implementation of the requirements in this proposed rule. The guidance documents are available as indicated in the "Availability of Documents" section of this document. You may submit comments on the draft regulatory guidance by the methods outlined in the ADDRESSES section of this document.

The DG-4027 has been prepared as a revision to Regulatory Guide (RG) 4.2, Supplement 1, "Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications." The DG-4027 provides general procedures for the preparation of environmental reports that are submitted as part of an application for the renewal of a nuclear power plant operating license, including SLR, in accordance with 10 CFR part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants," including subsequent license renewals. The revision updates the content for environmental reports. The revision also updates the regulatory and technical bases and the criteria for required plant-specific analyses for Category 2 issues and other matters to be addressed in the environmental report, as specified in the proposed amendments to § 51.53(c)(3).

The draft revision of NUREG-1555, Supplement 1, Revision 2, provides guidance for the NRC staff when performing a 10 CFR part 51 environmental review of an application for the renewal of a nuclear power plant operating license, including SLR. The changes in the draft revision to the Standard Review Plan parallel the

revisions in DG-4027. The primary purpose of the Standard Review Plan is to ensure that these reviews are focused on the significant environmental concerns associated with license renewal as described in 10 CFR part 51. Specifically, the Standard Review Plan provides guidance to the NRC staff about environmental issues that should be reviewed and provides acceptance criteria to help the reviewer evaluate the information submitted as part of the license renewal application. It is also the intent of this draft Standard Review Plan to make information about the regulatory process available and to improve communication between the NRC, interested members of the public, and the nuclear industry, thereby increasing understanding of the review process.

B. Applicability of License Renewal Terms

The proposed rule would extend the applicability of the LR GEIS to one term of SLR. The NRC is seeking comment on whether the proposed rule should be expanded beyond two license renewal terms. Please provide the rationale for your response.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes proposed by this rulemaking.

10 CFR 51.53, Postconstruction Environmental Reports

In § 51.53(c)(3), this proposed rule would remove the words "an initial renewed license" and add in its place the words "a license renewal covered by Table B-1", to indicate applicability to initial LR and SLR. Additionally, the proposed rule would revise the phrase "and holding an operating license, construction permit, or combined license as of June 30, 1995" to read "for a nuclear power plant for which an operating license, construction permit, or combined license was issued as of June 30, 1995," in order to clarify that Watts Bar Nuclear Units 1 and 2, for which construction permits were issued by that date but are no longer held by the licensee, are within the scope of the LR GEIS and Table B-1. The revised phrasing more clearly indicates that holders of renewed licenses for nuclear power plants that previously held operating licenses, construction permits, or combined licenses within the scope of the LR GEIS remain within its scope during the license renewal term.

This proposed rule would revise paragraph (c)(3)(ii)(B) for clarity and consistency with the methodology in

Clean Water Act (CWA) Sections 316(a) and (b).

This proposed rule would revise paragraph (c)(3)(ii)(D) to remove the words "is located at an inland site and", for consistency with proposed consolidation of two issues related to groundwater quality degradation and corresponding updates in Table B-1.

This proposed rule would revise paragraph (c)(3)(ii)(E) for clarity and consistency with proposed revisions to Table B-1.

This proposed rule would revise paragraph (c)(3)(ii)(G) for consistency with proposed revisions to Table B-1 related to the "Microbiological hazards to the public" issue.

This proposed rule would revise paragraph (c)(3)(ii)(K) for clarity and consistency with the requirements of Section 106 of the National Historic Preservation Act and NEPA.

This proposed rule would revise paragraph (c)(3)(ii)(N) for clarity and consistency with proposed revisions to Table B-1 related to the scope of environmental justice concerns.

This proposed rule would revise paragraph (c)(3)(ii)(O) for consistency with the revised terminology for "cumulative effects" provided by the Council on Environmental Quality.

This proposed rule would add new paragraph (c)(3)(ii)(Q) to include an assessment of the effects of climate change in postconstruction environmental reports.

Section 51.95, Postconstruction Environmental Impact Statements

This proposed rule would revise paragraph (c) to remove the date "(June 2013)", to clarify the reference to the current revision of NUREG-1437.

Appendix B to Subpart A—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant

This proposed rule would revise appendix B to subpart A of 10 CFR part 51, to indicate the applicability to initial LR and one term of SLR and to update the findings on environmental issues with the data supported by the analyses in the proposed NUREG-1437, Revision 2.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule would only affect nuclear power plant licensees filing for license renewal applications. The companies that own

⁶ Unless stated otherwise, references to RG 4.2, Supplement 1, refer to DG-4027, the draft revision to RG 4.2, Supplement 1, which is being published at the same time as this notice.

these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available as indicated in the “Availability of Documents” section of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** caption of this document.

VIII. Backfitting and Issue Finality

The proposed rule would codify in 10 CFR part 51 certain environmental issues identified in the draft revised LR GEIS. The proposed rule would also revise § 51.53(c)(3) to remove the word “initial.” The NRC has determined that the backfitting rule in § 50.109 and the issue finality provisions in 10 CFR part 52 do not apply to this proposed rule because this amendment does not involve any provision that would either constitute backfitting as that term is defined in 10 CFR chapter I or affect the issue finality of any approval issued under 10 CFR part 52.

IX. Cumulative Effects of Regulation

The NRC is following its cumulative effects of regulation (CER) process by engaging with external stakeholders throughout the rulemaking and related regulatory activities. Public involvement has included (1) the publication of notice announcing information gathering through the public scoping process to support the review to determine whether to update the LR GEIS on August 4, 2020 (85 FR 47252); and (2) four public meetings conducted on August 19, 2020, and August 27, 2020 (two meetings on each day), to receive comments on the scope of the LR GEIS.

The NRC is issuing draft guidance along with this proposed rule to support more informed external stakeholder understanding and feedback. The draft guidance is available as indicated in the “Availability of Documents” section of this document. Further, the NRC will continue to hold public meetings throughout the rulemaking process.

In addition to the question on the implementation of this proposed rule presented in the “Availability of Guidance for Comment and Specific Requests for Comment” section of this

document, the NRC is requesting CER feedback on the following questions:

1. If CER challenges currently exist or are expected, what should be done to address them? Please explain your response.
2. Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the implementation of the proposed rule's requirements? Please explain your response.
3. Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the unintended consequences, and how should they be addressed? Please explain your response.
4. Please comment on the NRC's cost and benefit estimates in the draft regulatory analysis that supports the proposed rule. The regulatory analysis is available as indicated in the “Availability of Documents” section of this document.

X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

XI. National Environmental Policy Act

In support of the proposed revisions to 10 CFR part 51 concerning initial LR and SLRs, the NRC prepared draft Revision 2 to NUREG–1437, which is published for comment concurrent with this proposed rule. With regard to the corresponding changes in requirements for applications for initial LR or SLR, the NRC has determined that this is the type of action described in § 51.22(c)(3), an NRC categorical exclusion. Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for this aspect of the proposed rule, as it is procedural in nature and pertains to the type of environmental information to be reviewed.

XII. Paperwork Reduction Act

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C 3501 *et seq.*). This

proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collections.

Type of submission: Revision.

The title of the information collection: 10 CFR part 51, Renewing Nuclear Power Plant Operating Licenses—Environmental Review.

The form number if applicable: Not applicable.

How often the information is required or requested: On occasion.

Environmental Reports are required upon submittal of an application for an operating license renewal.

Who will be required or asked to respond: Applicants for renewal of nuclear power plant operating licenses.

An estimate of the number of annual responses: 8.3.

An estimated number of annual respondents: 8.3 (5 applicants for future subsequent license renewals and 3.3 applicants for near-term and submitted applications, and issued subsequent license renewals).

An estimate of the total number of hours needed annually to comply with the information collection requirement or request: 71,067 hours.

Abstract: The NRC is proposing to amend the regulations that govern the NRC's environmental reviews of operating license renewal applications. The NRC's regulations in § 51.53(c) require each applicant for renewal of a license to operate a nuclear power plant under 10 CFR part 54 to submit an environmental report which includes, among other things, a description of the proposed action, including the applicant's plans to modify the facility or its administrative controls. This proposed rulemaking would codify the generic findings of the LR GEIS, which presents impact analyses for the environmental issues common to many or most of license renewal applications that can be addressed generically, thereby eliminating the need to repeatedly reproduce the same analyses each time a license renewal application is submitted. The NRC's regulations in § 51.53(c) require each applicant to prepare and submit a report entitled “Applicant's Environmental Report—Operating License Renewal Stage,” with the applicant's license renewal application. The information provided by the applicant in the environmental report helps the NRC meet its regulatory obligations consistent with Section 102(2) of the National Environmental Policy Act of 1969, as amended. The proposed rule would increase burden on an applicant because several proposed changes to Table B–1 (e.g., new Category 1 and 2 issues, consolidation of

Category 1 issues into Category 2 issues, and dividing an existing Category 2 issue into multiple Category 2 issues) would require the applicant to evaluate such issues on a site-specific basis and provide this information in the environmental report.

The NRC is seeking public comment on the potential impact of the information collection contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility? Please explain your response.

2. Is the estimate of the burden of the proposed information collection accurate? Please explain your response.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected? Please explain your response.

4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology? Please explain your response.

A copy of the Office of Management and Budget (OMB) clearance package and proposed rule is available in ADAMS under Accession No. ML22208A002 or may be obtained free of charge by contacting the NRC's Public Document Room reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. You

may obtain information and comment submissions related to the OMB clearance package by searching on <https://www.regulations.gov> under Docket ID NRC-2018-0296.

You may submit comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2018-0296.

- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6-A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to the OMB reviewer at OMB Office of Information and Regulatory Affairs (3150-0021), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: oira_submission@omb.eop.gov.

Submit comments by April 3, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. This proposed rule, which amends various provisions of 10 CFR part 51, does not constitute the establishment of a standard that contains generally applicable requirements.

XIV. Public Meetings

The NRC plans to hold public meetings to promote a full understanding of the proposed rule, the draft revised LR GEIS, and associated guidance documents, and to receive public comments.

The NRC will publish a notice of the location, time, and agenda of the meetings in the **Federal Register**, on [Regulations.gov](https://www.regulations.gov), and on the NRC's public meeting website within at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: <https://www.nrc.gov/public-involve/public-meetings/index.cfm>.

XV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No. Federal Register citation
Draft Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants	
Draft NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," Volume 1, Revision 2.	ML23010A078.
Draft NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," Volume 2, Revision 2.	ML23010A086.
Draft Guidance Documents	
Draft NUREG-1555, Supplement 1, Revision 2, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal".	ML22165A070.
Draft Regulatory Guide DG-4027, "Preparation of Environmental Reports for Nuclear Power Plant License Renewal Applications" (also referenced as RG 4.2, Supplement 1).	ML22165A072.
Proposed Rule Documents	
SECY-22-0109, "Proposed Rule: Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC-2018-0296)".	ML22165A004.
Draft Regulatory Analysis for the 10 CFR Part 51, Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants.	ML23010A074.
Draft Supporting Statement for Information Collections Contained in the Renewing Nuclear Power Plant Operating Licenses—Environmental Review Proposed Rule.	ML22208A002.
Related Documents	
Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Final Rule, June 20, 2013.	78 FR 37281.

Document	ADAMS Accession No. Federal Register citation
Revisions to Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Correction, Final Rule, Correcting Amendment, July 31, 2013.	78 FR 46255.
Continued Storage of Spent Nuclear Fuel, Final Rule, September 29, 2014	79 FR 56251.
Corrected Transcript for Public Scoping Meeting to Discuss the Review and Potential Update of NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," August 27, 2020, 1:30 p.m.	ML20296A270.
Corrected Transcript for Public Scoping Meeting to Discuss the Review and Potential Update of NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," August 27, 2020, 6:30 p.m.	ML20296A271.
Corrected Transcript for Public Scoping Meeting to Discuss the Review and Potential Update of NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," August 19, 2020, 1:30 p.m.	ML20296A272.
Corrected Transcript for Public Scoping Meeting to Discuss the Review and Potential Update of NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," August 19, 2020, 6:30 p.m.	ML20296A273.
Environmental Impact Statement Scoping Process Summary Report, Review and Update of the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437), June 2021.	ML21039A576.
Notice of Intent to Review and Update the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, August 4, 2020.	85 FR 47252.
NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," Volume 1, dated May 1996.	ML040690705.
NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," Volume 2, dated May 1996.	ML040690738.
NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," Volume 1, Revision 1, dated June 2013.	ML13106A241.
NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," Volume 2, Revision 1, dated June 2013.	ML13106A242.
NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," Volume 3, Revision 1, dated June 2013.	ML13106A244.
NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," Supplement 5, Second Renewal, Regarding Subsequent License Renewal for Turkey Point Nuclear Generating Unit Nos. 3 and 4, dated October 2019.	ML19290H346.
SECY-21-0066, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32, NRC-2018-0296)," dated July 22, 2021.	ML20364A008.
SECY-22-0024, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32, NRC-2018-0296)," dated March 25, 2022.	ML22062B643.
SECY-22-0036, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—10-Year Environmental Regulatory Update (NRC-2022-0087)," dated April 25, 2022.	ML22083A149.
SRM-SECY-21-0066, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32, NRC-2018-0296)," dated February 24, 2022.	ML22053A308.
SRM-SECY-22-0024, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32, NRC-2018-0296)," dated April 5, 2022.	ML22096A035.
SRM-SECY-22-0036, "Rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses—10-Year Environmental Regulatory Update (NRC-2022-0087)," dated June 17, 2022.	ML22168A130.
U.S. Nuclear Regulatory Commission Memorandum and Order CLI-09-21, dated November 3, 2009	ML093070690.
U.S. Nuclear Regulatory Commission Memorandum and Order CLI-22-02, dated February 24, 2022	ML22055A496.
U.S. Nuclear Regulatory Commission Memorandum and Order CLI-22-03, dated February 24, 2022	ML22055A521, ML22055A526, ML22055A527, ML22055A533, ML22055A554.
U.S. Nuclear Regulatory Commission Memorandum and Order CLI-22-04, dated February 24, 2022	ML22055A557.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2018-0296. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. The following actions are needed to subscribe: (1) navigate to the docket folder NRC-2018-0296, (2) click the "Subscribe" link, and (3) enter an email address and click on the "Subscribe" link.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact

statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR part 51 as follows:

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy

Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168).

Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141).

Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

■ 2. Amend § 51.53 by:

■ a. Removing in paragraph (c)(3) introductory text, the words “an initial renewed license and holding an operating license, construction permit, or combined license as of June 30, 1995” and adding in its place the words “a license renewal covered by Table B–1 for a power plant for which an operating license, construction permit, or combined license was issued as of June 30, 1995”;

■ b. Revising paragraph (c)(3)(ii)(B);

■ c. Removing in paragraph (c)(3)(ii)(D), the words “is located at an inland site and”;

■ d. Revising paragraphs (c)(3)(ii)(E); (G); (K); (N); (O); and

■ e. Adding paragraph (c)(3)(ii)(Q).

The revisions and additions read as follows:

§ 51.53 Postconstruction environmental reports.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(B) If the applicant’s plant utilizes once-through cooling or cooling pond water intake and discharge systems, the applicant shall provide a copy of current Clean Water Act 316(b) Best Technology Available determinations and, if applicable, a 316(a) variance in accordance with 40 CFR part 125, or equivalent State permits and supporting documentation. If the applicant cannot provide these documents, it shall assess the impact of the proposed action on fish and shellfish resources resulting from impingement mortality and entrainment and thermal discharges.

* * * * *

(E) All license renewal applicants shall assess the impact of refurbishment, continued operations, and other license renewal-related construction activities on important plant and animal habitats. Additionally, the applicant shall assess the impact of the proposed action on federally protected ecological resources in accordance with Federal laws protecting such resources, including but not limited to, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the National Marine Sanctuaries Act.

* * * * *

(G) If the applicant’s plant uses a cooling pond, lake, canal, or discharges into waters of the United States accessible to the public, an assessment of the impact of the proposed action on public health from thermophilic organisms in the affected water must be provided.

* * * * *

(K) All applicants shall identify any potentially affected historic and cultural resources and historic properties and assess whether future plant operations and any planned refurbishment activities would affect these resources in accordance with the Section 106 of the National Historic Preservation Act and in the context of the National Environmental Policy Act.

* * * * *

(N) Applicants shall provide information on the general demographic composition of minority and low-income populations and communities (by race and ethnicity) and Indian tribes in the vicinity of the nuclear power plant that could be disproportionately affected by license renewal, including continued reactor operations and refurbishment activities.

* * * * *

(O) Applicants shall provide information about other past, present, and reasonably foreseeable actions occurring in the vicinity of the nuclear

power plant that may result in a cumulative effect.

* * * * *

(Q) Applicants shall include an assessment of the effects of any observed and projected changes in climate on environmental resource areas that are affected by license renewal, as well as any mitigation measures implemented at the applicant’s plant to address climate change impacts.

* * * * *

§ 51.95 [Amended]

■ 3. In § 51.95, paragraph (c) introductory text, removing the words “(June 2013)”.

■ 4. Revise appendix B to subpart A of 10 CFR part 51 to read as follows:

Appendix B to Subpart A of 10 CFR Part 51—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant

The Commission has assessed the environmental impacts associated with granting a renewed operating license for a licensee holding an operating license, construction permit, or combined license as of June 30, 1995. This assessment applies to applications for initial or a first (*i.e.*, one term) subsequent license renewal. Table B–1 summarizes the Commission’s findings on the scope and magnitude of environmental impacts of renewing the operating license for a nuclear power plant as required by section 102(2) of the National Environmental Policy Act of 1969, as amended. Table B–1, subject to an evaluation of those issues identified in Category 2 as requiring further analysis and possible significant new information, represents the analysis of the environmental impacts associated with renewal of any operating license and is to be used in accordance with § 51.95(c). On a 10-year cycle, the Commission intends to review the material in this appendix and update it if necessary. A scoping notice must be published in the **Federal Register** indicating the results of the NRC’s review and inviting public comments and proposals for other areas that should be updated.

TABLE B–1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS ¹

Issue	Category ²	Finding ³
Land Use		
Onsite land use	1	SMALL. Changes in onsite land use from continued operations and refurbishment associated with license renewal would be a small fraction of the nuclear power plant site and would involve only land that is controlled by the licensee.
Offsite land use	1	SMALL. Offsite land use would not be affected by continued operations and refurbishment associated with license renewal.
Offsite land use in transmission line right-of-ways (ROWs) ⁴ .	1	SMALL. Use of transmission line ROWs from continued operations and refurbishment associated with license renewal would continue with no change in land use restrictions.
Visual Resources		
Aesthetic impacts	1	SMALL. No important changes to the visual appearance of plant structures or transmission lines are expected from continued operations and refurbishment associated with license renewal.

TABLE B-1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS ¹—Continued

Issue	Category ²	Finding ³
Air Quality		
Air quality impacts	1	SMALL. Air quality impacts from continued operations and refurbishment associated with license renewal are expected to be small at all plants. Emissions from emergency diesel generators and fire pumps and routine operations of boilers used for space heating are minor. Impacts from cooling tower particulate emissions have been small. Emissions resulting from refurbishment activities at locations in or near air quality nonattainment or maintenance areas would be short-lived and would cease after these activities are completed. Operating experience has shown that the scale of refurbishment activities has not resulted in exceedance of the <i>de minimis</i> thresholds for criteria pollutants, and best management practices, including fugitive dust controls and the imposition of permit conditions in State and local air emissions permits, would ensure conformance with applicable State or Tribal implementation plans.
Air quality effects of transmission lines ⁴	1	SMALL. Production of ozone and oxides of nitrogen from transmission lines is insignificant and does not contribute measurably to ambient levels of these gases.
Noise		
Noise impacts	1	SMALL. Noise levels would remain below regulatory guidelines for offsite receptors during continued operations and refurbishment associated with license renewal.
Geologic Environment		
Geology and soils	1	SMALL. The impact of continued operations and refurbishment activities on geology and soils would be small for all nuclear power plants and would not change appreciably during the license renewal term.
Surface Water Resources		
Surface water use and quality (non-cooling system impacts).	1	SMALL. Impacts are expected to be small if best management practices are employed to control soil erosion and spills. Surface water use associated with continued operations and refurbishment associated with license renewal would not increase significantly or would be reduced if refurbishment occurs during a plant outage.
Altered current patterns at intake and discharge structures.	1	SMALL. Altered current patterns would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Altered salinity gradients	1	SMALL. Effects of salinity gradients would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Altered thermal stratifications of lakes	1	SMALL. Effects on thermal stratification would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Scouring caused by discharged cooling water	1	SMALL. Scouring effects would be limited to the area in the vicinity of the intake and discharge structures. These impacts have been small at operating nuclear power plants.
Discharge of metals in cooling system effluent	1	SMALL. Discharges of metals have not been found to be a problem at operating nuclear power plants with cooling-tower-based heat dissipation systems and have been satisfactorily mitigated at other plants. Discharges are monitored and controlled as part of the National Pollutant Discharge Elimination System (NPDES) permit process.
Discharge of biocides, sanitary wastes, and minor chemical spills.	1	SMALL. The effects of these discharges are regulated by Federal and State environmental agencies. Discharges are monitored and controlled as part of the NPDES permit process. These impacts have been small at operating nuclear power plants.
Surface water use conflicts (plants with once-through cooling systems).	1	SMALL. These conflicts have not been found to be a problem at operating nuclear power plants with once-through heat dissipation systems.
Surface water use conflicts (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Impacts could be of small or moderate significance, depending on makeup water requirements, water availability, and competing water demands.
Effects of dredging on surface water quality	1	SMALL. Dredging to remove accumulated sediments in the vicinity of intake and discharge structures and to maintain barge shipping has not been found to be a problem for surface water quality. Dredging is performed under permit from the U.S. Army Corps of Engineers, and possibly, from other State or local agencies.
Temperature effects on sediment transport capacity.	1	SMALL. These effects have not been found to be a problem at operating nuclear power plants and are not expected to be a problem during the license renewal term.
Groundwater Resources		
Groundwater contamination and use (non-cooling system impacts).	1	SMALL. Extensive dewatering is not anticipated from continued operations and refurbishment associated with license renewal. Industrial practices involving the use of solvents, hydrocarbons, heavy metals, or other chemicals, and/or the use of wastewater ponds or lagoons have the potential to contaminate site groundwater, soil, and subsoil. Contamination is subject to State or U.S. Environmental Protection Agency (EPA) regulated cleanup and monitoring programs. The application of best management practices for handling any materials produced or used during these activities would reduce impacts.
Groundwater use conflicts (plants that withdraw less than 100 gallons per minute [gpm]).	1	SMALL. Plants that withdraw less than 100 gpm are not expected to cause any groundwater use conflicts.
Groundwater use conflicts (plants that withdraw more than 100 gallons per minute [gpm]).	2	SMALL, MODERATE, or LARGE. Plants that withdraw more than 100 gpm could cause groundwater use conflicts with nearby groundwater users.
Groundwater use conflicts (plants with closed-cycle cooling systems that withdraw makeup water from a river).	2	SMALL, MODERATE, or LARGE. Water use conflicts could result from water withdrawals from rivers during low-flow conditions, which may affect aquifer recharge. The significance of impacts would depend on makeup water requirements, water availability, and competing water demands.
Groundwater quality degradation resulting from water withdrawals.	1	SMALL. Groundwater withdrawals at operating nuclear power plants would not contribute significantly to groundwater quality degradation.

TABLE B-1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS ¹—Continued

Issue	Category ²	Finding ³
Groundwater quality degradation (plants with cooling ponds).	2	SMALL or MODERATE. Sites with cooling ponds could degrade groundwater quality. The significance of the impact would depend on site-specific conditions including cooling pond water quality, site hydrogeologic conditions (including the interaction of surface water and groundwater), and the location, depth, and pump rate of water wells.
Radionuclides released to groundwater	2	SMALL or MODERATE. Leaks of radioactive liquids from plant components and pipes have occurred at numerous plants. Groundwater protection programs have been established at all operating nuclear power plants to minimize the potential impact from any inadvertent releases. The magnitude of impacts would depend on site-specific characteristics.
Terrestrial Resources		
Non-cooling system impacts on terrestrial resources.	2	SMALL, MODERATE, or LARGE. The magnitude of effects of continued nuclear power plant operation and refurbishment, unrelated to operation of the cooling system, would depend on numerous site-specific factors, including ecological setting, planned activities during the license renewal term, and characteristics of the plants and animals present in the area. Application of best management practices and other conservation initiatives would reduce the potential for impacts.
Exposure of terrestrial organisms to radionuclides	1	SMALL. Doses to terrestrial organisms from continued nuclear power plant operation and refurbishment during the license renewal term would be expected to remain well below U.S. Department of Energy exposure guidelines developed to protect these organisms.
Cooling system impacts on terrestrial resources (plants with once-through cooling systems or cooling ponds).	1	SMALL. Continued operation of nuclear power plant cooling systems during license renewal could cause thermal effluent additions to receiving waterbodies; chemical effluent additions to surface water or groundwater, impingement of waterfowl, disturbance of terrestrial plants and wetlands from maintenance dredging, and erosion of shoreline habitat. However, plants where these impacts have occurred successfully mitigated the impact, and it is no longer of concern. These impacts are not expected to be significant issues during the license renewal term.
Cooling tower impacts on terrestrial plants	1	SMALL. Continued operation of nuclear power plant cooling towers could deposit particulates and water droplets or ice on vegetation and lead to structural damage or changes in terrestrial plant communities. However, nuclear power plants where these impacts occurred have successfully mitigated the impact. These impacts are not expected to be significant issues during the license renewal term.
Bird collisions with plant structures and transmission lines ⁴ .	1	SMALL. Bird mortalities from collisions with nuclear power plant structures and in-scope transmission lines would be negligible for any species and are unlikely to threaten the stability of local or migratory bird populations or result in noticeable impairment of the function of a species within the ecosystem. These impacts are not expected to be significant issues during the license renewal term.
Water use conflicts with terrestrial resources (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Nuclear power plants could consume water at rates that cause occasional or intermittent water use conflicts with nearby and downstream terrestrial and riparian communities. Such impacts could noticeably affect riparian or wetland species or alter characteristics of the ecological environment during the license renewal term. The one plant where impacts have occurred successfully mitigated the impact. Impacts are expected to be small at most nuclear power plants but could be moderate at some.
Transmission line right-of-way (ROW) management impacts on terrestrial resources ⁴ .	1	SMALL. In-scope transmission lines tend to occupy only industrial-use or other developed portions of nuclear power plant sites and, therefore, effects of ROW maintenance on terrestrial plants and animals during the license renewal term would be negligible. Application of best management practices would reduce the potential for impacts.
Electromagnetic field effects on terrestrial plants and animals ⁴ .	1	SMALL. In-scope transmission lines tend to occupy only industrial-use or other developed portions of nuclear power plant sites and, therefore, effects of electromagnetic fields on terrestrial plants and animals during the license renewal term would be negligible.
Aquatic Resources		
Impingement mortality and entrainment of aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. The impacts of impingement mortality and entrainment would generally be small at nuclear power plants with once-through cooling systems or cooling ponds that have implemented best technology requirements for existing facilities under Clean Water Act (CWA) Section 316(b). For all other plants, impacts could be small, moderate, or large depending on characteristics of the cooling water intake system, results of impingement and entrainment studies performed at the plant, trends in local fish and shellfish populations, and implementation of mitigation measures.
Impingement mortality and entrainment of aquatic organisms (plants with cooling towers).	1	SMALL. No significant impacts on aquatic populations associated with impingement mortality and entrainment at nuclear power plants with cooling towers have been reported, including effects on fish and shellfish from direct mortality, injury, or other sublethal effects. Impacts during the license renewal term would be similar and small. Further, effects of these cooling water intake systems would be mitigated through adherence to NPDES permit conditions established pursuant to CWA Section 316(b).
Entrainment of phytoplankton and zooplankton	1	SMALL. Entrainment has not resulted in noticeable impacts on phytoplankton or zooplankton populations near operating nuclear power plants. Impacts during the license renewal term would be similar and small. Further, effects would be mitigated through adherence to NPDES permit conditions established pursuant to CWA Section 316(b).
Effects of thermal effluents on aquatic organisms (plants with once-through cooling systems or cooling ponds).	2	SMALL, MODERATE, or LARGE. Acute, sublethal, and community-level effects of thermal effluents on aquatic organisms would generally be small at nuclear power plants with once-through cooling systems or cooling ponds that adhere to State water quality criteria or that have and maintain a valid CWA Section 316(a) variance. For all other plants, impacts could be small, moderate, or large depending on site-specific factors, including ecological setting of the plant; characteristics of the cooling system and effluent discharges; and characteristics of the fish, shellfish, and other aquatic organisms present in the area.
Effects of thermal effluents on aquatic organisms (plants with cooling towers).	1	SMALL. Acute, sublethal, and community-level effects of thermal effluents have not resulted in noticeable impacts on aquatic communities at nuclear power plants with cooling towers. Impacts during the license renewal term would be similar and small. Further, effects would be mitigated through adherence to State water quality criteria or CWA Section 316(a) variances.

TABLE B-1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS ¹—Continued

Issue	Category ²	Finding ³
Infrequently reported effects of thermal effluents ...	1	SMALL. Continued operation of nuclear power plant cooling systems could result in certain infrequently reported thermal impacts, including cold shock, thermal migration barriers, accelerated maturation of aquatic insects, proliferation of aquatic nuisance organisms, depletion of dissolved oxygen, gas supersaturation, eutrophication, and increased susceptibility of exposed fish and shellfish to predation, parasitism, and disease. Most of these effects have not been reported at operating nuclear power plants. Plants that have experienced these impacts successfully mitigated the impact, and it is no longer of concern. Infrequently reported thermal impacts are not expected to be significant issues during the license renewal term.
Effects of nonradiological contaminants on aquatic organisms.	1	SMALL. Heavy metal leaching from condenser tubes was an issue at several operating nuclear power plants. These plants successfully mitigated the issue, and it is no longer of concern. Cooling system effluents would be the primary source of nonradiological contaminants during the license renewal term. Implementation of best management practices and adherence to NPDES permit limitations would minimize the effects of these contaminants on the aquatic environment.
Exposure of aquatic organisms to radionuclides ...	1	SMALL. Doses to aquatic organisms from continued nuclear power plant operation and refurbishment during the license renewal term would be expected to remain well below U.S. Department of Energy exposure guidelines developed to protect these organisms.
Effects of dredging on aquatic resources	1	SMALL. Dredging at nuclear power plants is expected to occur infrequently, would be of relatively short duration, and would affect relatively small areas. Continued operation of many plants may not require any dredging. Adherence to best management practices and CWA Section 404 permit conditions would mitigate potential impacts at plants where dredging is necessary to maintain function or reliability of cooling systems. Dredging is not expected to be a significant issue during the license renewal term.
Water use conflicts with aquatic resources (plants with cooling ponds or cooling towers using makeup water from a river).	2	SMALL or MODERATE. Nuclear power plants could consume water at rates that cause occasional or intermittent water use conflicts with nearby and downstream aquatic communities. Such impacts could noticeably affect aquatic plants or animals or alter characteristics of the ecological environment during the license renewal term. The one plant where impacts have occurred successfully mitigated the impact. Impacts are expected to be small at most nuclear power plants but could be moderate at some.
Non-cooling system impacts on aquatic resources	1	SMALL. No significant impacts on aquatic resources associated with landscape and grounds maintenance, stormwater management, or ground-disturbing activities at operating nuclear power plants have been reported. Impacts from continued operation and refurbishment during the license renewal term would be similar and small. Application of best management practices and other conservation initiatives would reduce the potential for impacts.
Impacts of transmission line right-of-way (ROW) management on aquatic resources ⁴ .	1	SMALL. In-scope transmission lines tend to occupy only industrial-use or other developed portions of nuclear power plant sites and, therefore, the effects of ROW maintenance on aquatic plants and animals during the license renewal term would be negligible. Application of best management practices would reduce the potential for impacts.
Federally Protected Ecological Resources		
Endangered Species Act: federally listed species and critical habitats under U.S. Fish and Wildlife jurisdiction.	2	The potential effects of continued nuclear power plant operation and refurbishment on federally listed species and critical habitats would depend on numerous site-specific factors, including the ecological setting; listed species and critical habitats present in the action area; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and other ground-disturbing activities. Consultation with the U.S. Fish and Wildlife Service under Endangered Species Act Section 7(a)(2) would be required if license renewal may affect listed species or critical habitats under this agency's jurisdiction.
Endangered Species Act: federally listed species and critical habitats under National Marine Fisheries Service jurisdiction.	2	The potential effects of continued nuclear power plant operation and refurbishment on federally listed species and critical habitats would depend on numerous site-specific factors, including the ecological setting; listed species and critical habitats present in the action area; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and other ground-disturbing activities. Consultation with the National Marine Fisheries Service under Endangered Species Act Section 7(a)(2) would be required if license renewal may affect listed species or critical habitats under this agency's jurisdiction.
Magnuson-Stevens Act: essential fish habitat	2	The potential effects of continued nuclear power plant operation and refurbishment on essential fish habitat would depend on numerous site-specific factors, including the ecological setting; essential fish habitat present in the area, including habitats of particular concern; and plant-specific factors related to operations, including water withdrawal, effluent discharges, and other activities that may affect aquatic habitats. Consultation with the National Marine Fisheries Service under Magnuson-Stevens Act Section 305(b) would be required if license renewal could result in adverse effects to essential fish habitat.
National Marine Sanctuaries Act: sanctuary resources.	2	The potential effects of continued nuclear power plant operation and refurbishment on sanctuary resources would depend on numerous site-specific factors, including the ecological setting; national marine sanctuaries present in the area, and plant-specific factors related to operations, including water withdrawal, effluent discharges, and other activities that may affect aquatic habitats. Consultation with the Office of National Marine Sanctuaries under National Marine Sanctuaries Act Section 304(d) would be required if license renewal could destroy, cause the loss of, or injure sanctuary resources.
Historic and Cultural Resources		
Historic and cultural resources ⁴	2	Impacts from continued operations and refurbishment on historic and cultural resources located on-site and in the transmission line ROW are analyzed on a plant-specific basis. The NRC will perform a National Historic Preservation Act (NHPA) Section 106 review, in accordance with 36 CFR Part 800 which includes consultation with the State and Tribal Historic Preservation Officers, Indian Tribes, and other interested parties.

TABLE B-1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS ¹—Continued

Issue	Category ²	Finding ³
Socioeconomics		
Employment and income, recreation and tourism ..	1	SMALL. Although most nuclear plants have large numbers of employees with higher than average wages and salaries, employment, income, recreation, and tourism impacts from continued operations and refurbishment associated with license renewal are expected to be small.
Tax revenue	1	SMALL. Nuclear plants provide tax revenue to local jurisdictions in the form of property tax payments, payments in lieu of tax (PILOT), or tax payments on energy production. The amount of tax revenue paid during the license renewal term as a result of continued operations and refurbishment associated with license renewal is not expected to change.
Community services and education	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to local community and educational services would be small. With little or no change in employment at the licensee's plant, value of the power plant, payments on energy production, and PILOT payments expected during the license renewal term, community and educational services would not be affected by continued power plant operations.
Population and housing	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to regional population and housing availability and value would be small. With little or no change in employment at the licensee's plant expected during the license renewal term, population and housing availability and values would not be affected by continued power plant operations.
Transportation	1	SMALL. Changes resulting from continued operations and refurbishment associated with license renewal to traffic volumes would be small.
Human Health		
Radiation exposures to plant workers	1	SMALL. Occupational doses from continued operations and refurbishment associated with license renewal are expected to be within the range of doses experienced during the current license term, and would continue to be well below regulatory limits.
Radiation exposures to the public	1	SMALL. Radiation doses to the public from continued operations and refurbishment associated with license renewal are expected to continue at current levels, and would be well below regulatory limits.
Chemical hazards	1	SMALL. Chemical hazards to plant workers resulting from continued operations and refurbishment associated with license renewal are expected to be minimized by the licensee implementing good industrial hygiene practices as required by permits and Federal and State regulations. Chemical releases to the environment and the potential for impacts to the public are expected to be minimized by adherence to discharge limitations of NPDES and other permits.
Microbiological hazards to plant workers	1	SMALL. Occupational health impacts are expected to be controlled by continued application of accepted industrial hygiene practices to minimize worker exposures as required by permits and Federal and State regulations.
Microbiological hazards to the public	2	SMALL, MODERATE, or LARGE. These microorganisms are not expected to be a problem at most operating plants except possibly at plants using cooling ponds, lakes, canals, or that discharge to waters of the United States accessible to the public. Impacts would depend on site-specific characteristics.
Electromagnetic fields (EMFs) ⁶	⁵ N/A	Uncertain impact. Studies of 60-Hz EMFs have not uncovered consistent evidence linking harmful effects with field exposures. EMFs are unlike other agents that have a toxic effect (e.g., toxic chemicals and ionizing radiation) in that dramatic acute effects cannot be forced and longer-term effects, if real, are subtle. Because the state of the science is currently inadequate, no generic conclusion on human health impacts is possible.
Physical occupational hazards	1	SMALL. Occupational safety and health hazards are generic to all types of electrical generating stations, including nuclear power plants, and are of small significance if the workers adhere to safety standards and use protective equipment as required by Federal and State regulations.
Electric shock hazards ⁴	2	SMALL, MODERATE, or LARGE. Electrical shock potential is of small significance for transmission lines that are operated in adherence with the National Electrical Safety Code (NESC). Without a review of conformance with NESC criteria of each nuclear power plant's in-scope transmission lines, it is not possible to determine the significance of the electrical shock potential.
Postulated Accidents		
Design-basis accidents	1	SMALL. The NRC staff has concluded that the environmental impacts of design-basis accidents are of small significance for all plants.
Severe accidents ⁷	1	SMALL. The probability-weighted consequences of atmospheric releases, fallout onto open bodies of water, releases to groundwater, and societal and economic impacts from severe accidents are small for all plants. Severe accident mitigation alternatives do not warrant further plant-specific analysis because the demonstrated reductions in population dose risk and continued severe accident regulatory improvements substantially reduce the likelihood of finding cost-effective significant plant improvements.
Environmental Justice		
Impacts on minority populations, low-income populations, and Indian tribes.	2	Impacts on minority populations, low-income populations, Indian tribes, and subsistence consumption resulting from continued operations and refurbishment associated with license renewal will be addressed in nuclear plant-specific reviews.
Waste Management		
Low-level waste storage and disposal	1	SMALL. The comprehensive regulatory controls that are in place and the low public doses being achieved at reactors ensure that the radiological impacts on the environment would remain small during the license renewal term.

TABLE B-1—SUMMARY OF FINDINGS ON ENVIRONMENTAL ISSUES FOR INITIAL AND ONE TERM OF SUBSEQUENT LICENSE RENEWAL OF NUCLEAR POWER PLANTS ¹—Continued

Issue	Category ²	Finding ³
Onsite storage of spent nuclear fuel	1	During the license renewal term, SMALL. The expected increase in the volume of spent fuel from an additional 20 years of operation can be safely accommodated onsite during the license renewal term with small environmental impacts through dry or pool storage at all plants. For the period after the licensed life for reactor operations, the impacts of onsite storage of spent nuclear fuel during the continued storage period are discussed in NUREG-2157 and as stated in § 51.23(b), shall be deemed incorporated into this issue.
Offsite radiological impacts of spent nuclear fuel and high-level waste disposal.	1	For the high-level waste and spent-fuel disposal component of the fuel cycle, the EPA established a dose limit of 0.15 mSv (15 millirem) per year for the first 10,000 years and 1.0 mSv (100 millirem) per year between 10,000 years and 1 million years for offsite releases of radionuclides at the proposed repository at Yucca Mountain, Nevada. The Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the impacts of spent fuel and high level waste disposal, this issue is considered Category 1.
Mixed-waste storage and disposal	1	SMALL. The comprehensive regulatory controls and the facilities and procedures that are in place ensure proper handling and storage, as well as negligible doses and exposure to toxic materials for the public and the environment at all plants. License renewal would not increase the small, continuing risk to human health and the environment posed by mixed waste at all plants. The radiological and nonradiological environmental impacts of long-term disposal of mixed waste from any individual plant at licensed sites are small.
Nonradioactive waste storage and disposal	1	SMALL. No changes to systems that generate nonradioactive waste are anticipated during the license renewal term. Facilities and procedures are in place to ensure continued proper handling, storage, and disposal, as well as negligible exposure to toxic materials for the public and the environment at all plants.
Greenhouse Gas Emissions and Climate Change		
Greenhouse gas impacts on climate change	1	SMALL. Greenhouse gas impacts on climate change from continued operations and refurbishment associated with license renewal are expected to be small at all plants. Greenhouse gas emissions from routine operations of nuclear power plants are typically very minor, because such plants, by their very nature, do not normally combust fossil fuels to generate electricity. Greenhouse gas emissions from construction vehicles and other motorized equipment for refurbishment activities would be intermittent and temporary, restricted to the refurbishment period. Worker vehicle greenhouse gas emissions for refurbishment would be similar to worker vehicle emissions from normal nuclear power plant operations.
Climate change impacts on environmental resources.	2	Climate change can have additive effects on environmental resource conditions that may also be directly impacted by continued operations and refurbishment during the license renewal term. The effects of climate change can vary regionally and climate change information at the regional and local scale is necessary to assess trends and the impacts on the human environment for a specific location. The impacts of climate change on environmental resources during the license renewal term are location-specific and cannot be evaluated generically.
Cumulative Effects		
Cumulative effects	2	Cumulative effects or impacts of continued operations and refurbishment associated with license renewal must be considered on a plant-specific basis. The effects depend on regional resource characteristics, the incremental resource-specific effects of license renewal, and the cumulative significance of other factors affecting the environmental resource.
Uranium Fuel Cycle		
Offsite radiological impacts—individual impacts from other than the disposal of spent fuel and high-level waste.	1	SMALL. The impacts to the public from radiological exposures have been considered by the Commission in Table S-3 of this part. Based on information in the GEIS, impacts to individuals from radioactive gaseous and liquid releases, including radon-222 and technetium-99, would remain at or below the NRC's regulatory limits.
Offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste.	1	There are no regulatory limits applicable to collective doses to the general public from fuel-cycle facilities. The practice of estimating health effects on the basis of collective doses may not be meaningful. All fuel-cycle facilities are designed and operated to meet the applicable regulatory limits and standards. The Commission concludes that the collective impacts are acceptable. The Commission concludes that the impacts would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR Part 54 should be eliminated. Accordingly, while the Commission has not assigned a single level of significance for the collective impacts of the uranium fuel cycle, this issue is considered Category 1.
Nonradiological impacts of the uranium fuel cycle	1	SMALL. The nonradiological impacts of the uranium fuel cycle resulting from the renewal of an operating license for any plant would be small.
Transportation	1	SMALL. The impacts of transporting materials to and from uranium-fuel-cycle facilities on workers, the public, and the environment are expected to be small.
Termination of Nuclear Power Plant Operations and Decommissioning		
Termination of plant operations and decommissioning.	1	SMALL. License renewal is expected to have a negligible effect on the impacts of terminating operations and decommissioning on all resources.

¹ Data supporting this table are contained in NUREG-1437, Revision 2, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (February 2023).

² The numerical entries in this column are based on the following category definitions: *Category 1*: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown: (1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic; (2) A single significance level (*i.e.*, small, moderate, or large) has been assigned to the impacts (except for offsite radiological impacts of spent nuclear fuel and high-level waste disposal and offsite radiological impacts—collective impacts from other than the disposal of spent fuel and high-level waste); and (3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are not likely to be sufficiently beneficial to warrant implementation. The generic analysis of the issue may be adopted in each plant-specific review. *Category 2*: For the issue, the analysis reported in the Generic Environmental Impact Statement has shown that one or more of the criteria of Category 1 cannot be met, and therefore additional plant-specific review is required.

³ The impact findings in this column are based on the definitions of three significance levels. Unless the significance level is identified as beneficial, the impact is adverse, or in the case of “small,” may be negligible. The definitions of significance follow: *SMALL*—For the issue, environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission’s regulations are considered small as the term is used in this table. *Moderate*—For the issue, environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource. *LARGE*—For the issue, environmental effects are clearly noticeable and are sufficient to destabilize important attributes of the resource. For issues where probability is a key consideration (*i.e.*, accident consequences), probability was a factor in determining significance.

⁴ This issue applies only to the in-scope portion of electric power transmission lines, which are defined as transmission lines that connect the nuclear power plant to the substation where electricity is fed into the regional power distribution system and transmission lines that supply power to the nuclear plant from the grid.

⁵ NA (not applicable). The categorization and impact finding definitions do not apply to these issues.

⁶ If, in the future, the Commission finds that, contrary to current indications, a consensus has been reached by appropriate Federal health agencies that there are adverse health effects from electromagnetic fields, the Commission will require applicants to submit plant-specific reviews of these health effects as part of their license renewal applications. Until such time, applicants for license renewal are not required to submit information on this issue.

⁷ Although the NRC does not anticipate any license renewal applications for nuclear power plants for which a previous severe accident mitigation design alternative (SAMDA) or severe accident mitigation alternative (SAMA) analysis has not been performed, alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives and would be the functional equivalent of a Category 2 issue requiring site-specific analysis.

Dated: February 23, 2023.

For the Nuclear Regulatory Commission.

Brooke P. Clark,
Secretary of the Commission.

[FR Doc. 2023–04102 Filed 3–2–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC–2021–0024]

RIN 3150–AK58

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2023

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, special project, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to comply with the Nuclear Energy Innovation and Modernization Act, which requires the NRC to recover, to the maximum extent practicable, approximately 100 percent of its annual budget less certain amounts excluded from this fee-recovery requirement.

DATES: Submit comments by April 3, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration for comments received before this date. Because the Nuclear Energy Innovation and Modernization Act requires the NRC to collect fees for fiscal year 2023 by September 30, 2023, the NRC must finalize any revisions to its fee schedules promptly, and thus is unable to grant any extension request of the comment period.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2021–0024. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

- *Email comments to:* Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (ET) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Anthony Rossi, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7341; email: Anthony.Rossi@nrc.gov.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0024 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2021–0024.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly

available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, the ADAMS accession numbers are provided in the “Availability of Documents” section of this document.

- *NRC’s PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–

4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic submission of comments through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2021–0024 in your comment.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment. The NRC will post all comments at <https://www.regulations.gov> as well as enter the comments into ADAMS. The NRC does not routinely edit comments to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comments. Your request should state that the NRC does not routinely edit comments to remove such information before making the comments available to the public or entering the comments into ADAMS.

II. Background; Statutory Authority

The NRC's fee regulations are primarily governed by two laws: (1) the Independent Offices Appropriation Act, 1952 (IOAA) (31 U.S.C. 9701), and (2) the Nuclear Energy Innovation and Modernization Act (NEIMA) (42 U.S.C. 2215). The IOAA authorizes and encourages Federal agencies to recover, to the fullest extent possible, costs

attributable to services provided to identifiable recipients. Under NEIMA, the NRC must recover, to the maximum extent practicable, approximately 100 percent of its annual budget, less the budget authority for excluded activities. Under section 102(b)(1)(B) of NEIMA, “excluded activities” include any fee-relief activity as identified by the Commission, generic homeland security activities, waste incidental to reprocessing activities, Nuclear Waste Fund activities, advanced reactor regulatory infrastructure activities, Inspector General services for the Defense Nuclear Facilities Safety Board, research and development at universities in areas relevant to the NRC's mission, and a nuclear science and engineering grant program. In fiscal year (FY) 2023, the fee-relief activities identified by the Commission are consistent with prior fee rules, which are listed in Table 1—Excluded Activities.

Under NEIMA, the NRC must use its IOAA authority first to collect service fees for NRC work that provides specific benefits to identifiable recipients (such as licensing work, inspections, and special projects). The NRC's regulations in 10 CFR part 170, “Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended,” explain how the agency collects service fees from specific beneficiaries. Because the NRC's fee recovery under the IOAA (10 CFR part 170) will not equal 100 percent of the agency's total budget authority for the fiscal year (less the budget authority for excluded activities), the NRC also

assesses “annual fees” under 10 CFR part 171, “Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC,” to recover the remaining amount necessary to comply with NEIMA.

III. Discussion

FY 2023 Fee Collection—Overview

The NRC is issuing this FY 2023 proposed fee rule based on the Consolidated Appropriations Act, 2023 (the enacted budget). The proposed fee rule reflects a total budget authority in the amount of \$927.2 million, which is an increase of \$39.5 million from FY 2022. As explained previously, certain portions of the NRC's total budget authority for the fiscal year are excluded from NEIMA's fee-recovery requirement under section 102(b)(1)(B) of NEIMA. Based on the FY 2023 enacted budget, these exclusions total \$137.0 million, which is an increase of \$6.0 million from FY 2022. These excluded activities consist of \$97.1 million for fee-relief activities, \$23.8 million for advanced reactor regulatory infrastructure activities, \$13.4 million for generic homeland security activities, \$1.2 million for waste incidental to reprocessing activities, and \$1.5 million for Inspector General services for the Defense Nuclear Facilities Safety Board. Table I summarizes the excluded activities for the FY 2023 proposed fee rule. The FY 2022 amounts are provided for comparison purposes.

TABLE I—EXCLUDED ACTIVITIES
[Dollars in millions]

	FY 2022 final rule	FY 2023 proposed rule
Fee-Relief Activities:		
International activities	25.5	28.7
Agreement State oversight	11.1	11.9
Medical isotope production infrastructure	3.7	2.6
Fee exemption for nonprofit educational institutions	11.6	13.5
Costs not recovered from small entities under 10 CFR 171.16(c)	7.4	8.8
Regulatory support to Agreement States	12.1	14.2
Generic decommissioning/reclamation activities (not related to the operating power reactors and spent fuel storage fee classes)	15.9	13.8
Uranium recovery program and unregistered general licensees	3.0	2.3
Potential Department of Defense remediation program Memorandum of Understanding activities	0.9	0.9
Non-military radium sites	0.3	0.2
Subtotal Fee-Relief Activities	91.5	97.1
Activities under section 102(b)(1)(B)(ii) of NEIMA (Generic Homeland Security activities, Waste Incidental to Reprocessing activities, and the Defense Nuclear Facilities Safety Board)	16.5	16.1
Advanced reactor regulatory infrastructure activities	23.0	23.8
Total Excluded Activities	131.0	137.0

After accounting for the exclusions from the fee-recovery requirement and net billing adjustments (*i.e.*, for FY 2023 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2023 for prior-year invoices), the NRC must recover approximately \$791.4 million in fees in FY 2023. Of this amount, the NRC estimates that \$195.4 million will be recovered through 10 CFR part 170 service fees and approximately \$596.0 million will be recovered through 10 CFR part 171 annual fees. Table II summarizes the fee-recovery amounts

for the FY 2023 proposed fee rule using the FY 2023 enacted budget and takes into account the budget authority for excluded activities and net billing adjustments. For all information presented in the following tables in this proposed rule, individual values may not sum to totals due to rounding. Please see the work papers, available as indicated in the “Availability of Documents” section of this document, for actual amounts.

In FY 2023, the explanatory statement associated with the Consolidated Appropriations Act, 2023, includes

direction for the NRC to use \$16.0 million in prior-year unobligated carryover funds for the University Nuclear Leadership Program. Consistent with the requirements of NEIMA, the NRC does not assess fees in the current fiscal year for any carryover funds because fees are calculated based on the budget authority enacted for the current fiscal year. Fees were already assessed in the fiscal year in which the carryover funds were appropriated. The FY 2022 amounts are provided for comparison purposes.

TABLE II—BUDGET AND FEE RECOVERY AMOUNTS

[Dollars in millions]

	FY 2022 final rule	FY 2023 proposed rule
Total budget authority	\$887.7	\$927.2
Less Budget Authority for Excluded Activities:	– 131.0	– 137.0
Balance	756.7	790.2
Fee Recovery Percent	100.0	100.0
Total Amount to be Recovered:	756.7	790.2
Less Estimated Amount to be Recovered through 10 CFR part 170 Fees	– 198.8	– 195.4
Estimated Amount to be Recovered through 10 CFR part 171 Fees	557.9	594.8
10 CFR part 171 Billing Adjustments:		
Unpaid Current Year Invoices (estimated)	2.0	4.9
Less Payments Received in Current Year for Previous Year Invoices (estimated)	– 6.0	– 3.7
Adjusted 10 CFR part 171 Annual Fee Collections Required	553.9	596.0
Adjusted Amount to be Recovered through 10 CFR parts 170 and 171 Fees	752.7	791.4

FY 2023 Fee Collection—Professional Hourly Rate

The NRC uses a professional hourly rate to assess fees under 10 CFR part 170 for specific services it provides. The professional hourly rate also helps determine flat fees (which are used for the review of certain types of license applications). This rate is applicable to all activities for which fees are assessed under §§ 170.21 and 170.31.

The NRC’s professional hourly rate is derived by adding budgeted resources for (1) mission-direct program salaries and benefits, (2) mission-indirect program support, and (3) agency support (corporate support and the Inspector General (IG)). The NRC then subtracts certain offsetting receipts and divides this total by the mission-direct full-time equivalent (FTE) converted to hours (the mission-direct FTE converted

to hours is the product of the mission-direct FTE multiplied by the estimated annual mission-direct FTE productive hours). The only budgeted resources excluded from the professional hourly rate are those for mission-direct contract resources, which are generally billed to licensees separately. The following shows the professional hourly rate calculation:

$$\text{Professional Hourly Rate} = \frac{\text{Budgeted Resources}}{\text{Mission-Direct FTE Converted to Hours}} = \frac{\$777.5 \text{ million}}{1,672.2 \times 1,551} = \$300$$

For FY 2023, the NRC is proposing to increase the professional hourly rate from \$290 to \$300. The 3.4 percent increase in the professional hourly rate is primarily due to a 4.6 percent increase in budgeted resources of approximately \$34.1 million. The increase in budgeted resources is primarily due to an increase in salaries and benefits to support Federal pay raises for NRC employees. The

anticipated decline in the number of mission-direct FTE compared to FY 2022 also contributed to the proposed increase in the professional hourly rate. The professional hourly rate is inversely related to the mission-direct FTE amount; therefore, as the number of mission-direct FTE decrease, the professional hourly rate may increase. The number of mission-direct FTE is expected to decline by approximately

24, primarily due to: (1) the closure of the Palisades Nuclear Plant (Palisades); (2) a reduction in resources for development of the operating reactors licensing action infrastructure for process improvements and special projects; and (3) planned completions and budget reallocations to support the restoration of resources for Byron Station, Units 1 and 2, and Dresden Nuclear Power Station, Units 2 and 3.

The FY 2023 estimate for annual mission-direct FTE productive hours is 1,551 hours, which is an increase from 1,510 hours in FY 2022. This estimate, also referred to as the “Productive Hours Assumption,” reflects the average

number of hours that a mission-direct employee spends on mission-direct work in a given year. This estimate, therefore, excludes hours charged to annual leave, sick leave, holidays, training, and general administrative

tasks. Table III shows the professional hourly rate calculation methodology. The FY 2022 amounts are provided for comparison purposes.

TABLE III—PROFESSIONAL HOURLY RATE CALCULATION

[Dollars in millions, except as noted]

	FY 2022 final rule	FY 2023 proposed rule
Mission-Direct Program Salaries & Benefits	\$349.3	\$359.2
Mission-Indirect Program Support	\$115.1	\$118.8
Agency Support (Corporate Support and the IG)	\$278.9	\$299.5
Subtotal	\$743.3	\$777.5
Less Offsetting Receipts ¹	\$0.0	\$0.0
Total Budgeted Resources Included in Professional Hourly Rate	\$743.3	\$777.5
Mission-Direct FTE	1,696.1	1,672.2
Annual Mission-Direct FTE Productive Hours (Whole numbers)	1,510	1,551
Mission-Direct FTE Converted to Hours (Mission-Direct FTE multiplied by Annual Mission-Direct FTE Productive Hours)	2,561,111	2,593,582
Professional Hourly Rate (Total Budgeted Resources Included in Professional Hourly Rate Divided by Mission-Direct FTE Converted to Hours) (Whole Numbers)	\$290	\$300

¹ The fees collected by the NRC for Freedom of Information Act (FOIA) services and indemnity fees (financial protection required of all licensees for public liability claims at 10 CFR part 140) are subtracted from the budgeted resources amount when calculating the 10 CFR part 170 professional hourly rate, per the guidance in the Office of Management and Budget Circular A–25, “User Charges.” The budgeted resources for FOIA activities are allocated under the product for Information Services within the Corporate Support business line. The budgeted resources for indemnity activities are allocated under the Licensing Actions and Research and Test Reactors products within the Operating Reactors business line.

FY 2023 Fee Collection—Flat Application Fee Changes

The NRC proposes to amend the flat application fees it charges in its schedule of fees in § 170.31 to reflect the revised professional hourly rate of \$300. The NRC charges these fees to applicants for materials licenses and other regulatory services, as well as to holders of materials licenses. The NRC calculates these flat fees by multiplying the average professional staff hours needed to process the licensing actions by the professional hourly rate for FY 2023. As part of its calculations, the NRC analyzes the actual hours spent performing licensing actions and estimates the five-year average of professional staff hours that are needed to process licensing actions as part of its biennial review of fees. These actions are required by section 205(a) of the Chief Financial Officers Act of 1990 (31 U.S.C. 902(a)(8)). The NRC performed this review for the FY 2023 proposed rule and will perform this review again for the FY 2025 proposed rule. The biennial review adjustments and the higher professional hourly rate of \$300 is the primary reason for the increase in flat application fees (see the work papers).

In order to simplify billing, the NRC rounds these flat fees to a minimal degree. Specifically, the NRC rounds these flat fees (up or down) in such a way that ensures both convenience for its stakeholders and minimal effects due to rounding. Accordingly, fees under \$1,000 are rounded to the nearest \$10, fees between \$1,000 and \$100,000 are rounded to the nearest \$100, and fees greater than \$100,000 are rounded to the nearest \$1,000.

The proposed flat fees are applicable for certain materials licensing actions (see fee categories 1.C. through 1.D., 2.B. through 2.F., 3.A. through 3.S., 4.B. through 5.A., 6.A. through 9.D., 10.B., 15.A. through 15.L., 15.R., and 16 of § 170.31). Applications filed on or after the effective date of the FY 2023 final fee rule will be subject to the revised fees in the final rule. Since international activities are an excluded activity, fees are not assessed for import and export licensing actions under 10 CFR parts 170 and 171.

FY 2023 Fee Collection—Low-Level Waste Surcharge

The NRC proposes to assess a generic low-level waste (LLW) surcharge of \$4.023 million. Disposal of LLW occurs

at commercially-operated LLW disposal facilities that are licensed by either the NRC or an Agreement State. Four existing LLW disposal facilities in the United States accept various types of LLW. All are located in Agreement States and, therefore, are regulated by an Agreement State, rather than the NRC. The NRC proposes to allocate this surcharge to its licensees based on data available in the U.S. Department of Energy’s (DOE) Manifest Information Management System. This database contains information on total LLW volumes disposed of by four generator classes: academic, industrial, medical, and utility. The ratio of waste volumes disposed of by these generator classes to total LLW volumes disposed over a period of time is used to estimate the portion of this surcharge that will be allocated to the power reactors, fuel facilities, and the materials users fee classes. The materials users fee class portion is adjusted to account for the large percentage of materials licensees that are licensed by the Agreement States rather than the NRC.

Table IV shows the allocation of the LLW surcharge and its allocation across the various fee classes.

TABLE IV—ALLOCATION OF LLW SURCHARGE FY 2023

[Dollars in millions]

Fee classes	LLW surcharge	
	Percent	\$
Operating Power Reactors	88.4	3.556
Spent Fuel Storage/Reactor Decommissioning	0.0	0.000
Non-Power Production or Utilization Facilities	0.0	0.000
Fuel Facilities	9.2	0.370
Materials Users	2.4	0.097
Transportation	0.0	0.000
Rare Earth Facilities	0.0	0.000
Uranium Recovery	0.0	0.000
Total	100.0	4.023

FY 2023 Fee Collection—Revised Annual Fees

In accordance with SECY-05-0164, “Annual Fee Calculation Method,” the NRC rebaselines its annual fees every year. “Rebaselining” entails analyzing the budget in detail and then allocating the FY 2023 budgeted resources to

various classes or subclasses of licensees. It also includes updating the number of NRC licensees in its fee calculation methodology.

The NRC is proposing revisions to its annual fees in §§ 171.15 and 171.16 to recover approximately 100 percent of the NRC’s FY 2023 enacted budget (less the budget authority for excluded

activities and the estimated amount to be recovered through 10 CFR part 170 fees).

Table V shows the proposed rebaselined fees for FY 2023 for a sample of licensee categories. The FY 2022 amounts are provided for comparison purposes.

TABLE V—REBASELINED ANNUAL FEES

[Actual dollars]

Class/category of licenses	FY 2022 final annual fee	FY 2023 proposed annual fee
Operating Power Reactors	\$5,165,000	\$5,486,000
+ Spent Fuel Storage/Reactor Decommissioning	227,000	267,000
Total, Combined Fee	5,392,000	5,753,000
Spent Fuel Storage/Reactor Decommissioning	227,000	267,000
Non-Power Production or Utilization Facilities	90,100	98,900
High Enriched Uranium Fuel Facility (Category 1.A.(1)(a))	4,334,000	5,136,000
Low Enriched Uranium Fuel Facility (Category 1.A.(1)(b))	1,469,000	1,741,000
Uranium Enrichment (Category 1.E)	1,888,000	2,238,000
UF ₆ Conversion and Deconversion Facility (Category 2.A.(1))	436,000	1,320,000
Basic <i>In Situ</i> Recovery Facilities (Category 2.A.(2)(b))	42,000	49,500
Typical Users:		
Radiographers (Category 3O)	29,600	43,700
All Other Specific Byproduct Material Licensees (Category 3P)	9,900	12,500
Medical Other (Category 7C)	17,000	18,100
Device/Product Safety Evaluation—Broad (Category 9A)	18,100	17,600

The work papers that support this proposed rule show in detail how the NRC allocates the budgeted resources for each class of licensees and calculates the fees.

Paragraphs a. through h. of this section describe the budgeted resources

allocated to each class of licensees and the calculations of the rebaselined fees. For more information about detailed fee calculations for each class, please consult the accompanying work papers for this proposed rule.

a. Operating Power Reactors

The NRC proposes to collect \$510.2 million in annual fees from the operating power reactors fee class in FY 2023, as shown in Table VI. The FY 2022 operating power reactors fees are shown for comparison purposes.

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 proposed rule
Total budgeted resources	\$645.4	\$665.3
Less estimated 10 CFR part 170 receipts	– 165.8	– 160.2
Net 10 CFR part 171 resources	479.6	505.1

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS—Continued
[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 proposed rule
Allocated generic transportation	0.4	0.5
Allocated LLW surcharge	3.8	3.6
Billing adjustment	–3.4	1.0
Total required annual fee recovery	480.3	510.2
Total operating reactors	93	93
Annual fee per operating reactor	5.165	5.486

In comparison to FY 2022, the FY 2023 proposed annual fee for the operating power reactors fee class is increasing primarily due to the following: (1) an increase in budgeted resources; (2) a decrease in 10 CFR part 170 estimated billings; and (3) an increase in the 10 CFR part 171 billing adjustment. These components are discussed in the following paragraphs.

The budgeted resources for the operating power reactors fee class increased primarily as a result of an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits. The increase is offset by a decrease in the budgeted resources primarily due to a reduction in FTE for the following: (1) the closure of Palisades; (2) a reduction resources for the development of operating reactors licensing action infrastructure for process improvements and special projects; (3) a reduction in contract support resources for baseline inspections in the reactors safety program now being performed in-house; and (4) planned completions and budget reallocations to support the restoration of resources for Byron Station, Units 1 and 2, and Dresden Nuclear Power Station, Units 2 and 3.

The proposed annual fee is increasing due to a reduction in the 10 CFR part 170 estimated billings resulting from: (1) a decrease in hours associated with the closure of Palisades and (2) delays to planned new reactor design and licensing applications, topical reports, and white papers.

The proposed annual fee increase is also affected by these contributing factors: (1) an increase in the 10 CFR part 171 billing adjustment (moving from a credit to a surcharge) due to the timing of invoices issued in FY 2022, and (2)

an increase in the generic transportation surcharge due to an increase in the overall budgeted resources for certificates of compliance (CoCs) for the operating power reactors fee class.

The fee-recoverable budgeted resources, including the proposed assessment of annual fees for Vogtle Electric Generating Plant, Unit 3, are divided equally among the 93 licensed operating power reactors, resulting in an annual fee of \$5,486,000 per reactor. Additionally, each licensed operating power reactor will be assessed the FY 2023 spent fuel storage/reactor decommissioning proposed annual fee of \$267,000 (see Table VII and the discussion that follows). The combined FY 2023 proposed annual fee for each operating power reactor is \$5,753,000.

Section 102(b)(3)(B)(i) of NEIMA established a cap for the annual fees charged to operating reactor licensees; under this provision, the annual fee for an operating reactor licensee, to the maximum extent practicable, shall not exceed the annual fee amount per operating reactor licensee established in the FY 2015 final fee rule (80 FR 37432; June 30, 2015), adjusted for inflation. The NRC included an estimate of the operating power reactors fee class annual fee in Appendix C, “Estimated Operating Power Reactors Annual Fee,” of the FY 2023 Congressional Budget Justification (CBJ) (NUREG–1100, Volume 38) to increase transparency for stakeholders. The NRC developed this estimate based on the staff’s allocation of the FY 2023 CBJ to fee classes under 10 CFR part 170, and allocations within the operating power reactors fee class under 10 CFR part 171. The fee estimate included in the FY 2023 CBJ assumed 94 operating power reactors in FY 2023 and applied various data assumptions

from the FY 2021 final fee rule. Based on these allocations and assumptions, the operating power reactor annual fee included in the FY 2023 CBJ was estimated to be \$5.2 million, approximately \$0.5 million below the FY 2015 operating power reactors annual fee amount adjusted for inflation of \$5.7 million. The assumptions made between budget formulation and the development of this proposed rule have changed; however, the FY 2023 proposed annual fee of \$5,486,000 remains below the FY 2015 operating power reactors annual fee amount, as adjusted for inflation.

In FY 2016, the NRC amended its licensing, inspection, and annual fee regulations to establish a variable annual fee structure for light-water small modular reactors (SMRs) (81 FR 32617; May 24, 2016). Under the variable annual fee structure, an SMR annual fee would be assessed as a function of its bundled licensed thermal power rating. Currently, there are no operating SMRs; therefore, the NRC will not assess an annual fee in FY 2023 for this type of licensee.

b. Spent Fuel Storage/Reactor Decommissioning

The NRC proposes to collect \$32.9 million in annual fees from 10 CFR part 50 and 10 CFR part 52 power reactor licensees, and from 10 CFR part 72 licensees that do not hold a 10 CFR part 50 license or a 10 CFR part 52 combined license, to recover the budgeted resources for the spent fuel storage/reactor decommissioning fee class in FY 2023, as shown in Table VII. The FY 2022 spent fuel storage/reactor decommissioning fees are shown for comparison purposes.

TABLE VII—ANNUAL FEE SUMMARY CALCULATIONS FOR SPENT FUEL STORAGE/REACTOR DECOMMISSIONING
[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 proposed rule
Total budgeted resources	\$40.4	\$42.9
Less estimated 10 CFR part 170 receipts	– 13.8	– 11.7
Net 10 CFR part 171 resources	26.6	31.2
Allocated generic transportation costs	1.3	1.6
Billing adjustments	– 0.2	0.1
Total required annual fee recovery	27.7	32.9
Total spent fuel storage facilities	122	123
Annual fee per facility	0.227	0.267

In comparison to FY 2022, the FY 2023 proposed annual fee for the spent fuel storage/reactor decommissioning fee class is increasing primarily due to the following: (1) an increase in the budgeted resources; (2) a decrease in the 10 CFR part 170 estimated billings and (3) an increase in the 10 CFR part 171 billing adjustment. These components are discussed in the following paragraphs.

The budgeted resources for the spent fuel storage/reactor decommissioning fee class increased primarily due to the following: (1) an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits; (2) an increase in licensing and oversight activities for one additional power reactor in decommissioning; and (3) an increased number of power reactors transitioning to accelerated decommissioning schedule status. This increase in the budgeted resources is offset by a decline in contract support due to the completion of research activities related to accident tolerant fuel (ATF), the assessment of gross ruptures in high burnup fuel, and

standardized computer analysis for licensing evaluation (SCALE) code verification and validation.

The 10 CFR part 170 estimated billings for the spent fuel storage/reactor decommissioning fee class decreased primarily due to the following: (1) a reduction in hours and contract support associated with the staff's review of applications for renewals, amendments, exemptions, and inspections for independent spent fuel storage installation (ISFSI) licenses and dry cask storage CoCs; (2) the near completion of the safety and environmental review of the Holtec HI-STORE consolidated interim storage facility application; (3) the completion of the staff's review of the Interim Storage Partners consolidated interim storage facility application and issuance of the license; (4) the completion of decommissioning transition activities for the Duane Arnold Energy Center and the site entering a period of dormancy; (5) the near termination of the LaCrosse Boiling Water Reactor and preparation to release the site from NRC oversight; (6) the termination of the 10 CFR part

50 license for the Humboldt Bay Nuclear Power Plant; and (7) the decrease in decommissioning license amendment requests and inspection activities at multiple sites.

The proposed annual fee increase is also affected by these contributing factors: (1) an increase in the 10 CFR part 171 billing adjustment (moving from a credit to a surcharge) due to the timing of invoices in FY 2022, and (2) an increase in the generic transportation surcharge due to an increase in the generic transportation budgeted resources.

The required annual fee recovery amount is divided equally among 123 licensees, resulting in a FY 2023 annual fee of \$267,000 per licensee.

c. Fuel Facilities

The NRC proposes to collect \$19.9 million in annual fees from the fuel facilities fee class in FY 2023, as shown in Table VIII. The FY 2022 fuel facilities fees are shown for comparison purposes.

TABLE VIII—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES
[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 proposed rule
Total budgeted resources	\$22.4	\$26.6
Less estimated 10 CFR part 170 receipts	– 8.0	– 9.0
Net 10 CFR part 171 resources	14.4	17.6
Allocated generic transportation	1.7	1.9
Allocated LLW surcharge	0.4	0.4
Billing adjustments	– 0.1	0.0
Total remaining required annual fee recovery	16.4	19.9

In comparison to FY 2022, the FY 2023 proposed annual fee for the fuel facilities fee class is increasing primarily due to the increase in

budgeted resources. This increase is offset by an increase in 10 CFR part 170 estimated billings as discussed in the following paragraphs.

The budgeted resources for the fuel facilities fee class increased primarily as a result of an increase in the fully-costed FTE rate compared to FY 2022 due to

an increase in salaries and benefits. In addition, the budgeted resources increased to support the following: (1) licensing actions related to enrichment and manufacturing of high assay low-enrichment uranium fuel, advanced reactor fuel, and ATF; (2) the staff's review of two greater than critical mass (GTCM) facility license renewal applications and an application for a new GTCM facility; (3) cyber security activities; (4) restart activities for the Honeywell International, Inc. Uranium Conversion Facility and the Centrus American Centrifuge Plant; (5) an anticipated increase in material control and accounting inspections at Category II facilities; and (6) fuel facilities rulemaking activities.

The 10 CFR part 170 estimated billings increased as a result of the following: (1) the staff's review of the

Westinghouse Electric Company, LLC's license renewal application for the Columbia Fuel Fabrication Facility, which was completed in September 2022; (2) the staff's review of the Nuclear Fuel Services U-metal amendment and an inspection that was delayed due to the COVID-19 pandemic; (3) Louisiana Energy Services' transition of the Authority to Operate from DOE to the NRC; and (4) upgrades to National Institute of Standards and Technology (NIST)-800-53 Revision 5, "Security and Privacy Controls for Information Systems and Organizations." The increase in 10 CFR part 170 estimated billings is offset by a delay in the submission of X-Energy's environmental review for the TRISO-X facility.

The NRC will continue allocating annual fees to individual fuel facility

licensees based on the effort/fee determination matrix developed in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). To briefly recap, the matrix groups licensees within this fee class into various fee categories. The matrix lists processes that are conducted at licensed sites and assigns effort factors for the safety and safeguards activities associated with each process (these effort levels are reflected in Table IX). The annual fees are then distributed across the fee class based on the regulatory effort assigned by the matrix. The effort factors in the matrix represent regulatory effort that is not recovered through 10 CFR part 170 fees (*e.g.*, rulemaking, guidance). Regulatory effort for activities that are subject to 10 CFR part 170 fees, such as the number of inspections, is not applicable to the effort factor.

TABLE IX—EFFORT FACTORS FOR FUEL FACILITIES, FY 2023

Facility type (fee category)	Number of facilities	Effort factors	
		Safety	Safeguards
High-Enriched Uranium Fuel (1.A.(1)(a))	2	88	91
Low-Enriched Uranium Fuel (1.A.(1)(b))	3	70	21
Limited Operations (1.A.(2)(a))	1	3	11
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	0	0	0
Hot Cell (and others) (1.A.(2)(c))	0	0	0
Uranium Enrichment (1.E.)	1	16	23
UF ₆ Conversion and Deconversion (2.A.(1))	1	21	2

In FY 2023, the total remaining amount of the proposed annual fees to be recovered, \$19.9 million, is attributable to safety activities, safeguards activities, and the LLW surcharge. For FY 2023, the total budgeted resources proposed to be recovered as annual fees for safety activities are approximately \$11.2 million. To calculate the annual fee, the NRC allocates this amount to each fee

category based on its percentage of the total regulatory effort for safety activities. Similarly, the NRC allocates the budgeted resources to be recovered as annual fees for safeguards activities, \$8.3 million, to each fee category based on its percentage of the total regulatory effort for safeguards activities. Finally, the fuel facilities fee class portion of the LLW surcharge—\$0.4 million—is allocated to each fee category based on

its percentage of the total regulatory effort for both safety and safeguards activities. The proposed annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The proposed annual fee for each facility is summarized in Table X.

TABLE X—ANNUAL FEES FOR FUEL FACILITIES

[Actual dollars]

Facility type (fee category)	FY 2022 final annual fee	FY 2023 proposed annual fee
High-Enriched Uranium Fuel (1.A.(1)(a))	\$4,334,000	\$5,136,000
Low-Enriched Uranium Fuel (1.A.(1)(b))	1,469,000	1,741,000
Facilities with limited operations (1.A.(2)(a))	968,000	803,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	N/A	N/A
Hot Cell (and others) (1.A.(2)(c))	N/A	N/A
Uranium Enrichment (1.E.)	1,888,000	2,238,000
UF ₆ Conversion and Deconversion (2.A.(1))	436,000	1,320,000

d. Uranium Recovery Facilities

The NRC proposes to collect \$0.2 million in annual fees from the uranium

recovery facilities fee class in FY 2023, as shown in Table XI. The FY 2022

uranium recovery facilities fees are shown for comparison purposes.

TABLE XI—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES
[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 proposed rule
Total budgeted resources	\$0.9	\$0.8
Less estimated 10 CFR part 170 receipts	– 0.6	– 0.6
Net 10 CFR part 171 resources	0.3	0.2
Allocated generic transportation	N/A	N/A
Billing adjustments	0.0	0.0
Total required annual fee recovery	0.3	0.2

In comparison to FY 2022, the FY 2023 proposed annual fee for the non-DOE licensee in the uranium recovery facilities fee class is increasing as a result of an increase in budgeted resources attributed to licensing reviews associated with ground water restoration activities at one licensed uranium recovery facility and two licensed, but not yet constructed, uranium recovery facilities.

The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA).² The proposed annual fee

assessed to DOE includes the resources specifically budgeted for the NRC's UMTRCA Title I and Title II activities, as well as 10 percent of the remaining budgeted resources for this fee class. The NRC described the overall methodology for determining fees for UMTRCA in the FY 2002 fee rule (67 FR 42625; June 24, 2002), and the NRC continues to use this methodology. The DOE's UMTRCA proposed annual fee is decreasing compared to FY 2022 primarily due to a decrease in budgeted resources needed to conduct generic

work that staff will be performing to resolve issues associated with the transfer of NRC and Agreement State uranium mill tailings sites to DOE for long-term surveillance and maintenance. In addition, 10 CFR part 170 estimated billings are declining due to the anticipated workload decreases at various DOE UMTRCA sites. The NRC assesses the remaining 90 percent of its budgeted resources to the remaining licensee in this fee class, as described in the work papers, which is reflected in Table XII.

TABLE XII—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FACILITIES FEE CLASS
[Actual dollars]

Summary of costs	FY 2022 final annual fee	FY 2023 proposed annual fee
DOE Annual Fee Amount (UMTRCA Title I and Title II) General Licenses:		
UMTRCA Title I and Title II budgeted resources less 10 CFR part 170 receipts	\$206,441	\$113,550
10 percent of generic/other uranium recovery budgeted resources	4,665	5,504
10 percent of uranium recovery fee-relief adjustment	N/A	N/A
Total Annual Fee Amount for DOE (rounded)	211,000	119,000
Annual Fee Amount for Other Uranium Recovery Licenses:		
90 percent of generic/other uranium recovery budgeted resources less the amounts specifically budgeted for UMTRCA Title I and Title II activities	41,986	49,533
90 percent of uranium recovery fee-relief adjustment	N/A	N/A
Total Annual Fee Amount for Other Uranium Recovery Licensees	41,986	49,533

Further, for any non-DOE licensees, the NRC will continue using a matrix to determine the effort levels associated with conducting generic regulatory actions for the different licensees in the uranium recovery facilities fee class; this is similar to the NRC's approach for fuel facilities, described previously. The matrix methodology for uranium

recovery licensees first identifies the licensee categories included within this fee class (excluding DOE). These categories are conventional uranium mills and heap leach facilities, uranium *in situ* recovery (ISR) and resin ISR facilities, and mill tailings disposal facilities. The matrix identifies the types of operating activities that support and

benefit these licensees, along with each activity's relative weight (see the work papers). Currently, there is only one remaining non-DOE licensee, which is a basic ISR facility. Table XIII displays the benefit factors for the non-DOE licensee in that fee category.

² Congress established the two programs, Title I and Title II, under UMTRCA to protect the public and the environment from hazards associated with uranium milling. The UMTRCA Title I program is

for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for weapons programs. The NRC also regulates DOE's UMTRCA Title II program, which

is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

TABLE XIII—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills (2.A.(2)(a))	0	.....	.....	0
Basic <i>In Situ</i> Recovery facilities (2.A.(2)(b))	1	190	190	100
Expanded <i>In Situ</i> Recovery facilities (2.A.(2)(c))	0	.....	.....	0
Section 11e.(2) disposal incidental to existing tailings sites (2.A.(4))	0	.....	.....	0
Total	1	190	190	100

The FY 2023 proposed annual fee for the remaining non-DOE licensee is calculated by allocating 100 percent of the budgeted resources, as summarized in Table XIV.

TABLE XIV—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

[Other than DOE]

[Actual dollars]

Facility type (fee category)	FY 2022 final annual fee	FY 2023 proposed annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	N/A	N/A
Basic <i>In Situ</i> Recovery facilities (2.A.(2)(b))	\$42,000	\$49,500
Expanded <i>In Situ</i> Recovery facilities (2.A.(2)(c))	N/A	N/A
Section 11e.(2) disposal incidental to existing tailings sites (2.A.(4))	N/A	N/A

e. Non-Power Production or Utilization Facilities

power production or utilization facilities fee class in FY 2023, as shown in Table XV. The FY 2022 non-power

production or utilization facilities fees are shown for comparison purposes.

The NRC proposes to collect \$0.297 million in annual fees from the non-

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR NON-POWER PRODUCTION OR UTILIZATION FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 proposed rule
Total budgeted resources	\$6.072	\$5.999
Less estimated 10 CFR part 170 receipts	– 5.804	– 5.751
Net 10 CFR part 171 resources	0.268	0.248
Allocated generic transportation	0.035	0.040
Billing adjustments	– 0.032	0.009
Total required annual fee recovery	0.270	0.297
Total non-power production or utilization facilities licenses	3	3
Total annual fee per license (rounded)	0.0901	0.0989

In comparison to FY 2022, the FY 2023 proposed annual fee for the non-power production or utilization facilities fee class is increasing, as discussed in the following paragraphs.

In FY 2023, the budgeted resources are decreasing primarily due to the expected completion of the staff's review of the SHINE Medical technologies, LLC's (SHINE) operating license application. The decrease in the budgeted resources is offset by an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits.

The 10 CFR part 170 estimated billings associated with operating non-power production or utilization facilities licensees subject to annual fees are declining slightly due to less hours needed for activities associated with the special team inspection and the staff's review of a complex license amendment associated with the restart of the NIST Neutron Reactor. The 10 CFR part 170 estimated billings with respect to the medical isotope production facilities and advanced research and test reactors are remaining steady when compared with FY 2022 due to the following: (1)

the staff's review of the operating license application for SHINE and construction inspection activities; (2) the staff's review of the Kairos Power, LLC's application for a permit to construct a test reactor; and (3) pre-application meetings due to the anticipated submission of several license applications.

Furthermore, the proposed annual fee is increasing as a result of an increase in the 10 CFR part 171 billing adjustment (moving from a credit to a surcharge) due to the timing of invoices issued in FY 2022.

The annual fee-recovery amount is divided equally among the three non-power production or utilization facilities licensees subject to annual fees and results in an FY 2023 proposed annual fee of \$98,900 for each licensee.

f. Rare Earth

In FY 2023, the NRC has allocated approximately \$0.3 million in budgeted

resources to this fee class; however, because all the budgeted resources will be recovered through service fees assessed under 10 CFR part 170, the NRC is not proposing to assess and collect annual fees in FY 2023 for this fee class.

g. Materials Users

The NRC proposes to collect \$39.6 million in annual fees from materials users licensed under 10 CFR parts 30, 40, and 70 in FY 2023, as shown in Table XVI. The FY 2022 materials users fees are shown for comparison purposes.

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 proposed rule
Total budgeted resources for licensees not regulated by Agreement States	\$34.1	\$38.7
Less estimated 10 CFR part 170 receipts	– 0.9	– 1.2
Net 10 CFR part 171 resources	33.2	37.5
Allocated generic transportation	1.7	2.0
LLW surcharge	0.1	0.1
Billing adjustments	– 0.2	0.0
Total required annual fee recovery	34.8	39.6

The formula for calculating 10 CFR part 171 annual fees for the various categories of materials users is described in detail in the work papers. Generally, the calculation results in a single annual fee that includes 10 CFR part 170 costs, such as amendments, renewals, inspections, and other licensing actions specific to individual fee categories.

The total annual fee recovery of \$39.6 million for FY 2023 shown in Table XVI consists of \$30.2 million for general costs, \$9.3 million for inspection costs, and \$0.1 million for LLW costs. To equitably and fairly allocate the \$39.6 million required to be collected among approximately 2,400 diverse materials users licensees, the NRC continues to calculate the annual fees for each fee category within this class based on the 10 CFR part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the materials license, this approach is the methodology for allocating the generic and other regulatory costs to the diverse fee categories. This fee calculation method also considers the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

In comparison to FY 2022, the FY 2023 proposed annual fees are

increasing for 47 fee categories within the materials users fee class primarily as a result of an increase in the budgeted resources for: (1) a new decision-making tool to calculate resources for direct inspection work and support activities; (2) associated materials users rulemaking activities; and (3) an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits. In addition, annual fees are increasing due to the following: (1) the biennial review of licensing and inspection activities; (2) an increase in generic transportation costs for materials users; and (3) a decrease in the number of materials users licensees from FY 2022.

A constant multiplier is established to recover the total general costs (including allocated generic transportation costs) of \$30.2 million. To derive the constant multiplier, the general cost amount is divided by the sum of all fee categories (application fee plus the inspection fee divided by inspection priority) then multiplied by the number of licensees. This calculation results in a constant multiplier of 0.92 for FY 2023. The average inspection cost is the average inspection hours for each fee category multiplied by the professional hourly rate of \$300. The inspection priority is the interval between routine inspections, expressed in years. The

inspection multiplier is established in order to recover the \$9.3 million in inspection costs. To derive the inspection multiplier, the inspection costs amount is divided by the sum of all fee categories (inspection fee divided by inspection priority) then multiplied by the number of licensees. This calculation results in an inspection multiplier of 1.74 for FY 2023. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. Please see the work papers for more detail about this classification.

The proposed annual fee being assessed to each licensee also takes into account a share of approximately \$0.1 million in LLW surcharge costs allocated to the materials users fee class (see Table IV, “Allocation of LLW Surcharge, FY 2023,” in Section III, “Discussion,” of this document). The proposed annual fee for each fee category is shown in the proposed revision to § 171.16(d).

h. Transportation

The NRC proposes to collect \$1.7 million in annual fees to recover generic transportation budgeted resources in FY 2023, as shown in Table XVII. The FY 2022 fees are shown for comparison purposes.

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION
[Dollars in millions]

Summary fee calculations	FY 2022 final rule	FY 2023 proposed rule
Total budgeted resources	\$10.2	\$11.1
Less estimated 10 CFR part 170 receipts	– 3.4	– 3.5
Net 10 CFR part 171 resources	6.8	7.7
Less generic transportation resources	– 5.3	– 6.0
Billing adjustments	0.0	0.0
Total required annual fee recovery	1.5	1.7

In comparison to FY 2022, the FY 2023 proposed annual fee for the transportation fee class is increasing primarily due to an increase in the budgeted resources offset by: (1) an increase in the 10 CFR part 170 estimated billings and (2) generic transportation resources allocated to other fee classes as discussed in the following paragraphs.

In FY 2023, the budgeted resources increased primarily due to: (1) an increase in the fully-costed FTE rate compared to FY 2022 due to an increase in salaries and benefits; (2) maintenance for the storage and transportation information management system; and (3) environmental and licensing reviews of transportation packages for ATF, other advanced reactors fuels, and micro-reactors. This increase is offset by a decrease in budgeted resources associated with rulemaking activities.

The increase in the proposed annual fee is offset by an increase in 10 CFR part 170 estimated billings related to the review of new and amended packages and generic transportation resources allocated to respective other fee classes due to a rise in the number of CoCs.

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC recovers generic transportation costs unrelated to DOE by including those costs in the annual fees for licensee fee classes. The NRC continues to assess a separate annual fee under § 171.16, fee category 18.A., for DOE transportation activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

This resource distribution to the licensee fee classes and DOE is shown in Table XVIII. Note that for the non-power production or utilization facilities fee class, the NRC allocates the distribution to only those licensees that are subject to annual fees. Although five CoCs benefit the entire non-power production or utilization facilities fee class, only three out of 30 operating non-power production or utilization facilities licensees are subject to annual fees. Consequently, the number of CoCs used to determine the proportion of generic transportation resources allocated to annual fees for the non-power production or utilization facilities fee class has been adjusted to 0.5 so these licensees are charged a fair and equitable portion of the total fees (see the work papers).

TABLE XVIII—DISTRIBUTION OF TRANSPORTATION RESOURCES, FY 2023
[Dollars in millions]

Licensee fee class/DOE	Number of CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Materials Users	24.0	25.7	\$2.0
Operating Power Reactors	6.0	6.4	0.5
Spent Fuel Storage/Reactor Decommissioning	19.0	20.3	1.6
Non-Power Production or Utilization Facilities	0.5	0.5	0.0
Fuel Facilities	23.0	24.6	1.9
Sub-Total of Generic Transportation Resources	72.5	77.5	6.0
DOE	21.0	22.5	1.7
Total	93.5	100.0	7.7

The NRC assesses an annual fee to DOE based on the 10 CFR part 71 CoCs it holds. The NRC, therefore, does not allocate these DOE-related resources to other licensees' annual fees because these resources specifically support DOE.

FY 2023—Policy Change

The NRC proposes one policy change for FY 2023.

Expand § 171.15 To Be Technology-Inclusive and Create an Additional Minimum Fee and Variable Rate

The NRC proposes to amend § 171.15, “Annual fees: Non-power production or utilization licenses, reactor licenses, and independent spent fuel storage licenses,” to (1) expand the applicability of the small modular reactor (SMR) variable fee structure to include non-

light water reactor (non-LWR) SMRs and (2) establish an additional minimum fee and variable rate applicable to SMRs with a licensed thermal power rating of less than or equal to 250 megawatts-thermal (MWt). The NRC proposes these changes to be technology inclusive and establish a fair and equitable approach for assessing annual fees to these SMRs. In addition, there is the potential for a reduced regulatory effort (and cost) for

the smallest proposed SMRs since these types of facilities are considerably smaller in size than the current fleet of operating power reactors, and the level of oversight could be comparable to facilities in the non-power production or utilization facilities fee class. The proposed revision retains the bundled unit concept for SMRs and the approach for calculating fees for reactors with licensed thermal power ratings greater than 250 MWt. For the purpose of calculating NRC fees, an SMR is defined in §§ 170.3 and 171.5, “Definitions,” as a power reactor with a licensed thermal power rating of 1,000 megawatts-thermal (MWt) or less. The rating is based on an electrical power generating capacity of 300 megawatts-electric or less per module. This definition currently applies only to light-water reactors (LWRs). The proposed rule provides for a non-LWR SMR’s annual fee to be calculated the same as for a LWR SMR, as a function of its licensed thermal power rating. In addition to the proposed amendments to § 171.15, the NRC is also proposing to make conforming changes to the relevant definitions in §§ 170.3 and 171.5.

In 2016, the NRC published the final rule, “Variable Annual Fee Structure for Small Modular Reactors” (SMR rule). The current SMR provisions in § 171.15 were the direct result of a multi-year agencywide effort with extensive stakeholder engagement. The goal of the effort was to address NRC staff and industry concerns that there may be inequities if SMR licensees were charged the same annual fee as the current fleet of operating power reactors, which have larger thermal power levels and electrical generating capacity. The SMR rule was limited to LWR SMRs but left open the possibility of future inclusion of non-LWR SMRs. The NRC stated in the final rule that, “[T]he light-water SMR designs that have been discussed with the NRC in pre-application discussions to date are similar to the current U.S. operating fleet of reactors in terms of physical configuration, operational characteristics, and applicability to the NRC’s existing regulatory framework. The NRC may consider the inclusion of non-light water SMRs in a future rulemaking once the agency has increased understanding of these factors with respect to non-light water designs” (81 FR 32625; May 24, 2016).

After issuing the SMR rule, the NRC continued to engage with industry, other Federal agencies, the international community, and other interested stakeholders to develop a knowledge base and understanding of the characteristics and proposed designs of

non-LWR SMRs. The NRC conducted public meetings with stakeholders to share information and discuss topics related to the development and licensing of non-LWRs and participated in preapplication activities with several applicants. During these public meetings, the NRC staff discussed various possible approaches to assessing annual fees for non-LWR SMRs. Stakeholders recommended that the NRC consider lower fees for non-LWR SMRs and requested the NRC proceed with rulemaking expeditiously. In developing a proposed approach to assess annual fees to future non-LWR SMRs, the NRC considered stakeholder input from these public meetings and analyzed a position paper from the Nuclear Energy Institute (NEI), “NEI Input on NRC Annual Fee Assessment for Non-Light Water Reactors.”

The NRC is in the process of conducting pre-application reviews for several LWR and non-LWR commercial SMR designs, but no applications for SMRs have been submitted for operating licenses under 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities,” or combined licenses under 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.” Under the current regulatory framework, it will be several years before a new SMR is ready, if approved, to begin commercial operation and be subject to annual fees pursuant to 10 CFR part 171. However, industry representatives and stakeholders have requested prompt NRC action to establish an annual fee policy for non-LWR SMRs, including microreactors, in order to inform business decisions and to provide regulatory predictability.

Commercial power reactors that are less than or equal to 20 MWt are considerably smaller in size than the current fleet of operating power reactors; the NRC anticipates that the level of oversight could be comparable to facilities in the non-power production or utilization facilities fee class. This position aligns with the approach presented in two rulemaking packages before the Commission, including SECY–22–0072, “Alternative Physical Security Requirements for Advanced Reactors (RIN 3150–AK19),” dated August 15, 2022, and SECY–22–0001, “Final Rule: Emergency Preparedness for Small Modular Reactors and Other New Technologies (RIN 3150–AJ68; NRC–2015–0225),” dated January 18, 2022, which would allow a future non-LWR SMR facility to have comparable security and emergency preparedness to a non-power production or utilization facility. In

addition, non-LWR SMRs that are less than 20 MWt may not require resident inspectors, similar to the non-power production or utilization facilities fee class oversight program.

As a result of this multi-year effort, the NRC is proposing to amend § 171.15 to be technology inclusive by expanding applicability to non-LWR SMRs. Additionally, the NRC is proposing changes to the minimum fees and the variable annual fee scale for SMRs that have a licensed thermal power rating of less than or equal to 250 MWt in order to fairly and equitably assess annual fees for those SMRs. The new minimum fee would be equal to the lowest annual fee that is assessed to the non-power production or utilization facility fee class and would be the only annual fee assessed for an SMR or for bundled units with a combined licensed thermal power rating per site that is less than or equal to 20 MWt. This proposed change also would create a new variable annual fee for an SMR or for bundled units with a combined licensed thermal power rating per site greater than 20 MWt but less than or equal to 250 MWt that would be added to the minimum fee (the non-power production or utilization facilities fee class annual fee). This approach would provide for a gradual increase in the annual fee as the licensed thermal power rating increases. The minimum fee currently included in § 171.15, which is equal to the average of the spent fuel storage/reactor decommissioning and non-power production or utilization facilities fee classes annual fees, would be retained as a component of the annual fee with an added variable fee assessed for an SMR or for bundled units with a combined licensed thermal power rating per site greater than 250 MWt but less than or equal to 2,000 MWt. Three different variable fees would be assessed: (1) a new variable fee assessed for power reactors with a licensed thermal power rating greater than 20 MWt but less than or equal to 250 MWt; (2) the existing variable fee assessed for power reactors with a licensed thermal power rating greater than 250 MWt but less than or equal to 2,000 MWt; and (3) for bundled units added above 4,500 MWt, the maximum fee (equal to the annual fee for the operating power reactor fee class) plus a variable fee would be assessed for the incremental licensed thermal power rating greater than 4,500 MWt up to 6,500 MWt (another 2,000 MWt range) which constitutes an additional bundled unit. This pattern for assessed fees would continue as licensed thermal power rating capacity is added. The new

variable fee provides for a gradual increase in fees for power reactors above 20 MWt but less than equal to 250 MWt rather than an abrupt increase to the higher minimum fee once an increment above 20 MWt is reached.

Without the proposed changes to § 171.15, a non-LWR SMR, regardless of size, would be required to pay the same annual fee as the operating power reactor fee class under the NRC's current annual fee structure. NEIMA requires that 10 CFR part 171 annual fees be assessed in a fair and equitable manner and, to the maximum extent practicable, be reasonably related to the cost of providing regulatory services. NEIMA provides that annual fees may be based on the allocation of resources of the Commission among licensees or certificate holders or classes of licensees or certificate holders. The differences between SMRs and the existing operating power reactor fleet will result in significant differences in the anticipated regulatory cost, thus applying the current fee structure to non-LWR SMRs could be inconsistent with NEIMA requirements that the NRC's fees be fairly and equitably allocated among its licensees.

The NRC finds the proposed policy change to be reasonable, fair, and equitable. Pursuant to § 171.15, annual fees for power reactors licensed under 10 CFR part 50 or a combined license under 10 CFR part 52, including an SMR licensee, will not commence until the licensee has notified the NRC in writing of the successful completion of power ascension testing. The NRC does not expect to license a non-LWR SMR facility for operation that would be assessed annual fees under 10 CFR part 171 for several years. However, the NRC is proposing this policy change, well before operation, to promote regulatory consistency and transparency, as well as to provide potential non-LWR SMR applicants, the industry, and the public with notice and opportunity to comment on the methodology that will be used to calculate 10 CFR part 171 annual fees for future licensed facilities. Furthermore, the NRC's view is that this policy change addresses potential inconsistencies in the current 10 CFR part 171 annual fee structure for future non-LWR SMRs. This proposed policy change will assist industry in planning and budgeting for future annual fees and will continue to provide a clear method for allocating NRC generic expenses to its operating power reactor licensees. Because the annual regulatory cost associated with LWR and non-LWR SMRs is inherently uncertain before such a licensed facility is operational, the NRC intends to re-evaluate the

variable annual fee structure at the appropriate time to ensure consistency with NEIMA. This re-evaluation will occur once SMR facilities become operational and sufficient regulatory cost data becomes available. Operational experience data should provide insights that will identify the correlation between design features and the level of NRC oversight typically needed for these new types of power plants; and provide data on whether further annual fee adjustments for SMRs may be needed. As cost data and operating experience for LWR and non-LWR SMRs are accumulated, the NRC will propose adjustments to fees as needed to make sure that the fees assessed to LWR and non-LWR SMRs (and to all operating power reactors) are commensurate with the regulatory support services provided by the NRC to meet the requirements of NEIMA.

FY 2023—Administrative Changes

The NRC is proposing three administrative changes in FY 2023:

1. *Amend Table 1 in § 170.31 and Table 2 in § 171.16 to add Program Code 21131 to fee category 1(A)(2)(c).*

On February 1, 2022, staff in the Office of Nuclear Material Safety and Safeguards added Program Code 21131, “Medical Isotopes Production Facility Licensed Under 10 part 70,” to fee category 1(A)(2)(c). This program code was created in preparation for future license applications that the NRC anticipates will be submitted for medical isotopes production facilities under 10 CFR part 70, “Domestic Licensing of Special Nuclear Material.” The NRC is proposing to amend Table 1 in § 170.31, “Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses,” and Table 2 in § 171.16, “Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC,” to add Program Code 21131 to fee category 1(A)(2)(c), as the program code is used as the basis for assessing 10 CFR part 170 service fees at full cost and a future annual fee under 10 CFR part 171.

2. *Amend § 170.12(f), “Method of payment,” by clarifying the types of payments and payment method.*

The NRC proposes to amend § 170.12(f), “Method of payment,” to add new payment method options (Amazon Pay and PayPal) now available via www.Pay.gov. The NRC is also proposing to remove the requirement for payment of invoices of \$5,000 or more

be made via the Automated Clearing House (ACH) through the NRC's Lockbox Bank. The NRC encourages applicants and licensees to use the electronic payment options for fee submittal.

3. Change Small Entity Fees.

In developing this proposed rule, the NRC has conducted a biennial review of small entity fees to determine whether the NRC should change those fees. The NRC used the fee methodology developed in FY 2009 to perform this biennial review (74 FR 27641; June 10, 2009). Based on this methodology and as a result of the biennial review, the NRC is increasing the upper tier small entity fee from \$4,900 to \$5,200, which constitutes an increase of approximately 6 percent. The lower tier small entity fee is not increasing and will remain at \$1,000. The NRC believes these fees are reasonable and provide relief to small entities, while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them.

IV. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),³ the NRC has prepared a regulatory flexibility analysis related to this proposed rule. The regulatory flexibility analysis is available as indicated in the “Availability of Documents” section of this document.

V. Regulatory Analysis

Under NEIMA, the NRC is required to recover, to the maximum extent practicable, approximately 100 percent of its annual budget for FY 2023 less the budget authority for excluded activities. The NRC established fee methodology guidelines for 10 CFR part 170 in 1978 and established additional fee methodology guidelines for 10 CFR part 171 in 1986. In subsequent rulemakings, the NRC has adjusted its fees without changing the underlying principles of its fee policy to ensure that the NRC continues to comply with the statutory requirements for cost recovery.

In this proposed rule, the NRC continues this longstanding approach. Therefore, the NRC did not identify any alternatives to the current fee structure guidelines and did not prepare a regulatory analysis for this proposed rule.

³ 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 847 (1996).

VI. Backfitting and Issue Finality

The NRC has determined that the backfit and issue finality provisions,, §§ 50.109, “Backfitting”; 52.39, “Finality of early site permit determinations”; 52.63, “Finality of standard design certifications”; 52.83, “Finality of referenced NRC approvals; partial initial decision on site suitability”; 52.98, “Finality of combined licenses; information requests”; 52.145, “Finality of standard design approvals; information requests”; 52.171, “Finality of manufacturing licenses; information requests”; and 70.76, “Backfitting,” do not apply to this proposed rule and that a backfit analysis is not required because these amendments do not require the modification of, or addition to, (1) systems, structures, components, or the design of a facility; (2) the design approval or manufacturing license for a facility; or (3) the procedures or organization required to design, construct, or operate a facility.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC wrote this document to be consistent with the Plain Writing Act, as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

VIII. National Environmental Policy Act

The NRC has determined that this proposed rule is the type of action described in § 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this proposed rule.

IX. Paperwork Reduction Act

This proposed rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0190.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC proposes to amend the licensing, inspection, and annual fees charged to its licensees and applicants, as necessary, to recover, to the maximum extent practicable, approximately 100 percent of its annual budget for FY 2023 less the budget authority for excluded

activities, as required by NEIMA. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XI. Availability of Guidance

The Small Business Regulatory Enforcement Fairness Act requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. The NRC, in compliance with the law, prepared the “Small Entity Compliance Guide” for the FY 2023 fee rule. The compliance guide was developed when the NRC completed the small entity biennial review. This compliance guide is available as indicated in the “Availability of Documents” section of this document.

XII. Public Meeting

The NRC will conduct a public meeting to describe the FY 2023 proposed rule and answer questions from the public on the proposed rule. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC’s public meeting website within 10 calendar days of the meeting. Stakeholders should monitor the NRC’s public meeting website for information about the public meeting at: <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

XIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Documents	ADAMS Accession No./FR citation/web link
FY 2023 Proposed Rule Work Papers	ML23040A277.
OMB Circular A–25, “User Charges”	https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf .
SECY–05–0164, “Annual Fee Calculation Method,” dated September 15, 2005	ML052580332.
“Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015,” dated June 30, 2015	80 FR 37432.
NUREG–1100, Volume 38, “Congressional Budget Justification: Fiscal Year 2023” (April 2022)	ML22089A188.
“Variable Annual Fee Structure for Small Modular Reactors,” dated May 24, 2016	81 FR 32617.
Revision of Fee Schedules; Fee Recovery for FY 2002,” dated June 24, 2002	67 FR 42611.
“Revision of Fee Schedules; Fee Recovery for FY 2006,” dated May 30, 2006	71 FR 30721.
“Revision of Fee Schedules; Fee Recovery for FY 2009,” dated June 10, 2009	74 FR 27641.
SECY–22–0072, “Proposed Rule: Alternative Physical Security Requirements for Advanced Reactors (RIN 3150–AK19),” dated August 2, 2022.	ML21334A004.
SECY–22–0001, “Final Rule: Emergency Preparedness for Small Modular Reactors and Other New Technologies (RIN 3150–AJ68; NRC–2015–0225),” dated January 3, 2022.	ML21200A059.
“NEI Input on NRC Annual Fee Assessment for Non-Light Water Reactors,” dated November 23, 2020.	ML20328A173.
FY 2023 Regulatory Flexibility Analysis	ML22347A251.
FY 2023 U.S. Nuclear Regulatory Commission Small Entity Compliance Guide	ML22347A247.

List of Subjects**10 CFR Part 170**

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Approvals, Byproduct material, Holders of certificates, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Registrations, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR parts 170 and 171 as follows:

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

- 1. The authority citation for part 170 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w) (42 U.S.C. 2014, 2201(w)); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2215; 31 U.S.C. 901, 902, 9701; 44 U.S.C. 3504 note.

- 2. In § 170.3, revise the definition for “Small modular reactor (SMR)” to read as follows.

§ 170.3 Definitions.

* * * * *

Small modular reactor (SMR) for the purposes of calculating fees, means the class of power reactors having a licensed thermal power rating less than or equal to 1,000 MWt per module. This rating is based on the thermal power equivalent of an SMR with an electrical power generating capacity of 300 MWe or less per module.

* * * * *

- 3. In § 170.12, revise paragraph (f) to read as follows.

§ 170.12 Payment of fees.

* * * * *

(f) *Method of payment.* All fee payments under 10 CFR part 170 are to be made payable to the U.S. Nuclear Regulatory Commission. The payments are to be made in U.S. funds by electronic funds transfer, such as ACH (Automated Clearing House) using Electronic Data Interchange (E.D.I.), check, draft, money order, credit card, Amazon Pay, or PayPal (submit

electronic payment at www.Pay.gov or manual payment using the NRC Form 629, “Authorization for Payment by Credit Card”). Specific written instructions for making electronic payments and credit card payments may be obtained by contacting the Office of the Chief Financial Officer at 301–415–7554. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee’s financial institution and bank accounts.

* * * * *

§ 170.20 [Amended]

- 4. In § 170.20, remove the dollar amount “\$290” and add in its place the dollar amount “\$300”.

- 5. In § 170.31, revise table 1 to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

* * * * *

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fees ^{2,3}
1. Special nuclear material: ¹¹	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) ⁶ [Program Code(s): 21213]	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel ⁶ [Program Code(s): 21210].	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities. ⁶	
(a) Facilities with limited operations ⁶ [Program Code(s): 21240, 21310, 21320]	Full Cost.
(b) Gas centrifuge enrichment demonstration facilities. ⁶ [Program Code(s): 21205]	Full Cost.
(c) Others, including hot cell facilities. ⁶ [Program Code(s): 21130, 21131, 21133]	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFS) ¹ ⁶ [Program Code(s): 23200].	Full Cost.
C. Licenses for possession and use of special nuclear material of less than a critical mass as defined in § 70.4 of this chapter in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. ⁴	
Application [Program Code(s): 22140]	\$1,400.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. ⁴	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310].	\$2,800.
E. Licenses or certificates for construction and operation of a uranium enrichment facility ⁶ [Program Code(s): 21200]	Full Cost.
F. Licenses for possession and use of special nuclear material greater than critical mass as defined in § 70.4 of this chapter, for development and testing of commercial products, and other non-fuel-cycle activities. ^{4,6} [Program Code(s): 22155].	Full Cost.
2. Source material: ¹¹	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. ⁶ [Program Code(s): 11400].	Full Cost.

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fees ^{2 3}
(2) Licenses for possession and use of source material in recovery operations such as milling, <i>in-situ</i> recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode. ⁶	
(a) Conventional and Heap Leach facilities ⁶ [Program Code(s): 11100]	Full Cost.
(b) Basic <i>In Situ</i> Recovery facilities ⁶ [Program Code(s): 11500]	Full Cost.
(c) Expanded <i>In Situ</i> Recovery facilities ⁶ [Program Code(s): 11510]	Full Cost.
(d) <i>In Situ</i> Recovery Resin facilities ⁶ [Program Code(s): 11550]	Full Cost.
(e) Resin Toll Milling facilities ⁶ [Program Code(s): 11555]	Full Cost.
(f) Other facilities ⁶ [Program Code(s): 11700]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) ⁶ [Program Code(s): 11600, 12000].	Full Cost.
(4) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) ⁶ [Program Code(s): 12010]	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding. ^{7 8}	
Application [Program Code(s): 11210]	\$1,300.
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter.	
Application [Program Code(s): 11240]	\$6,400.
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter.	
Application [Program Code(s): 11230, 11231]	\$3,000.
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution.	
Application [Program Code(s): 11710]	\$2,800.
F. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810, 11820]	\$2,800.
3. Byproduct material: ¹¹	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5.	
Application [Program Code(s): 03211, 03212, 03213]	\$14,000.
(1). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20.	
Application [Program Code(s): 04010, 04012, 04014]	\$18,600.
(2). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20.	
Application [Program Code(s): 04011, 04013, 04015]	\$23,300.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	\$3,900.
(1). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20.	
Application [Program Code(s): 04110, 04112, 04114, 04116]	\$5,200.
(2). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20.	
Application [Program Code(s): 04111, 04113, 04115, 04117]	\$6,400.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 1–5.	
Application [Program Code(s): 02500, 02511, 02513]	\$5,600.
(1). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 6–20.	
Application [Program Code(s): 04210, 04212, 04214]	\$7,500.
(2). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: more than 20.	
Application [Program Code(s): 04211, 04213, 04215]	\$9,300.
D. [Reserved]	N/A.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fees ^{2 3}
Application [Program Code(s): 03510, 03520]	\$3,400.
F. Licenses for possession and use of less than or equal to 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	\$7,000.
G. Licenses for possession and use of greater than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	\$66,900.
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03254, 03255, 03257]	\$7,200.
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03253, 03256]	\$17,200.
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	\$2,200.
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	\$1,200.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 1–5.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	\$5,900.
(1) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 6–20.	
Application [Program Code(s): 04610, 04612, 04614, 04616, 04618, 04620, 04622]	\$7,900.
(2) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: more than 20.	
Application [Program Code(s): 04611, 04613, 04615, 04617, 04619, 04621, 04623]	\$9,800.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	\$21,600.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C. ¹³	
Application [Program Code(s): 03219, 03225, 03226]	\$9,600.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Number of locations of use: 1–5.	
Application [Program Code(s): 03310, 03320]	\$21,100.
(1). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Number of locations of use: 6–20.	
Application [Program Code(s): 04310, 04312]	\$28,100.
(2). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. Number of locations of use: more than 20.	
Application [Program Code(s): 04311, 04313]	\$35,100.
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. ⁹ Number of locations of use: 1–5.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03130, 03140, 03220, 03221, 03222, 03800, 03810, 22130].	\$9,400.
(1). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. ⁹ Number of locations of use: 6–20.	
Application [Program Code(s): 04410, 04412, 04414, 04416, 04418, 04420, 04422, 04424, 04426, 04428, 04430, 04432, 04434, 04436, 04438].	\$12,500.
(2). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. ⁹ Number of locations of use: more than 20.	
Application [Program Code(s): 04411, 04413, 04415, 04417, 04419, 04421, 04423, 04425, 04427, 04429, 04431, 04433, 04435, 04437, 04439].	\$15,600.
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration	\$500.

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fees ^{2,3}
R. Possession of items or products containing radium-226 identified in § 31.12 of this chapter which exceed the number of items or limits specified in that section. ⁵	
1. Possession of quantities exceeding the number of items or limits in § 31.12(a)(4) or (5) of this chapter but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700]	\$2,800.
2. Possession of quantities exceeding 10 times the number of items or limits specified in § 31.12(a)(4) or (5) of this chapter.	
Application [Program Code(s): 02710]	\$2,700.
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210]	\$15,300.
4. Waste disposal and processing: ¹¹	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material.	
Application [Program Code(s): 03231, 03233, 03236, 06100, 06101]	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234]	\$7,500.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232]	\$5,400.
5. Well logging: ¹¹	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112]	\$4,900.
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	Full Cost.
6. Nuclear laundries: ¹¹	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	\$28,000.
7. Medical licenses: ¹¹	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Number of locations of use: 1–5.	
Application [Program Code(s): 02300, 02310]	\$12,000.
(1). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Number of locations of use: 6–20.	
Application [Program Code(s): 04510, 04512]	\$15,900.
(2). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. Number of locations of use: more than 20.	
Application [Program Code(s): 04511, 04513]	\$19,900.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Number of locations of use: 1–5.	
Application [Program Code(s): 02110]	\$9,400.
(1). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Number of locations of use: 6–20.	
Application [Program Code(s): 04710]	\$12,400.
(2). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. Number of locations of use: more than 20.	
Application [Program Code(s): 04711]	\$15,500.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. ¹⁰ Number of locations of use: 1–5.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	\$12,800.

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fees ^{2 3}
(1). Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. ¹⁰ Number of locations of use: 6–20. Application [Program Code(s): 04810, 04812, 04814, 04816, 04818, 04820, 04822, 04824, 04826, 04828]	\$17,100.
(2). Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. ¹⁰ Number of locations of use: more than 20. Application [Program Code(s): 04811, 04813, 04815, 04817, 04819, 04821, 04823, 04825, 04827, 04829]	\$11,800.
8. Civil defense: ¹¹	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. Application [Program Code(s): 03710]	\$2,800.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution. Application—each device	\$19,100.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices. Application—each device	\$9,700.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution. Application—each source	\$5,700.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel. Application—each source	\$1,100.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost.
2. Other Casks	Full Cost.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	\$4,200.
Inspections	Full Cost.
2. Users.	
Application	\$4,200.
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost.
11. Review of standardized spent fuel facilities	Full Cost.
12. Special projects: Including approvals, pre-application/licensing activities, and inspections.	
Application [Program Code: 25110]	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Decommissioning/Reclamation ¹¹	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs). The transition to this fee category occurs when a licensee has permanently ceased principal activities. [Program Code(s): 03900, 11900, 21135, 21215, 21325, 22200].	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, regardless of whether or not the sites have been previously licensed.	Full Cost.
15. Import and Export licenses: ¹²	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under § 110.40(b) of this chapter. Application—new license, or amendment; or license exemption request	N/A.
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires the NRC to consult with domestic host state authorities (<i>i.e.</i> , Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.). Application—new license, or amendment; or license exemption request	N/A.
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances. Application—new license, or amendment; or license exemption request	N/A.
D. Application for export or import of nuclear material not requiring Commission or Executive Branch review, or obtaining foreign government assurances. Application—new license, or amendment; or license exemption request	N/A.

TABLE 1 TO § 170.31—SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fees ^{2,3}
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities. Minor amendment	N/A.
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).	
<i>Category 1 (Appendix P, 10 CFR Part 110) Exports:</i>	
F. Application for export of appendix P Category 1 materials requiring Commission review (e.g., exceptional circumstance review under § 110.42(e)(4) of this chapter) and to obtain one government-to-government consent for this process. For additional consent see fee category 15.I. Application—new license, or amendment; or license exemption request	N/A.
G. Application for export of appendix P Category 1 materials requiring Executive Branch review and to obtain one government-to-government consent for this process. For additional consents see fee category 15.I. Application—new license, or amendment; or license exemption request	N/A.
H. Application for export of appendix P Category 1 materials and to obtain one government-to-government consent for this process. For additional consents see fee category 15.I. Application—new license, or amendment; or license exemption request	N/A.
I. Requests for each additional government-to-government consent in support of an export license application or active export license. Application—new license, or amendment; or license exemption request	N/A.
<i>Category 2 (Appendix P, 10 CFR Part 110) Exports:</i>	
J. Application for export of appendix P Category 2 materials requiring Commission review (e.g., exceptional circumstance review under § 110.42(e)(4) of this chapter). Application—new license, or amendment; or license exemption request	N/A.
K. Applications for export of appendix P Category 2 materials requiring Executive Branch review. Application—new license, or amendment; or license exemption request	N/A.
L. Application for the export of Category 2 materials. Application—new license, or amendment; or license exemption request	N/A.
M. [Reserved]	N/A.
N. [Reserved]	N/A.
O. [Reserved]	N/A.
P. [Reserved]	N/A.
Q. [Reserved]	N/A.
<i>Minor Amendments (Category 1 and 2, Appendix P, 10 CFR Part 110, Export):</i>	
R. Minor amendment of any active export license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities. Minor amendment	N/A.
16. Reciprocity: Agreement State licensees who conduct activities under the reciprocity provisions of § 150.20 of this chapter. Application	\$3,000.
17. Master materials licenses of broad scope issued to Government agencies. Application [Program Code(s): 03614]	Full Cost.
18. Department of Energy. A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages). B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	Full Cost.

¹ *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(1) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(i) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(ii) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee category 1.C. only.

(2) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, pre-application consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(3) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(4) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(5) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

² Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in fee categories 9.A. through 9.D.

³ Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended.

⁴ Licensees paying fees under categories 1.A., 1.B., and 1.E. are not subject to fees under categories 1.C., 1.D. and 1.F. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

⁵ Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

⁶ Licensees subject to fees under fee categories 1.A., 1.B., 1.E., or 2.A. must pay the largest applicable fee and are not subject to additional fees listed in this table.

⁷ Licensees paying fees under 3.C., 3.C.1, or 3.C.2 are not subject to fees under 2.B. for possession and shielding authorized on the same license.

⁸ Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

⁹ Licensees paying fees under 3.N. are not subject to paying fees under 3.P., 3.P.1, or 3.P.2 for calibration or leak testing services authorized on the same license.

¹⁰ Licensees paying fees under 7.B., 7.B.1, or 7.B.2 are not subject to paying fees under 7.C., 7.C.1, or 7.C.2. for broad scope licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

¹¹ A materials license (or part of a materials license) that transitions to fee category 14.A is assessed full-cost fees under 10 CFR part 170, but is not assessed an annual fee under 10 CFR part 171. If only part of a materials license is transitioned to fee category 14.A, the licensee may be charged annual fees (and any applicable 10 CFR part 170 fees) for other activities authorized under the license that are not in decommissioning status.

¹² Because the resources for import and export licensing activities are identified as a fee-relief activity to be excluded from the fee-recoverable budget, import and export licensing actions will not incur fees.

¹³ Licensees paying fees under 4.A., 4.B. or 4.C. are not subject to paying fees under 3.N. licenses that authorize services for other licensees authorized on the same license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 6. The authority citation for part 171 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w), 223, 234 (42 U.S.C. 2014, 2201(w), 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2215; 44 U.S.C. 3504 note.

■ 7. In § 171.5, revise the definitions for “Bundled unit”, “Minimum fee”, “Small modular reactor (SMR)”, “Variable fee”, and “Variable rate” to read as follows:

§ 171.5 Definitions.

* * * * *

Bundled unit means multiple SMR reactors on a single site that are considered a single unit for the purpose of assessing an annual fee. A bundled unit is assessed an annual fee based on the cumulative licensed thermal power rating of all licensed SMR reactors on the same site. The maximum capacity of a bundled unit is a cumulative licensed thermal power rating of 4,500 MWt. A single SMR reactor can be part of two bundled units if it completes the capacity of one unit and begins the capacity of an additional unit. For a given site, the use of the bundled unit concept is independent of the number of SMR plants, the number of SMR licenses issued, or the sequencing of the SMR licenses that have been issued.

Bundled units with capacities greater than 2,000 MWt and less than or equal to 4,500 MWt are assessed a maximum fee that is equivalent to the annual fee paid by the current reactor fleet. Above 4,500 MWt establishes an additional bundled unit.

* * * * *

Minimum fee means the lowest annual fee assessed for an SMR or a bundled unit in a thermal power rating fee assessment tier.

* * * * *

Small modular reactor (SMR) for the purposes of calculating fees means the class of power reactors having a licensed thermal power rating less than or equal to 1,000 MWt per module. This rating is based on the thermal power equivalent of an SMR with an electrical power generating capacity of 300 MWe or less per module.

* * * * *

Variable fee means an annual fee component that is added to the minimum fee. The variable fee is designed to gradually increase as licensed thermal power capacity is added within the bundled unit fee assessment tier. The variable fee is calculated as the product of the incremental increase in the thermal power rating multiplied by the variable rate.

Variable rate means the factor used to calculate the variable fee component of the annual fee. To determine the total annual fee, the incremental increase in the licensed thermal power rating within the fee assessment tier is multiplied by the variable rate resulting in a variable fee that is added to the minimum fee. There is a different factor

for each SMR or bundled unit fee assessment tier. Each factor represents the difference between the lower licensed thermal power rating within each tier and the actual thermal power rating for the unit or site.

■ 8. In § 171.15, revise paragraphs (b)(1) and (b)(2) introductory text, paragraphs (c)(1) and (c)(2) introductory text, and paragraphs (d)(2) and (e) to read as follows:

§ 171.15 Annual fees: Non-power production or utilization licenses, reactor licenses, and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2023 annual fee for each operating power reactor that must be collected by September 30, 2023, is \$5,486,000.

(2) The FY 2023 annual fees are comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee and associated additional charges. The activities comprising the spent fuel storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2023 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2023 annual fee for each power reactor holding a 10 CFR part 50 license or combined license issued under 10 CFR part 52 that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold

a 10 CFR part 50 license or a 10 CFR part 52 combined license, is \$267,000.

(2) The FY 2023 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating

power reactor annual fee shown in paragraph (b) of this section). The activities comprising the FY 2023 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d) * * *

(2) The annual fees for a small modular reactor(s) located on a single site to be collected by September 30 of each year, are as follows:

TABLE 1 TO PARAGRAPH (d)(2)

Bundled unit thermal power rating	Minimum fee	Variable fee	Maximum fee
First Bundled Unit(s)—cumulative MWt:			
0 MWt ≤20 MWt	(a) TBD	N/A	N/A
>20 MWt ≤250 MWt	(a) TBD	(d) TBD	N/A
>250 MWt ≤2,000 MWt	(b) TBD	(e) TBD	N/A
>2,000 MWt ≤4,500 MWt	N/A	N/A	(c) TBD
Additional Bundled Unit(s)—cumulative MWt (above the first bundled unit of 4,500 MWt):			
0 MWt ≤2,000 MWt	N/A	(f) TBD	N/A
>2,000 MWt ≤4,500 MWt	N/A	N/A	(c) TBD

^a Annual fee paid by the non-power production or utilization facilities fee class.

^b Average of the annual fees for the spent fuel storage/reactor decommissioning and the non-power production or utilization facilities fee classes.

^c Annual fee paid by the operating power reactors fee class.

^d $[(b) - (a)]/230 \times$ the difference between 20 MWt for the first bundled unit(s) and the actual cumulative licensed thermal power rating up to 250 MWt.

^e $[(c) - (b)]/1,750 \times$ the difference between 250 MWt for the first bundled unit(s) and the actual cumulative licensed thermal power rating up to 2,000 MWt.

^f $[(c) - (b)]/2,000 \times$ the difference between 4,500 MWt for the first bundled unit(s) and the total actual cumulative licensed thermal power rating up to 2,000 MWt.

* * * * *

(e) The FY 2023 annual fee for licensees authorized to operate one or more non-power production or utilization facilities under a single 10 CFR part 50 license, unless the reactor is exempted from fees under § 171.11(b), is \$98,900.

■ 9. In § 171.16, revise paragraphs (b) introductory text, (c), and (d) to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(b) The FY 2023 annual fee is comprised of a base annual fee and associated additional charges. The base FY 2023 annual fee is the sum of budgeted costs for the following activities:

* * * * *

(c) A licensee who is required to pay an annual fee under this section, in

addition to 10 CFR part 72 licenses, may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in table 1 to this paragraph (c). Failure to file a small entity certification in a timely manner could result in the receipt of a delinquent invoice requesting the outstanding balance due and/or denial of any refund that might otherwise be due. The small entity fees are as follows:

TABLE 1 TO PARAGRAPH (c)

NRC small entity classification	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over the last 5 completed fiscal years):	
\$555,000 to \$8 million	\$5,200
Less than \$555,000	1,000
Small Not-For-Profit Organizations (Annual Gross Receipts):	
\$555,000 to \$8 million	5,200
Less than \$555,000	1,000
Manufacturing Entities that Have An Average of 500 Employees or Fewer:	
35 to 500 employees	5,200
Fewer than 35 employees	1,000
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 49,999	5,200
Fewer than 20,000	1,000
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer:	
35 to 500 employees	5,200
Fewer than 35 employees	1,000

(d) The FY 2023 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in table 2 to this paragraph (d):

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) ¹⁵ [Program Code(s): 21213]	\$5,136,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel ¹⁵ [Program Code(s): 21210]	1,741,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations ¹⁵ [Program Code(s): 21310, 21320]	803,000
(b) Gas centrifuge enrichment demonstration facility ¹⁵ [Program Code(s): 21205]	N/A
(c) Others, including hot cell facility ¹⁵ [Program Code(s): 21130, 21131, 21133]	N/A
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) ^{11 15} [Program Code(s): 23200]	N/A
C. Licenses for possession and use of special nuclear material of less than a critical mass, as defined in § 70.4 of this chapter, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers. [Program Code(s): 22140]	2,500
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A. [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22170, 23100, 23300, 23310]	7,400
E. Licenses or certificates for the operation of a uranium enrichment facility ¹⁵ [Program Code(s): 21200]	2,238,000
F. Licenses for possession and use of special nuclear materials greater than critical mass, as defined in § 70.4 of this chapter, for development and testing of commercial products, and other non-fuel cycle activities. ⁴ [Program Code: 22155]	4,400
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride or for deconverting uranium hexafluoride in the production of uranium oxides for disposal. ¹⁵ [Program Code: 11400]	1,320,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities. ¹⁵ [Program Code(s): 11100]	N/A
(b) Basic <i>In Situ</i> Recovery facilities. ¹⁵ [Program Code(s): 11500]	49,500
(c) Expanded <i>In Situ</i> Recovery facilities ¹⁵ [Program Code(s): 11510]	N/A
(d) <i>In Situ</i> Recovery Resin facilities. ¹⁵ [Program Code(s): 11550]	⁵ N/A
(e) Resin Toll Milling facilities. ¹⁵ [Program Code(s): 11555]	⁵ N/A
(f) Other facilities ⁶ [Program Code(s): 11700]	⁵ N/A
(3) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) ¹⁵ [Program Code(s): 11600, 12000]	⁵ N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) ¹⁵ [Program Code(s): 12010]	N/A
B. Licenses which authorize the possession, use, and/or installation of source material for shielding. ^{16 17} Application [Program Code(s): 11210]	2,800
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter. [Program Code: 11240]	10,400
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter. [Program Code(s): 11230 and 11231]	5,300
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution. [Program Code: 11710]	6,800
F. All other source material licenses. [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810, 11820]	9,200
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5. [Program Code(s): 03211, 03212, 03213]	28,800
(1). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20. [Program Code(s): 04010, 04012, 04014]	38,300
(2). Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20. [Program Code(s): 04011, 04013, 04015]	47,800
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 1–5. [Program Code(s): 03214, 03215, 22135, 22162]	10,000

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued
[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
(1). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: 6–20. [Program Code(s): 04110, 04112, 04114, 04116]	13,300
(2). Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. Number of locations of use: more than 20. [Program Code(s): 04111, 04113, 04115, 04117]	16,500
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4) of this chapter. Number of locations of use: 1–5. [Program Code(s): 02500, 02511, 02513]	9,700
(1). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: 6–20. [Program Code(s): 04210, 04212, 04214]	12,800
(2). Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). Number of locations of use: more than 20. [Program Code(s): 04211, 04213, 04215]	17,700
D. [Reserved]	⁵ N/A
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). [Program Code(s): 03510, 03520]	9,400
F. Licenses for possession and use of less than or equal to 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. [Program Code(s): 03511]	9,000
G. Licenses for possession and use of greater than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes. [Program Code(s): 03521]	74,300
H. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. [Program Code(s): 03254, 03255, 03257]	9,300
I. Licenses issued under subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. [Program Code(s): 03250, 03251, 03253, 03256]	19,300
J. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. [Program Code(s): 03240, 03241, 03243]	3,700
K. Licenses issued under subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. [Program Code(s): 03242, 03244]	2,800
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 1–5. [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	13,500
(1) Licenses of broad scope for possession and use of product material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: 6–20. [Program Code(s): 04610, 04612, 04614, 04616, 04618, 04620, 04622]	17,900
(2) Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. Number of locations of use: more than 20. [Program Code(s): 04611, 04613, 04615, 04617, 04619, 04621, 04623]	22,300
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution. [Program Code(s): 03620]	25,200
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. ²¹ [Program Code(s): 03219, 03225, 03226]	14,900
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license Number of locations of use: 1–5. [Program Code(s): 03310, 03320]	43,700

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
(1). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license. Number of locations of use: 6–20. [Program Code(s): 04310, 04312]	58,500
(2). Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license. Number of locations of use: more than 20. [Program Code(s): 04311, 04313]	72,900
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. ¹⁸ Number of locations of use: 1–5. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03140, 03130, 03220, 03221, 03222, 03800, 03810, 22130]	12,500
(1). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. ¹⁸ Number of locations of use: 6–20. [Program Code(s): 04410, 04412, 04414, 04416, 04418, 04420, 04422, 04424, 04426, 04428, 04430, 04432, 04434, 04436, 04438]	16,700
(2). All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. ¹⁸ Number of locations of use: more than 20. [Program Code(s): 04411, 04413, 04415, 04417, 04419, 04421, 04423, 04425, 04427, 04429, 04431, 04433, 04435, 04437, 04439]	20,800
Q. Registration of devices generally licensed under part 31 of this chapter	¹³ N/A
R. Possession of items or products containing radium-226 identified in § 31.12 of this chapter which exceed the number of items or limits specified in that section: ¹⁴	
(1). Possession of quantities exceeding the number of items or limits in § 31.12(a)(4), or (5) of this chapter but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	6,500
(2). Possession of quantities exceeding 10 times the number of items or limits specified in § 31.12(a)(4) or (5) of this chapter [Program Code(s): 02710]	6,800
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	26,300
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03236, 06100, 06101]	20,000
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. [Program Code(s): 03234]	15,600
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. [Program Code(s): 03232]	9,000
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies. [Program Code(s): 03110, 03111, 03112]	12,500
B. Licenses for possession and use of byproduct material for field flooding tracer studies. [Program Code(s): 03113]	⁵ N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material. [Program Code(s): 03218]	28,200
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ Number of locations of use: 1–5. [Program Code(s): 02300, 02310]	28,900
(1). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ Number of locations of use: 6–20. [Program Code(s): 04510, 04512]	38,500
(2). Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ Number of locations of use: more than 20. [Program Code(s): 04511, 04513]	48,200
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ Number of locations of use: 1–5. [Program Code(s): 02110]	42,500

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued
[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
(1). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ Number of locations of use: 6–20. [Program Code(s): 04710]	56,500
(2). Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ⁹ Number of locations of use: more than 20. [Program Code(s): 04711]	70,500
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ^{9 19} Number of locations of use: 1–5. [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	18,100
(1). Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ^{9 19} Number of locations of use: 6–20. [Program Code(s): 04810, 04812, 04814, 04816, 04818, 04820, 04822, 04824, 04826, 04828]	24,200
(2). Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. ^{9 19} Number of locations of use: more than 20. [Program Code(s): 04811, 04813, 04815, 04817, 04819, 04821, 04823, 04825, 04827, 04829]	22,100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. [Program Code(s): 03710]	6,500
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	17,600
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	9,000
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	5,300
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,000
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	⁶ N/A
2. Other Casks	⁶ N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	⁶ N/A
2. Users	⁶ N/A
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	⁶ N/A
11. Standardized spent fuel facilities	⁶ N/A
12. Special Projects [Program Code(s): 25110]	⁶ N/A
13. A. Spent fuel storage cask Certificate of Compliance	⁶ N/A
B. General licenses for storage of spent fuel under § 72.210 of this chapter	¹² N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter, including master materials licenses (MMLs). The transition to this fee category occurs when a licensee has permanently ceased principal activities. [Program Code(s): 03900, 11900, 21135, 21215, 21325, 22200]	^{7 20} N/A
B. Site-specific decommissioning activities associated with unlicensed sites, including MMLs, whether or not the sites have been previously licensed	⁷ N/A
15. Import and Export licenses	⁸ N/A
16. Reciprocity	⁸ N/A
17. Master materials licenses of broad scope issued to Government agencies. ¹⁵ [Program Code(s): 03614]	352,000
18. Department of Energy:	
A. Certificates of Compliance	¹⁰ 1,733,000

TABLE 2 TO PARAGRAPH (d)—SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities [Program Code(s): 03237, 03238]	119,000

¹ Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1 of the current FY, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license.

² Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

³ Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

⁴ Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

⁵ There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

⁶ Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

⁷ Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

⁸ No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

⁹ Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under fee categories 7.A, 7.A.1, 7.A.2, 7.B., 7.B.1, 7.B.2, 7.C, 7.C.1, or 7.C.2.

¹⁰ This includes Certificates of Compliance issued to the DOE that are not funded from the Nuclear Waste Fund.

¹¹ See § 171.15(c).

¹² See § 171.15(c).

¹³ No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

¹⁴ Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

¹⁵ Licensees subject to fees under categories 1.A., 1.B., 1.E., 2.A., and licensees paying fees under fee category 17 must pay the largest applicable fee and are not subject to additional fees listed in this table.

¹⁶ Licensees paying fees under 3.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

¹⁷ Licensees paying fees under 7.C. are not subject to fees under 2.B. for possession and shielding authorized on the same license.

¹⁸ Licensees paying fees under 3.N. are not subject to paying fees under 3.P., 3.P.1, or 3.P.2 for calibration or leak testing services authorized on the same license.

¹⁹ Licensees paying fees under 7.B., 7.B.1, or 7.B.2 are not subject to paying fees under 7.C., 7.C.1, or 7.C.2 for broad scope license licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices authorized on the same license.

²⁰ No annual fee is charged for a materials license (or part of a materials license) that has transitioned to this fee category because the decommissioning costs will be recovered through 10 CFR part 170 fees, but annual fees may be charged for other activities authorized under the license that are not in decommissioning status.

²¹ Licensees paying fees under 4.A., 4.B. or 4.C. are not subject to paying fees under 3.N. licenses that authorize services for other licensees authorized on the same license.

Dated: February 21, 2023.

For the Nuclear Regulatory Commission.

James C. Corbett,

Acting Chief Financial Officer.

[FR Doc. 2023-03940 Filed 3-2-23; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[Notice 2023-04]

Candidate Salaries

AGENCY: Federal Election Commission.

ACTION: Proposed rule; public hearing.

SUMMARY: The Commission is announcing a hybrid public hearing on proposed changes to regulations regarding the use of campaign funds by

a candidate's principal campaign committee to pay compensation to the candidate.

DATES: The hearing will be held on Wednesday, March 22, 2023, and will begin at 11 a.m.

ADDRESSES: The hearing will be held at the Federal Election Commission, 1050 First St. NE, 12th floor Hearing Room, Washington, DC 20463, and virtually. For those attending the meeting in person, current COVID-19 safety protocols for visitors, which are based on the CDC COVID-19 community level in Washington, DC, will be updated on the Commission's contact page, www.fec.gov/contact/, by the Monday before the hearing. This hearing will be open to the public, subject to the above-referenced guidance regarding the COVID-19 community level and

corresponding health and safety procedures. Virtual attendees may access the hearing by going to the Commission's website, www.fec.gov, and clicking on the banner to be taken to the hearing page.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel for Policy, or Mr. Joseph P. Wenzinger, Attorney, or Cheryl A. Hemsley, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On December 12, 2022, the Commission published a Notice of Proposed Rulemaking ("NPRM") proposing changes to regulations regarding the use of campaign funds by a candidate's principal campaign committee to pay

compensation to the candidate.¹ The deadline for comments on the NPRM was February 10, 2023. In the NPRM, the Commission stated that it may hold a public hearing and, if so, it would publish notification in the **Federal Register** announcing the date and time.

Accordingly, the Commission is announcing that it will hold a hybrid public hearing on Wednesday, March 22, 2023 (see **DATES** and **ADDRESSES** above). Witnesses will include those who indicated in their timely written comments on the NPRM that they wished to testify at the hearing. The Commission may also invite witnesses to testify. The Commission will make transcripts of the hearing available on its website after the hearing. Individuals who plan to attend in person and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694-1040, at least 72 hours prior to the meeting date.

On behalf of the Commission,

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023-04365 Filed 3-2-23; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-0422; Project Identifier MCAI-2022-01067-T]

RIN 2120-AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL-600-2C10 (Regional Jet Series 700, 701 & 702), CL-600-2C11 (Regional Jet Series 550), CL-600-2D15 (Regional Jet Series 705), CL-600-2D24 (Regional Jet Series 900), and CL-600-2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a determination that new restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as

applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 17, 2023.

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-2023-0422; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

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

FOR FURTHER INFORMATION CONTACT:

Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No.

FAA-2023-0422; Project Identifier MCAI-2022-01067-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF-2022-43, dated August 9, 2022 (Transport Canada AD CF-2022-43) (also referred to after this as the MCAI), to correct an unsafe condition for all MHI RJ Aviation ULC Model CL-600-2C10 (Regional Jet Series 700, 701 & 702), CL-600-2C11 (Regional Jet Series 550), CL-600-2D15 (Regional Jet Series 705), CL-600-2D24 (Regional Jet Series 900), and CL-600-2E25 (Regional Jet Series 1000)

¹ Candidate Salaries, 87 FR 75945 (Dec. 12, 2022).

airplanes. The MCAI states that new airworthiness limitations have been developed.

The FAA is proposing this AD to address an unannounced loss or low quantity of fire extinguishing agent in the engine and auxiliary power unit (APU) fire extinguishing bottles. This condition, if not corrected, could result in the inability to extinguish and suppress an engine or APU fire.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0422.

Related Service Information Under 14 CFR Part 51

The FAA reviewed Task 26–20–00–101, “Visual Check of the Engine Fire Extinguishing bottle pressure gauge” and Task 26–20–00–102, “Visual Check of the APU Fire Extinguishing bottle pressure gauge,” of Section 1, “Certification Maintenance Requirements,” Subject 1–26, “Fire Protection,” of the MHI RJ Model CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 Series 550/700/705/900/1000 Airworthiness Limitations, Maintenance Requirements Manual—Part 2, Volume 1, CSP B–053, Revision 26, dated March 25, 2022. This service information specifies new airworthiness limitations for certification maintenance requirements.

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 **ADDRESSES**.

FAA’s Determination

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 the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR

91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i)(1) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 606 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the 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

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.):
Docket No. FAA–2023–0422; Project Identifier MCAI–2022–01067–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 17, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate previously held by Bombardier, Inc.) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900) and CL–600–2E25 (Regional Jet Series 1000) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address an unannounced loss or low quantity of fire extinguishing agent in the engine and auxiliary power unit (APU) fire extinguishing bottles. The unsafe condition, if not corrected, may lead to the inability to extinguish and suppress an engine or APU fire.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Task 26–20–00–101, “Visual Check of the Engine Fire Extinguishing bottle pressure gauge” and Task 26–20–00–102, “Visual Check of the APU Fire Extinguishing bottle pressure gauge,” of Section 1, “Certification Maintenance Requirements,” Subject 1–26, “Fire Protection,” of the MHI RJ Model CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 Series 550/700/705/900/1000 Airworthiness Limitations, Maintenance Requirements Manual—Part 2, Volume 1, CSP B–053, Revision 26, dated March 25, 2022 (Task 26–20–00–101 and Task 26–20–00–102 of the MRM—Part 2, Revision 26). The initial compliance time for doing the tasks is at the phase-in time specified in Task 26–20–00–101 and Task 26–20–00–102 of the MRM—Part 2, Revision 26, or within 60 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or 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) or intervals may be used unless the actions or intervals, are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–43, dated August 9, 2022, for related information. This Transport Canada AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0422.

(2) For more information about this AD, contact Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyacos@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Task 26–20–00–101, “Visual Check of the Engine Fire Extinguishing bottle pressure gauge” and Task 26–20–00–102, “Visual Check of the APU Fire Extinguishing bottle pressure gauge,” of Section 1, “Certification Maintenance Requirements,” Subject 1–26, “Fire Protection,” of the MHI RJ Model CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 Series 550/700/705/900/1000 Airworthiness Limitations, Maintenance Requirements Manual—Part 2, Volume 1, CSP B–053, Revision 26, dated March 25, 2022.

(ii) [Reserved]

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

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

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

Issued on February 25, 2023.

Christina Underwood,

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

[FR Doc. 2023–04301 Filed 3–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****14 CFR Parts 259, 260, and 399**

[Docket No. DOT–OST–2022–0089]

RIN 2105–AF04

Airline Ticket Refunds and Consumer Protections; Public Hearing

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Public hearing.

SUMMARY: DOT is announcing a virtual public hearing pursuant on certain issues related to the U.S. Department of Transportation’s Notice of Proposed Rulemaking on Airline Ticket Refunds and Consumer Protections.

DATES: The virtual hearing will be held on March 14, 2023, from 1 p.m. to 5 p.m. Eastern Time. The hearing is open to the public, subject to any technical and/or capacity limitations. Requests to attend the hearing must be submitted to https://usdot.zoomgov.com/webinar/register/WN_u2RfGmWTSICqQVUyz9TAXA. We encourage interested parties to register by Thursday, March 9, 2023. Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the hearing. Requests for additional accommodations because of a disability must be received at Cristina.Draguta@dot.gov by Thursday, March 9, 2023.

ADDRESSES: The virtual hearing will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. An agenda will be available on the Department’s Office of Aviation Consumer Protection website at <https://www.transportation.gov/airconsumer/latest-news> in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: To register and attend this virtual hearing, please use the link: https://usdot.zoomgov.com/webinar/register/WN_u2RfGmWTSICqQVUyz9TAXA. Attendance is open to the public subject to any technical and/or capacity limitations. For further information, please contact Cristina Draguta, Attorney-Advisor, by email at Cristina.Draguta@dot.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On August 22, 2022, the U.S. Department of Transportation (DOT or Department) published in the **Federal Register** a notice of proposed rulemaking (NPRM) that proposes to

codify its longstanding interpretation that it is an unfair business practice for a U.S. air carrier, a foreign air carrier, or a ticket agent to refuse to provide requested refunds to consumers when a carrier has cancelled or made a significant change to a scheduled flight to, from, or within the United States, and consumers found the alternative transportation offered by the carrier or the ticket agent to be unacceptable (87 FR 51550). The NPRM proposes to define, for the first time, the terms significant change and cancellation. It would also require U.S. and foreign airlines and ticket agents inform consumers that they are entitled to a refund if that is the case before making an offer for travel credits, vouchers, or other compensation in lieu of refunds. The Department further proposes to require that U.S. and foreign air carriers and ticket agents provide non-expiring travel vouchers or credits to consumers holding non-refundable tickets for scheduled flights to, from, or within the United States who are unable to travel as scheduled in certain circumstances related to a serious communicable disease. If the carrier or ticket agent received significant financial assistance from the government because of a public health emergency, the Department proposes to require U.S. and foreign air carriers and ticket agents provide refunds, in lieu of non-expiring travel vouchers or credits. The NPRM proposes to allow carriers and ticket agents to require consumers provide evidence to support their assertion of entitlement to a travel voucher, credit, or refund. The comment period for the NPRM closed on December 16, 2022.

On December 16, 2022, Airlines for America (A4A) and International Air Transport Association (IATA) (collectively “Petitioners”) filed a petition to request a public hearing on the NPRM pursuant to the Department’s regulation on rulemakings relating to unfair and deceptive practices, 14 CFR 399.75.¹ The Petitioners specifically raise three issues regarding the NPRM and request that these issues be addressed in the hearing. For each issue, Petitioners argue that it meets the threshold set forth in section 399.75 for granting a public hearing because the underlying proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute; because the ordinary public comment process is unlikely to provide

an adequate examination of the issue to permit a fully informed judgement; because the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; because the requested hearing on the issue would advance the consideration of the proposed rule and the General Counsel’s ability to make the rulemaking determinations required by the Department’s regulation; and because granting the petition would not unduly delay the rulemaking.

The Department has carefully considered the petition for a public hearing consistent with 14 CFR 399.75 and is granting a public hearing to afford Petitioners and other stakeholders an opportunity, in addition to the public comment process afforded by the NPRM, to present factual issues that they believe are pertinent to the Department’s decision on the rulemaking. The scope of the hearing is limited to the factual issues specified in this notice.

The Department’s proposals are set forth in the August 2022 NPRM. The three issues identified by Petitioners concerning the Department’s NPRM and on which they request a hearing are discussed in more detail in their petition for rehearing. The information the Department is requesting during the hearing on these issues is summarized below.

Issue 1: Whether Consumers Can Make Reasonable Self-Determinations Regarding Contracting a Serious Communicable Disease

The Department requests interested parties to provide the following information to the extent it has not been provided in any written comments already submitted to the Docket:

- Information on airlines’ and ticket agents’ current practice in handling consumers’ requests for the cancellation or postponement of travel due to contracting a serious communicable disease, including a description of the procedure to review the requests, information on the evidentiary documentation required, if any, and the accommodations provided in response to legitimate claims (e.g., refunds, credits, rebooking);
- Data on the volume of such requests, both pre- and during the COVID–19 public health emergency;
- Information on the volume and percentage of requests from consumers that are considered fraudulent;
- Information on the volume and percentage of requests received that are not considered fraudulent but

nonetheless rejected due to being based on “unreasonable self-determination;”

- Data on the costs to airlines and ticket agents to verify consumers’ claims regarding contracting a serious communicable disease;
- Information on the type of diseases claimed by consumers as a “serious communicable disease” based on which the consumers are requesting to cancel or postpone travel; and
- Any other information pertinent to the Department’s determination on this proposal.

Issue 2: Whether the Documentation Requirement (Medical Attestation and/or Public Health Guidance) Is Sufficient To Prevent Fraud

The Department welcomes the following information during the hearing, to the extent it has not been provided in any written comments already submitted to the Docket:

- Information on whether medical attestations currently provided to airlines from consumers seeking to cancel or postpone travel are primarily based on consumers’ self-assessments, the medical professionals’ assessments, or a combination of both;
- Information on the types of medical professionals who are currently providing the attestations that are accepted by airlines and ticket agents;
- Information on the types of public health authority-issued guidance that are currently affecting air travel;
- Information on airlines’ validation of medical attestations, including the procedures, the volume, and the costs associated with the validation; and
- Any other information pertinent to the Department’s determination on this proposal.

Issue 3: How To Determine Whether a Downgrade of Amenities or Travel Experiences Qualifies as a “Significant Change of Flight Itinerary”

The Department requests that interested parties provide information on whether there are certain types of amenity changes that should be considered “significant” changes that would entitle a consumer to a refund and if so, whether the determination should be made categorically or by airlines on a case-by-case basis. The Department also requests information on how different airline operational and pricing models affect onboard amenities and travel experiences, and subsequently affect consumer expectations. In addition, the Department welcomes any other new information pertinent to the Department’s determination on this proposal.

¹ See, *Airlines for America and the International Air Transport Association Petition for Hearing*, <https://www.regulations.gov/comment/DOT-OST-2022-0089-5296>.

II. Agenda, Hearing Officer, and Post-Hearing Actions

During the March 14, 2023, hearing, the Department will hear information from the public on the three subjects described above. The Department's tentative positions on these subjects are articulated in the NPRM. The Department does not expect to provide further summary or explanation on its positions at the hearing.

The Department is appointing Blane Workie, Assistant General Counsel, Office of Aviation Consumer Protection, as the Hearing Officer presiding over the hearing. The Department's regulations at 14 CFR 399.75 specify that the General Counsel shall arrange for a hearing officer to preside over the hearing. The regulations further provide that after the hearing process is complete, the General Counsel must consider the record of the hearing and make a reasoned determination whether to terminate the rulemaking, proceed with the rulemaking as proposed, or modify the proposed rule. The regulations further require the General Counsel to explain, in an appropriate rulemaking document published in the **Federal Register**, the rationale for the post-hearing decision made by the General Counsel. The rationale for the post-hearing decision made by the General Counsel will be explained in any final rule or other appropriate rulemaking document issued by the Department for this action.

III. Public Participation

The March 14, 2023, hearing will begin at 1:00 p.m. EDT, and the Department will provide time for opening remarks by the Hearing Officer. The meeting will then transition to public comments and presentations. Any oral comments presented should be limited to the subjects described in this Notice and be brief so all participants will have an opportunity to speak. Depending on the volume of requests for oral comments that we receive and the time available, we may be able to accommodate additional comments and/or presentations that speakers wish to add. Individual members of the public who wish to present oral comments must notify the Department of Transportation, no later than Thursday, March 9 via email at clereece.kroha@dot.gov that they wish to present oral comments. The email should (1) identify specific subject(s) on which you wish to provide comments; and (2) state the organization or entity you are representing or that you are speaking as a member of the public. All written materials (e.g., PowerPoint presentations) presented at the hearing

will be made part of the meeting's record.

Consistent with the requirement of 14 CFR 399.75, the Department plans to reopen the comment period for this rulemaking on March 14, 2023, the date of the hearing, and the comment period will remain open for seven (7) days, closing on March 21, 2023. Interested parties who wish to file statements or comments that are specifically related to the subject(s) discussed at the hearing may submit their written comments electronically to the NPRM Docket (DOT–OST–2022–0089).

After the hearing and after the record of the hearing is closed, the hearing officer will place on the rulemaking docket minutes of the hearing reflecting the evidence and arguments presented on the issues.

IV. Viewing Documents

Documents associated with the NPRM on Airline Ticket Refunds and Consumer Protections may be accessed in the rulemaking Docket (DOT–OST–2022–0089). Dockets may be accessed at <https://www.regulations.gov>. After entering the relevant docket number click the link to “Open Docket Folder” and choose the document to review.

Signed in Washington, DC, on this 28th day of February 2023.

John E. Putnam,

General Counsel, U.S. Department of Transportation.

[FR Doc. 2023–04494 Filed 3–2–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT–OST–2022–0109]

RIN 2105–AF10

Enhancing Transparency of Airline Ancillary Service Fees

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Public hearing.

SUMMARY: This Notice announces a virtual public hearing on certain issues related to the U.S. Department of Transportation's Notice of Proposed Rulemaking on Enhancing Transparency of Airline Ancillary Service Fees.

DATES: The virtual hearing will be held on March 16, 2023, from 10:00 a.m. to 5:00 p.m. Eastern Time. The hearing is open to the public, subject to any technical and/or capacity limitations.

Requests to attend the hearing must be submitted to https://usdot.zoomgov.com/webinar/register/WN_v-c7rpgUR5yvFVePlnQU_A. We encourage interested parties to register by Monday, March 13, 2023.

Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the hearing. Requests for additional accommodations because of a disability must be received at Cristina.Draguta@dot.gov by Monday, March 13, 2023.

ADDRESSES: The virtual hearing will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. An agenda will be available on the Department's Office of Aviation Consumer Protection website at <https://www.transportation.gov/airconsumer/latest-news> in advance of the hearing.

FOR FURTHER INFORMATION CONTACT: To register and attend this virtual hearing, please use the link: https://usdot.zoomgov.com/webinar/register/WN_v-c7rpgUR5yvFVePlnQU_A. Attendance is open to the public subject to any technical and/or capacity limitations. For further information, please contact Cristina Draguta, Attorney-Advisor, by email at Cristina.Draguta@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 2022, the U.S. Department of Transportation (DOT or Department) published in the **Federal Register** a notice of proposed rulemaking (NPRM) that proposed several disclosure requirements to enhance the transparency of ancillary service fees so consumers know the true cost of air travel early in the purchasing process. (87 FR 63718). In the NPRM, the Department proposed to require U.S. air carriers, foreign air carriers, and ticket agents to clearly disclose passenger-specific or itinerary-specific baggage fees, change fees, and cancellation fees to consumers whenever fare and schedule information is provided to consumers for flights to, within, and from the United States. The Department also proposed requiring similar disclosures for fees for a child 13 or under to be seated adjacent to an accompanying adult, as well as the transactability of such seating fees. To ensure ticket agents could provide the proposed disclosures, the NPRM proposed requiring carriers to provide useable, current, and accurate information regarding fees to ticket agents that sell or display the carrier's fare and schedule information. The

NPRM also proposed an implementation and compliance period of six months from the date of a potential final rule.

The NPRM provided for a comment period of 60 days after publication of the NPRM in the **Federal Register**, *i.e.*, December 19, 2022. In response to a request for additional opportunity to comment, the Department extended the comment period for an additional 35 days to January 23, 2023.¹ The Department subsequently received a request to further extend the comment period on the basis that the requestor was not able to view the January 12, 2023 meeting of the Aviation Consumer Protection Advisory Committee meeting when it occurred and that as of the time the request for extension was submitted, the meeting materials had not been posted to the docket. The Department declined to extend the comment period based on that request. (88 FR 4923 (Jan. 26, 2023)). The Department received another request for additional time to provide comments on the NPRM, based primarily on technological and interface issues identified by the petitioner. The Department is considering whether to grant that request and will publish its determination in the **Federal Register**. (See <https://www.transportation.gov/airconsumer/AncillaryFeeNPRM-Procedural-Information-January23-2023>.)

On January 23, 2023, multiple commenters petitioned the Department for a public hearing on the NPRM pursuant to the Department's regulation on rulemakings relating to unfair and deceptive practices, 14 CFR 399.75.² Airlines for America raised two questions in its petition: whether consumers are or are likely to be substantially injured or are misled by airlines' current disclosures of ancillary service fees; and whether disclosures of itinerary-specific ancillary fees at the time of first search will result in the display of incomplete or inapplicable ancillary fee information, cause consumer confusion, and distort the marketplace. The Travel Technology Association (Travel Tech) states in its petition that there is a fundamental disputed factual issue as to whether the proposed display requirements would benefit or harm consumers. Travel Tech also believes that the proposed disclosures are technically infeasible and has requested a hearing to discuss

these concerns as well as the Department's proposed time frame for compliance. In its comment on the NPRM, Google LLC also requested a hearing based on its assertion that the Department's analysis was flawed and that it was deficient in providing its complaint-based evidence justifying the rulemaking. In arguing that a hearing is in the public interest pursuant to 14 CFR 399.75, Airlines for America and Travel Tech assert that the underlying proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute; the ordinary public comment process is unlikely to provide an adequate examination of the issue to permit a fully informed judgement; the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; the requested hearing on the issue would advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by the Department's regulation; and a hearing will not unreasonably delay completion of this rulemaking.

The Department has carefully considered the petitions for a public hearing consistent with 14 CFR 399.75 and is granting a public hearing to afford Petitioners and other stakeholders an opportunity, in addition to the public comment process, to present factual issues that they believe are pertinent to the Department's decision on the rulemaking.³ The scope of the hearing is limited to the factual issues specified in this notice.

The Department's proposals are set forth in the October 2022 NPRM. The issues identified by Petitioners concerning the Department's NPRM and on which they request a hearing are discussed in more detail in their petitions for rehearing. The information the Department is requesting during the hearing on these issues is summarized below.

³ With its comment and petition, Google LLC noted similar concerns as Airlines for America and Travel Tech regarding the substance of the NPRM's proposals. However, Google LLC's petition was articulated in a footnote which did not make a sufficient showing that a hearing would be in the public interest. See 14 CFR 399.75(b)(2) for factors that assist in determining whether a petition is in the public interest. As such, we deny Google LLC's petition for a hearing in part to the extent the subjects of Google's petition are not otherwise addressed as part of the petitions of Airlines for America and Travel Tech.

Issue 1: Whether Consumers Are or Are Likely To Be Substantially Injured or Misled by Airlines' Current Disclosures of Ancillary Service Fees

The Department welcomes information during the hearing on the following topics, to the extent it has not been provided in any written comments already submitted to the Docket:

- Information from consumers and others about instances in which they searched for and/or purchased tickets for air travel and were confused or surprised by the baggage fees that they would need to pay.
- Statistical information from carriers and ticket agents about the number of complaints they receive from consumers expressing confusion or surprise at the baggage fees they were asked or made to pay.
- Information from consumers and others about instances in which they searched for and/or purchased tickets for air travel and were confused or surprised by the ticket change or cancellation fees that they would need to pay.
- Statistical information from carriers and ticket agents about the number of complaints they receive from consumers expressing confusion or surprise at the ticket change or cancellation fees they were asked or made to pay.
- Information from consumers and others about instances in which they searched for and/or purchased tickets for air travel and were confused or surprised that they would need to pay a fee for a child age 13 or under to be seated next to an accompanying adult.
- Statistical information from carriers and ticket agents about the number of complaints they receive from consumers expressing confusion or surprise that they were asked or made to pay a fee for a child age 13 or under to be seated next to an accompanying adult.
- Data on the frequency with which consumers view ancillary fee pages on airline websites.
- Data on the frequency with which consumers using ticket agent websites click on links to airline ancillary fee policies (whether external or internal links).
- Data on the frequency with which consumers conduct itinerary searches on airline websites and on ticket agent websites.
- Data and information regarding whether the Department's proposals would require significant changes to product displays and how such changes could impact consumers.
- Any other *factual* information that is pertinent to the Department's determination on this proposal.

¹ 87 FR 77765 (Dec. 20, 2022).

² See, *e.g.*, petitions for hearing from Airlines for America, <https://www.regulations.gov/comment/ DOT-OST-2022-0109-0091>, the Travel Technology Association, <https://www.regulations.gov/comment/ DOT-OST-2022-0109-0239>, and Google LLC, <https://www.regulations.gov/comment/ DOT-OST-2022-0109-0088>.

Issue 2: Whether Disclosures of Itinerary-Specific Ancillary Fees at the Time of First Search Will Result in the Display of Incomplete or Inapplicable Ancillary Fee Information, Cause Consumer Confusion, and Distort the Marketplace

The Department welcomes the following information during the hearing to the extent it has not been provided in any written comments already submitted to the Docket:

- Information on whether and how ancillary fee information is currently displayed to consumers as they use airline or ticket agent online booking systems to purchase tickets.
- Information or data on the proportion of airlines and ticket agents that employ online booking systems that do not display specific ancillary fees on the itinerary search results page of the booking process but do display specific ancillary fees on other pages of the booking process prior to the consumer executing a purchase or reservation.
- Data or information on whether and to what extent the lack of ancillary fee information at the time of itinerary and fare selection results in higher total trip costs to consumers compared to alternatives or higher time spent on the ticket purchase process.
- Information from consumers and others about the time spent searching for ancillary fee information on an airline or ticket agent website.
- Information from consumers and others about the added time spent, if any, from restarting an itinerary search due to a lack of ancillary fee information being displayed upfront.
- Information from consumers and others about added costs and/or time spent on searching airline and/or ticket agent websites to find fees for baggage, changes and cancellations, and family seating.
- Information from consumers and others about added costs and/or time spent on calculating the total price of a ticket to include baggage fees and family seating fees.
- Data and information regarding any potential for consumer confusion from overcrowded displays or information overload that could result from the Department's proposal, particularly on mobile or other devices with smaller displays.
- Any other information that is pertinent to the Department's determination on this proposal.

Issue 3: Whether Requiring Fee Disclosures on the First Page of the Itinerary Search Selection Process Would Be Technically Infeasible

The Department welcomes the following information during the hearing to the extent it has not been provided in any written comments already submitted to the Docket:

- Factual information or data on the proportion of consumers that search for and/or purchase tickets for air travel using mobile devices (e.g., mobile phones and tablets), and the proportion of ticket searches and/or purchases that are conducted using each type of mobile device.
- Factual information or data on the impact of additional disclosure requirements on web page and booking engine load times.
- Factual or demonstrative information on alternatives to the proposed disclosure requirements, as well as how the proposed disclosure requirements would be represented and used on mobile displays.
- Information on whether additional time for compliance with the proposal would mitigate the above concerns.

II. Agenda, Hearing Officer, and Post-Hearing Actions

During the March 16, 2023, hearing, the Department will hear information from the public on the three subjects described above. The Department's tentative positions on these subjects are articulated in the NPRM. The Department does not expect to provide further summary or explanation on its positions.

The Department is appointing Blane Workie, Assistant General Counsel, Office of Aviation Consumer Protection, as the Hearing Officer presiding over the hearing. The Department's regulations at 14 CFR 399.75 specify that the General Counsel shall arrange for a hearing officer to preside over the hearing. The regulations further provide that after the hearing process is complete, the General Counsel must consider the record of the hearing and make a reasoned determination whether to terminate the rulemaking, proceed with the rulemaking as proposed, or modify the proposed rule. The regulations further require the General Counsel to explain, in an appropriate rulemaking document published in the **Federal Register**, the rationale for the post-hearing decision made by the General Counsel. The rationale for the post-hearing decision made by the General Counsel will be explained in any final rule or other appropriate rulemaking document issued by the Department for this action.

III. Public Participation

The March 16, 2023, hearing will begin at 10:00 a.m. ET, and the Department will provide time for opening remarks by the Hearing Officer. The meeting will then transition to public comments and presentations. Any oral comments presented should be limited to the subjects described in this Notice and be brief so all participants will have an opportunity to speak. Depending on the volume of request for oral comments that we receive and the time available, we may be able to accommodate additional comments and/or presentations that speakers wish to add. Individual members of the public who wish to present oral comments must notify the Department of Transportation, no later than Monday, March 13 via email at Ryan.Patanaphan@dot.gov that they wish to present oral comments. The email should (1) identify specific subject(s) on which you wish to provide comments; and (2) state the organization or entity you are representing or that you are speaking as a member of the public. All written materials (e.g., PowerPoint presentations) presented at the hearing will be made part of the meeting's record.

Consistent with the requirement of 14 CFR 399.75, the Department plans to reopen the comment period for this rulemaking on March 16, 2023, the date of the hearing, and the comment period will remain open for seven (7) days, closing on March 23, 2023. Interested parties who wish to file statements or comments that are specifically related to the subject(s) discussed at the hearing may submit their written comments electronically to the NPRM Docket (DOT-OST-2022-0109).

After the hearing and after the record of the hearing is closed, the hearing officer will place on the rulemaking docket minutes of the hearing reflecting the evidence and arguments presented on the issues.

IV. Viewing Documents

Documents associated with the NPRM on Enhancing Transparency of Airline Ancillary Service Fees may be accessed in the rulemaking Docket (DOT-OST-2022-0109). Dockets may be accessed at <https://www.regulations.gov>. After entering the relevant docket number click the link to "Open Docket Folder" and choose the document to review.

Signed in Washington, DC, on this 28th day of February 2023.

John E. Putnam,

General Counsel, U.S. Department of Transportation.

[FR Doc. 2023-04510 Filed 3-2-23; 8:45 am]

BILLING CODE 4910-9X-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0936; FRL-10470-01-R9]

Clean Air Plans; 2015 8-Hour Ozone Nonattainment Area Requirements; Clean Fuels for Fleets; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the California State Implementation Plan (SIP) concerning the provisions for Clean Fuels for Fleets (CFF) for the 2015 ozone national ambient air quality standards (“2015 ozone NAAQS”) in the Riverside County (Coachella Valley), Sacramento Metro, San Joaquin Valley, Los Angeles—South Coast Air Basin (South Coast), Ventura County, and Los Angeles—San Bernardino Counties (West Mojave Desert) nonattainment areas (NAAs). The SIP revisions include the “California Clean Fuels for Fleets Certification for the 70 ppb Ozone Standard” (“Clean Fuels for Fleets Certification”) submitted on February 3, 2022. We are proposing to approve these revisions under the Clean Air Act (CAA or “the Act”), which establishes clean fuels for fleets requirements for “Serious,” “Severe,” and “Extreme” ozone NAAs.

DATES: Written comments must arrive on or before April 3, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0936 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Andrew Ledezma, Air Planning Office (ARD-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3985, or by email at Ledezma.Ernesto@epa.gov.

SUPPLEMENTARY INFORMATION:

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

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I. Background

On October 26, 2015, the EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm).¹ In accordance with section 107(d) of the CAA, the EPA must designate an area “nonattainment” if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area.

The EPA designated 21 areas in California as nonattainment for the 2015 ozone NAAQS on June 4, 2018, effective August 3, 2018.² Amador County, Calaveras County, Butte County,

Imperial County, Mariposa County,³ San Francisco Bay Area, San Luis Obispo (Eastern part), Sutter Buttes, Tuolumne County, and Tuscan Buttes NAAs were classified as Marginal nonattainment. Kern County (Eastern Kern), Nevada County (Western part), Sacramento Metro,⁴ and San Diego County⁵ NAAs were classified as Moderate nonattainment. The EPA classified the Ventura County NAA as Serious nonattainment. The EPA classified the Los Angeles-San Bernardino Counties (West Mojave Desert) and Riverside County (Coachella Valley) NAAs as Severe nonattainment. The EPA classified both the San Joaquin Valley and the South Coast NAAs as Extreme nonattainment. The EPA designated the lands of the Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation⁶ and the Morongo Band of Mission Indians as separate NAAs and classified them as Marginal and Serious nonattainment, respectively. The State of California does not have regulatory authority on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

Sections 182(c)(4)⁷ and 246 of the CAA provide that SIPs for Serious, Severe, and Extreme ozone nonattainment areas with 1980 populations greater than 250,000 must require at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter, purchased by each covered fleet operator in each covered area, to be clean-fuel vehicles and use clean alternative fuels when operating in the covered area.⁸ Sections

³ On April 13, 2022, the EPA reclassified Mariposa from Marginal to Moderate for the 2015 ozone NAAQS (87 FR 21842).

⁴ On October 28, 2021, the EPA reclassified Kern County (Eastern Kern), Nevada County (Western part) and Sacramento Metro from Moderate to Serious for the 2015 ozone NAAQS (86 FR 59648).

⁵ On April 8, 2021, the EPA reclassified San Diego from Moderate to Severe for the 2015 ozone NAAQS (86 FR 18227).

⁶ On April 13, 2022, the EPA reclassified the lands of the Pechanga Band Luiseño Mission Indians of the Pechanga Reservation from Marginal to Moderate for the 2015 ozone NAAQS (87 FR 21842).

⁷ CAA section 182(c)(4) establishes the requirements for clean-fuel vehicle programs in Serious NAAs. CAA sections 182(d) and 182(e) require the same for Severe and Extreme NAAs, respectively.

⁸ CAA section 241(2) defines clean alternative fuels as any fuel, including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, and hydrogen) or power source (including electricity). CAA section 241(7) defines a clean fuel vehicle as one that has been certified to meet the relevant light and heavy-duty truck exhaust standards in CAA sections 243 and 245, respectively.

¹ 80 FR 65292 (October 26, 2015).

² 83 FR 25776 (June 4, 2018).

182(c)(4) and 246 of the CAA also require states to submit to the EPA a plan revision addressing this requirement within 42 months after the effective date of the designation and classification.

On February 3, 2022, the California Air Resources Board (CARB) submitted SIP revisions to the EPA for multiple nonattainment areas to fulfill requirements under section 182(c)(4) and section 246 of the CAA requiring clean fuels for fleets in nonattainment areas. In this action, we are evaluating and proposing action on the submittal for CFF for six nonattainment areas with 1980 populations greater than 250,000 in California, and that are classified as Serious, Severe, or Extreme—the Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast, Ventura County, and West Mojave Desert NAAs.⁹

II. Statutory and Regulatory Requirements

A. Procedural Requirements for Adoption and Submittal of SIP Revisions

CAA sections 110(a)(1) and 110(l) and 40 CFR 51.102 require states to provide reasonable opportunity for a public hearing prior to adoption of SIP revisions. Section 110(k)(1)(B) requires the EPA to determine whether a SIP submittal is complete within 60 days of receipt. Any plan that the EPA does not affirmatively determine to be complete or incomplete will become complete six months after the day of submittal by operation of law. A finding of completeness does not approve the submittal as part of the SIP, nor does it indicate that the submittal is approvable. It does start a 12-month clock for the EPA to act on the SIP submittal (see CAA section 110(k)(2)).

B. Requirements for Clean Fuels for Fleets

As described in section I of this document, CAA section 182(c)(4) and 246 provide that SIPs for Serious, Severe, and Extreme nonattainment areas with 1980 populations greater than 250,000 require that at least a specified percentage of all new covered fleet vehicles in model year 1998 and

thereafter, purchased by each covered fleet operator in each covered area, be clean-fuel vehicles and use clean alternative fuels when operating in the covered area.

Additional guidance on this requirement is provided in CAA section 182(c)(4)(B). According to CAA section 182(c)(4)(B), any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under section 246 of the CAA, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute, can substitute for all or a portion of the clean-fuel vehicle program described under part C of title II of the Act.

According to the EPA's "Guidance for Fulfilling the Clean Fuels for Fleets Requirement of the Clean Air Act,"¹⁰ the substitute measure(s) must achieve long-term reductions in ozone precursor emissions equal to those achieved through the CFF Program. A state could submit a SIP revision implementing substitute measures that achieve emissions reductions that are equal or greater than those achieved by implementing a CFF Program, with the understanding that any new light- or heavy-duty vehicle purchased by a fleet owner is deemed to also meet the CAA emissions standards for ultra-low emission CFF vehicles.

III. Summary of the State's Submittal

A. Adoption and Submittal of SIP Revisions

The submittal package ("2022 CARB SIP submittal") contains the Clean Fuels for Fleets Certification, a multi-district certification that the existing CFF programs in the Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast, Ventura County, and West Mojave Desert NAAs meet the CFF requirements under the 2015 ozone standard.¹¹ The 2022 CARB SIP submittal includes a cover letter to the EPA dated February 3, 2022;¹² signed Resolution 22–1, dated January 27, 2022,¹³ demonstrating that CARB adopted the certification; a copy of the

notice of public hearing held on January 27, 2022,¹⁴ consistent with 40 CFR part 51.102; and a SIP completeness checklist.¹⁵

B. Summary of State Submittal

In the Clean Fuels for Fleets Certification, CARB states that in 1994, it submitted a SIP revision to the EPA to opt out of the CFF Program. The Clean Fuels for Fleets Certification includes a demonstration that California's Low-Emission Vehicle (LEV) program achieved emissions reductions at least equivalent to the reductions that would be achieved by the EPA's CFF Program. CARB also states that California's LEV program established regulations that created tiers of exhaust emissions standards for increasingly more stringent categories of LEVs, a mechanism requiring each auto manufacturer to phase-in a progressively cleaner mix of vehicles from year to year with the option of credit banking and trading, and a requirement that a specified percentage of passenger cars and light-duty trucks be zero-emission vehicles with no exhaust or evaporative emissions. The Clean Fuels for Fleets Certification also indicates that the EPA approved the California SIP revision to opt out of the CFF Program effective September 27, 1999.¹⁶

CARB also stated in the submittal that the State has continued to strengthen emissions requirements in its LEV program, adopting LEV II¹⁷ standards in 1998 and LEV III¹⁸ standards in 2012. CARB also certified in its Clean Fuels for Fleets Certification that California's LEV program qualifies as a substitute for the EPA program and satisfies Sections 182(c)(4) and 246 of the Act for the 0.070 ppm ozone standard for the Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast, Ventura County, and West Mojave Desert NAAs.

¹⁴ CARB, "Notice of Public Meeting to Consider the Proposed California Clean Fuels for Fleets Certification for the 70 ppb Ozone Standard," dated December 17, 2021.

¹⁵ CARB, "Completeness Checklist for SIP Revision."

¹⁶ 64 FR 46849 (August 27, 1999).

¹⁷ See the LEV II and CAP 2000 Regulatory Documents web page, available at: <https://ww3.arb.ca.gov/regact/levii/levii.htm>.

¹⁸ See the LEV III and GHG 2012 Regulatory Documents web page, available at: [https://ww3.arb.ca.gov/regact/2012/leviiiighg2012/leviiiighg2012.htm](https://ww3.arb.ca.gov/regact/2012/leviii/ghg2012/leviiiighg2012.htm).

⁹ CARB's submittal does not include the San Diego County NAA, which was submitted separately on January 12, 2021, as a part of the "2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County." The EPA will act on the CFF requirement for the San Diego County NAA in a separate rulemaking. CARB's submittal also does not include Kern County (Eastern Kern) and Nevada County (Western part) because neither area exceeds the population threshold that is prescribed in the Act to require implementation of the CFF Program.

¹⁰ EPA, "EPA's Guidance for Fulfilling the Clean Fuel Fleets Requirement of the Clean Air Act," EPA-420-B-22-027, June 2022.

¹¹ CARB, "California Clean Fuels for Fleets Certification for the 70 ppb Ozone Standard," dated December 17, 2021.

¹² Letter dated February 3, 2022, from Richard W. Corey, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

¹³ CARB Resolution 22–1, "California Clean Fuels for Fleets Certification for the 70 ppb Ozone Standard," January 27, 2022.

IV. The EPA's Evaluation of the State's Submittal

A. Evaluation of Procedural Requirements

Based on the documentation included in the 2022 CARB SIP submittal, the EPA finds that the submittal satisfies the procedural requirements of sections 110(a)(1) and 110(l) of the Act, requiring states to provide reasonable notice and an opportunity for public hearing prior to adoption of SIP revisions. CARB's submittal became complete by operation of law on August 3, 2022, pursuant to section 110(k)(1)(B).

B. Evaluation of Requirements for Clean Fuels for Fleets

The EPA has reviewed the Clean Fuels for Fleets Certification for consistency with sections 182(c)(4) and 246 of the CAA. As explained in section II of this document, Section 182(c)(4)(B) of the CAA allows states to opt out of the federal CFF Program by submitting a SIP revision consisting of a program or programs that will result in equivalent or greater long-term reductions in ozone precursors and toxic air emissions as that which is prescribed under section 246 of the CAA. We agree with the 2022 CARB SIP Submittal that in 1994, CARB submitted a SIP revision to the EPA to opt out of the federal CFF Program. The submittal included a demonstration that California's LEV program achieved emissions reductions at least as large as would be achieved by the federal program. The EPA approved the SIP revision to opt out of the federal program on August 27, 1999.¹⁹ There have been no changes to the federal CFF Program since the EPA approved the California SIP revision to opt out of the federal program, and thus, no corresponding changes to the SIP are required. The EPA finds that California has continued to adopt and implement increasingly stringent versions of the LEV program. Therefore, new vehicles must be certified to emissions standards that are significantly more stringent than the CFF Program. Thus, we find that the California SIP revision to opt out of the federal program, as approved in 1999, meets the requirements of CAA sections 182(c)(4)(A) and 246 and the EPA's "Guidance for Fulfilling the Clean Fuel Fleets Requirement of the Clean Air Act" for Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast, Ventura County, and West Mojave Desert NAAs for the 2015 ozone NAAQS.

V. Proposed Action

For the reasons discussed in this document, under CAA section 110(k)(3), the EPA is proposing to find that the 2022 CARB SIP submittal meets the requirements of CAA sections 182(c)(4) and 246 for the 2015 ozone NAAQS with respect to the Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast, Ventura County, and West Mojave Desert NAAs.

VI. Statutory and Executive Order Reviews

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

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

The State did not evaluate environmental justice considerations as

part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 16, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023-03781 Filed 3-2-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0529; FRL-10662-01-R4]

Air Plan Approval; Tennessee; Domtar Paper Company, LLC Nitrogen Oxides SIP Call Alternative Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve a source-specific State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), through a letter dated January 20, 2022, which would establish alternative monitoring, recordkeeping, and reporting requirements under the Nitrogen Oxides (NO_x) SIP Call.

DATES: Comments must be received on or before April 3, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2022-0529 at www.regulations.gov. Follow the online

¹⁹ 64 FR 46849.

instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9034. Mr. Scofield can also be reached via electronic mail at scofield.steve@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), also called the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that will significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state.

On October 27, 1998 (63 FR 57356), EPA finalized the "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" (NO_x SIP Call). The NO_x SIP Call required eastern states, including Tennessee, to submit SIPs limiting emissions of ozone season NO_x by implementing statewide emissions budgets. The NO_x SIP Call addressed the good neighbor provision for the 1979 ozone NAAQS and was

designed to mitigate the impact of transported NO_x emissions, one of the precursors of ozone.¹ EPA developed the NO_x Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_x SIP Call. This trading program allowed the following sources to participate in a regional cap and trade program: generally, electricity generating units (EGUs) with capacity greater than 25 megawatts (MW); and large industrial non-EGUs, such as boilers and combustion turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr). The NO_x SIP Call also identified potential reductions from cement kilns and stationary internal combustion engines.

To comply with the NO_x SIP Call requirements, in 2000 and 2001, TDEC submitted a revision to add new rule sections to the SIP-approved version of Chapter 1200–3–27, *Nitrogen Oxides*, of the Tennessee Rules. EPA approved the revision as compliant with Phase I of the NO_x SIP Call in 2004. *See* 69 FR 3015 (January 22, 2004). The approved revision required EGUs and large non-EGUs in the State to participate in the NO_x Budget Trading Program beginning in 2004. In 2005, Tennessee submitted, and EPA approved, a SIP revision to address additional emissions reductions required for the NO_x SIP Call under Phase II. *See* 70 FR 76408 (December 27, 2005).

In 2005, EPA published the Clean Air Interstate Rule (CAIR), which required several eastern states, including Tennessee, to submit SIPs that prohibited emissions consistent with revised ozone season NO_x budgets (as well as annual budgets for NO_x and sulfur dioxide). *See* 70 FR 25162 (May 12, 2005); *see also* 71 FR 25328 (April 28, 2006). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter (PM_{2.5}) NAAQS and was designed to mitigate the impact of transported NO_x emissions with respect to ozone and PM_{2.5}. CAIR established several trading programs that EPA implemented through federal implementation plans (FIPs) for EGUs greater than 25 MW in each affected state, but not large non-EGUs; states could submit SIPs to replace the FIPs that achieved the required emission reductions from EGUs and/or other

types of sources.² When the CAIR trading program for ozone season NO_x was implemented beginning in 2009, EPA discontinued administration of the NO_x Budget Trading Program; however, the requirements of the NO_x SIP Call continued to apply.

On November 25, 2009 (74 FR 61535), EPA approved revisions to Tennessee's SIP that incorporated requirements for CAIR. Consistent with CAIR's requirements, EPA approved a SIP revision in which Tennessee regulations: (1) Terminated its NO_x Budget Trading Program requirements, and (2) incorporated CAIR annual and ozone season NO_x state trading programs. *See* 74 FR 61535. Participation of EGUs in the CAIR ozone season NO_x trading program addressed the State's obligation under the NO_x SIP Call for those units, and Tennessee also chose to require non-EGUs subject to the NO_x SIP Call to participate in the same CAIR trading program. In this manner, Tennessee's CAIR rules incorporated into the SIP addressed the State's obligations under the NO_x SIP Call with respect to both EGUs and non-EGUs.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *See North Carolina v. EPA*, 531 F.3d 896, *modified on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued to be implemented with the NO_x annual and ozone season trading programs beginning in 2009 and the SO₂ annual trading program beginning in 2010.

Following the D.C. Circuit's remand of CAIR, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and address good neighbor obligations for the 1997 ozone NAAQS, the 1997 PM_{2.5} NAAQS, and the 2006 PM_{2.5} NAAQS. *See* 76 FR 48208 (August 8, 2011). Through FIPs, CSAPR required EGUs in eastern states, including Tennessee, to meet annual and ozone season NO_x emission budgets and annual SO₂ emission budgets implemented through new trading programs. Implementation of CSAPR began on January 1, 2015.³ CSAPR also contained provisions that would sunset

¹ As originally promulgated, the NO_x SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule's provisions with respect to that standard. *See* 65 FR 56245 (September 18, 2000); 84 FR 8422 (March 8, 2019).

² CAIR had separate trading programs for annual sulfur dioxide (SO₂) emissions, seasonal NO_x emissions, and annual NO_x emissions.

³ *See* 79 FR 71663 (December 3, 2014).

CAIR-related obligations on a schedule coordinated with the implementation of the CSAPR compliance requirements. Participation by a state's EGUs in the CSAPR trading program for ozone season NO_x generally addressed the state's obligation under the NO_x SIP Call for EGUs. CSAPR did not initially contain provisions allowing states to incorporate large non-EGUs into that trading program to meet the requirements of the NO_x SIP Call for non-EGUs. EPA also stopped administering CAIR trading programs with respect to emissions occurring after December 31, 2014.⁴

Even though the CAIR programs have not been implemented in Tennessee since 2014, ozone season NO_x emissions have remained well below the NO_x SIP Call budget levels. Through a letter to EPA dated February 27, 2017,⁵ Tennessee provided a SIP revision to incorporate a new provision—TACPR 1200–03–27–12, “NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines” (TN 2017 NO_x SIP Call Rule)—into the SIP. The TN 2017 NO_x SIP Call Rule established a state control program for sources that are subject to the NO_x SIP Call but not covered under CSAPR or the CSAPR Update (background regarding the CSAPR Update is provided later in this notice). The TN 2017 NO_x SIP Call Rule contains several subsections that together comprise a non-EGU control program under which Tennessee will allocate a specified budget of allowances to affected sources. Subsequently, on May 11, 2018, and October 11, 2018, Tennessee submitted letters requesting conditional approval⁶ of the TN 2017 NO_x SIP Call Rule and committing to provide a SIP revision to EPA by December 31, 2019, to address a deficiency by revising the definition of “affected unit” to remove the unqualified exclusion for any unit that serves a generator that produces power for sale. Based on the State's commitment to submit a SIP revision addressing the identified deficiency, EPA conditionally approved the February 27, 2017, submission. In the same action, EPA approved removal of the State's NO_x Budget Trading Program

and CAIR rules from Tennessee's SIP. See 84 FR 7998 (March 6, 2019).

Tennessee submitted a SIP revision on December 19, 2019, which revised Tennessee Air Pollution Control Regulation (TAPCR) 1200–03–27–12, “NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines,” to correct the definition of “affected unit” and to clarify requirements related to stationary boilers and combustion turbines. On March 2, 2021 (86 FR 12092), EPA published a final rule which corrected the definition of “affected unit” and clarified requirements related to stationary boilers and combustion turbines. EPA also converted the conditional approval of the TN 2017 NO_x SIP Call Rule to a full approval. See EPA's March 2, 2021 (86 FR 12092), final rule for further detail on these changes and EPA's rationale for approving them.

After litigation that reached the Supreme Court, the D.C. Circuit generally upheld CSAPR but remanded several state budgets to EPA for reconsideration. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 129–30 (D.C. Cir. 2015). EPA addressed the remanded ozone season NO_x budgets in the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), which also partially addressed eastern states' good neighbor obligations for the 2008 ozone NAAQS. See 81 FR 74504 (October 26, 2016). The air quality modeling for the CSAPR Update demonstrated that Tennessee contributes significantly to nonattainment and/or interferes with maintenance of the 2008 ozone NAAQS in other states. The CSAPR Update reestablished an option for most states to meet their ongoing obligations for non-EGUs under the NO_x SIP Call by including the units in the CSAPR Update trading program.

The CSAPR Update trading program replaced the original CSAPR trading program for ozone season NO_x for most covered states. Tennessee's EGUs participate in the CSAPR Update trading program, which generally also addresses the State's obligations under the NO_x SIP Call for EGUs. However, Tennessee elected not to include its large non-EGUs in the CSAPR Update ozone season trading program. Because Tennessee's large non-EGUs do not participate in any CSAPR or CSAPR Update trading program for ozone season NO_x emissions, the NO_x SIP Call regulations at 40 CFR 51.121(r)(2), as well as anti-backsliding provisions at 40 CFR 51.905(f) and 40 CFR 51.1105(e), require these non-EGUs to maintain

compliance with NO_x SIP Call requirements in some other way.

Under 40 CFR 51.121(f)(2) of the NO_x SIP Call regulations, where a state's implementation plan contains control measures for EGUs and large non-EGU boilers and combustion turbines, the SIP must contain enforceable limits on the ozone season NO_x mass emissions from these sources. In addition, under 40 CFR 51.121(i)(4) of the NO_x SIP Call regulations as originally promulgated, the SIP also had to require these sources to monitor emissions according to the provisions of 40 CFR part 75, which generally entails the use of continuous emission monitoring systems. Tennessee triggered these requirements by including control measures in its SIP for these types of sources, and the requirements have remained in effect despite the discontinuation of the NO_x Budget Trading Program after the 2008 ozone season.

On March 8, 2019, EPA revised some of the regulations that were originally promulgated in 1998 to implement the NO_x SIP Call.⁷ The revision gave states covered by the NO_x SIP Call greater flexibility concerning the form of the NO_x emissions monitoring requirements that the states must include in their SIPs for certain emissions sources. The revision amended 40 CFR 51.121(i)(4) to make Part 75 monitoring, recordkeeping, and reporting optional, such that SIPs may establish alternative monitoring requirements for NO_x SIP Call budget units that meet the general requirements of 40 CFR 51.121(f)(1) and (i)(1). Under the updated provision, a state's implementation plan still needs to include some form of emissions monitoring requirements for these types of sources, consistent with the NO_x SIP Call's general enforceability and monitoring requirements at 40 CFR 51.121(f)(1) and (i)(1), respectively, but states are no longer required to satisfy these general NO_x SIP Call requirements specifically through the adoption of 40 CFR part 75 monitoring requirements.

Following EPA's March 8, 2019, revision to the NO_x SIP Call requirements, Domtar Paper Company, LLC (Domtar) petitioned TDEC to adopt revised permit conditions applicable to Domtar's Kingsport Mill in Kingsport, Tennessee, with an alternative monitoring option for this large non-EGU, along with corresponding revised recordkeeping and reporting conditions. This petition resulted in the issuance of the permit for Domtar included as part of TDEC's SIP submittal. The changes

⁴ See 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

⁵ EPA notes that it received the submittal on February 28, 2017.

⁶ Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval.

⁷ See “Emissions Monitoring Provisions in State Implementation Plans Required Under the NO_x SIP Call,” 84 FR 8422 (March 8, 2019).

allow Domtar to address the NO_x SIP Call's requirements for enforceable limits on ozone season NO_x mass emissions through non-Part 75 alternative monitoring and reporting methodologies and specifically through the use of continuous emission monitoring under 40 CFR part 60, Appendix B in combination with monitoring of heat input. The January 20, 2022, source-specific SIP revision submitted by TDEC contains the permit provisions that TDEC modified to specifically address the alternative monitoring provisions allowed under the NO_x SIP Call and requests conditional approval of those provisions into the SIP. The contents of the submittal and EPA's analysis is further discussed in Section III.

II. Why is EPA proposing this action?

TDEC's January 20, 2022, letter requests that EPA conditionally approve into Tennessee's SIP Tennessee Air Pollution Control Board operating permit No. 079291 for Domtar, state effective on January 12, 2022, to provide alternative NO_x monitoring and reporting for the No. 2 Power Boiler at this facility in accordance with 40 CFR 51.121(i). TDEC requests that this approval be conditioned on Tennessee's commitment to modify the provisions at Chapter 1200-03-27.12(11) to specify allowable non-Part 75 permissible alternative monitoring and reporting methodologies for large industrial non-EGUs subject to the NO_x SIP Call, such as the alternative monitoring and reporting provisions in permit No. 079291. The submission also includes a demonstration under CAA section 110(l) intended to show that the revision would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. As discussed later, EPA has reviewed these changes, preliminarily finds them consistent with the CAA and regulations governing the NO_x SIP Call, and is proposing to conditionally approve the revisions to incorporate the source-specific SIP revision into the State's implementation plan.

III. Analysis of Tennessee's Submission

On August 13, 2021, Domtar submitted a petition to TDEC requesting approval of alternative monitoring, recordkeeping, and reporting requirements for the boiler subject to the NO_x SIP Call (No. 2 Power Boiler) at Domtar's Kingsport Mill. The petition states that Condition S2-4.F of PSD construction permit 978656 requires Domtar to monitor NO_x emissions from the No. 2 Power Boiler in accordance

with 40 CFR part 60. The petition also states that Domtar's Bubbling Fluidized Bed Biomass Boiler 4 is required to monitor NO_x emissions in accordance with Part 60, and Domtar wishes to use the same monitoring method for both boilers.

That petition resulted in TDEC's issuance of operating permit No. 079291 to Domtar, state effective on January 12, 2022, to address NO_x SIP Call requirements and to adopt an alternative monitoring option (along with corresponding recordkeeping and reporting requirements) for this large non-EGU. This permit has been submitted by TDEC for approval into Tennessee's SIP. The permit conditions within this permit are consistent with the flexibility provided to states on March 8, 2019 (84 FR 8422) concerning the form of the NO_x emissions monitoring requirements that the states must include in their SIPs for certain emissions sources, such as Domtar, to comply with the NO_x SIP Call, required at 40 CFR 51.121(i)(4).

Specifically, permit Condition 1 permits compliance with Tennessee's rules implementing the NO_x SIP Call by demonstrating compliance with permit Conditions 2 through 5. Condition 2 provides that Domtar may demonstrate compliance with Tennessee Rule 1200-03-27.12 by monitoring NO_x emissions from the No. 2 Power Boiler using the monitoring methodologies for NO_x emission rate set forth in 40 CFR part 60, Appendix B, in combination with monitoring of heat input.

Condition 3 requires that Domtar submit a program for conducting continuous in-stack monitoring for NO_x mass emissions for approval by TDEC in accordance with the requirements of 40 CFR part 60, Appendix B. To be approvable by TDEC, the program shall address the following:

- (a) A description of the overall monitoring program;
- (b) Specifications demonstrating that the proposed monitoring instruments will meet the requirements of 40 CFR part 60, Appendix B;
- (c) Specifications for the proposed fuel flow meter and a discussion of how the fuel Btu content will be determined;
- (d) Proposed location(s) of the monitoring instruments on the boiler effluent gas stream;
- (e) Proposed procedures for conducting performance specification testing of the monitoring instruments in units of the applicable standard (*i.e.* NO_x mass emissions);
- (f) Proposed ongoing monitoring instrument quality assurance procedures (40 CFR part 60, Appendix F or approved alternative);

(g) Procedures for addressing missing data (40 CFR part 75, Appendix C, Appendix F or approved alternative); and

(h) Proposed format for the reporting of data.

Condition 4 requires Domtar to calculate NO_x mass emissions (in tons) for each control period and report the total to TDEC no later than December 31 following the end of the control period. Further, Condition 4 requires that NO_x emission rates shall be calculated from continuous emissions monitoring system (CEMS) measurements using Method 19 in Appendix A-7 to 40 CFR part 60.

Condition 5 requires Domtar to maintain records of all measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this part recorded in a permanent form suitable for inspection. These records shall be retained for at least five years following the end of the control period in which such measurements, maintenance, reports, and records were collected.

Section 110(l) of the CAA prohibits revision of a SIP that would interfere with attainment or maintenance of a NAAQS, reasonable further progress toward attainment of a NAAQS, or any other applicable requirement of the CAA. In its submittal, TDEC includes a demonstration in accordance with section 110(l) of the CAA that the proposed revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Tennessee's demonstration explains that the proposed changes are compliant with section 110(l) of the CAA because: (1) As a newly constructed affected unit, TDEC calculated pursuant to SIP-approved Rule TAPCR 1200-03-27.12(6) that the NO_x allowance allocation for the No. 2 Power Boiler would be 160 tons per control period based on PSD construction permit 978656, Condition S2-1.F., which would be 2.8% of Tennessee's NO_x budget of 5,666 tons; (2) revising the monitoring method will not increase NO_x emissions; (3) Tennessee's review of all non-EGUs subject to the NO_x SIP Call demonstrates that NO_x emissions for the collection of affected facilities are operating well below the state's NO_x budget; (4) the alternative monitoring requirements would be permanent, enforceable, and sufficient to determine whether the source is in compliance

with the NO_x SIP Call emissions requirements; and (5) the work practice requirements of 40 CFR part 63 Subpart DDDDD (periodic tune-ups) will provide additional assurance that the boiler is operating properly. EPA preliminarily agrees with Tennessee's rationale summarized above and the conclusion that the proposed revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

In order to address the requirements of the NO_x SIP Call for sources that are not covered under a CSAPR trading program for ozone season NO_x emissions, SIP revisions must provide for enforceable emissions limitations and require emissions monitoring consistent with the NO_x SIP Call's general enforceability and monitoring requirements.⁸ EPA is proposing to find that TDEC's submittal meets these requirements and all other requirements of the CAA, including 40 CFR 51.121(i)(1) and (4), except that Tennessee additionally will need to modify TAPCR 1200–03–27.12(11) to specify permissible non-Part 75 alternative monitoring and reporting methodologies within one year of the effective date of EPA's conditional approval. Thus, EPA is proposing to conditionally approve TDEC operating permit No. 079291, state effective on January 12, 2022, into Tennessee's SIP pursuant to CAA section 110(k)(4), subject to TDEC's specific commitment to modify the provisions of TAPCR 1200–03–27.12(11) to specify permissible non-Part 75 alternative monitoring and reporting methodologies within one year of EPA's conditional approval, as described in TDEC's submittal.

If Tennessee meets its commitment to submit a SIP revision modifying the provisions of TAPCR 1200–03–27.12(11) to specify permissible non-Part 75 alternative monitoring and reporting methodologies, as allowed under 40 CFR 51.121(i)(1) and (4), by 12 months from the date of final approval of this proposed action, TDEC operating permit No. 079291 will remain a part of the SIP. However, if the State fails to submit this revision on or before 12 months from the date of final approval of this action, the conditional approval will become a disapproval pursuant to CAA section 110(k)(4).

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by

reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Sections I through III of this preamble, EPA is proposing to incorporate by reference Tennessee Air Pollution Control Board's operating permit No. 079291 for the Domtar Kingsport Mill, state effective on January 12, 2022. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Proposed Action

EPA is proposing to conditionally approve Tennessee Air Pollution Control Board operating permit No. 079291 for the Domtar Kingsport Mill, state effective January 12, 2022, for incorporation into the Tennessee SIP. These changes were submitted by Tennessee on January 20, 2022.

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: February 28, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2023–04430 Filed 3–2–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–502; Report No. 3193; FRS ID 128103]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for Reconsideration.

SUMMARY: Petition for Reconsideration (Petition) has been filed in the Commission's proceeding by Matthew Butler, on behalf Shire & Shore Communications.

DATES: Oppositions to the Petition must be filed on or before March 20, 2023.

⁸ See 40 CFR 51.121(f)(2)(ii) and 51.121(i)(4).

Replies to an opposition must be filed on or before March 13, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3193, released February 16, 2023. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: <https://apps.fcc.gov/ecfs/>. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Snowflake, Arizona; Millerton, Oklahoma; Powers, Oregon; Mount Enterprise and Paint Rock, Texas; Hardwick, Vermont; and Meeteetse, Wyoming) in MB Docket No. 21-502. This document is being published pursuant to 47 CFR 1.429(e).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023-04334 Filed 3-2-23; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 230224-0054]

RIN 0648-BL92

Pacific Halibut Fisheries of the West Coast; 2023 Catch Sharing Plan and Recreational Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve changes to the Pacific Halibut Catch Sharing Plan for the International Pacific Halibut Commission's regulatory Area 2A off of Washington, Oregon, and California. In addition, NMFS proposes to implement management measures

governing the 2023 recreational fisheries that are not implemented through the International Pacific Halibut Commission. These measures include the recreational fishery seasons, subarea allocations, and management measures for Area 2A. These actions are intended to conserve Pacific halibut and provide angler opportunity where available.

DATES: Comments on the proposed rule must be received on or before March 20, 2023.

ADDRESSES: Submit your comments, identified by NOAA-NMFS-2022-0128, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0128 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Scott M. Rumsey, Acting Regional Administrator, c/o Katie Davis, West Coast Region, NMFS, 500 W Ocean Blvd., Long Beach, CA 90802.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post them for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Docket: This proposed rule is accessible via the internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region website at <https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/fisheries-management-west-coast> and at the Council's website at <http://www.pcouncil.org>. Other comments received may be accessed through [Regulations.gov](https://www.regulations.gov).

FOR FURTHER INFORMATION CONTACT: Katie Davis, phone: 323-372-2126 or email: katie.davis@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773-773k, gives the Secretary of Commerce

(Secretary) responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Halibut Act requires that the Secretary adopt regulations to carry out the purposes and objectives of the Halibut Convention and Halibut Act (16 U.S.C. 773c). Additionally, as provided in the Halibut Act, the Regional Fishery Management Councils having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing in U.S. waters that are in addition to, and not in conflict with, approved International Pacific Halibut Commission (IPHC) regulations (16 U.S.C. 773c(c)).

At its annual meeting January 22-27, 2023, the IPHC recommended an Area 2A catch limit. This catch limit is derived from the total constant exploitation yield (TCEY) for Pacific halibut, which includes commercial discards and bycatch estimates calculated using a formula developed by the IPHC. As provided in the Halibut Act at 16 U.S.C. 773b, the Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, regulations recommended by the IPHC in accordance with the Convention. Following acceptance by the Secretary of State, the annual management measures promulgated by the IPHC are published in the **Federal Register** to provide notice of their immediate regulatory effectiveness and to inform persons subject to the regulations of their restrictions and requirements (50 CFR 300.62). Subject to acceptance by the Secretary of State with concurrence by the Secretary of Commerce, this proposed rule contains 2023 subarea allocations based on the Area 2A catch limit as recommended by the IPHC.

Since 1988, the Pacific Fishery Management Council (Council) has developed a Catch Sharing Plan that allocates the IPHC regulatory Area 2A Pacific halibut catch limit between treaty tribal and non-tribal harvesters, and among non-tribal commercial and recreational (sport) fisheries. NMFS has implemented at 50 CFR 300.63 *et seq.* certain provisions of the Catch Sharing Plan, and implemented in annual rules annual management measures consistent with the Catch Sharing Plan. In 1995, the Council recommended and NMFS approved a long-term Area 2A

Catch Sharing Plan (60 FR 14651; March 20, 1995). NMFS has been approving adjustments to the Area 2A Catch Sharing Plan based on Council recommendations each year to address the changing needs of these fisheries. While the full Catch Sharing Plan is not published in the **Federal Register**, it is made available on the Council website.

This rulemaking proposes to approve the changes the Council recommended at its November 2022 meeting to the Catch Sharing Plan for Area 2A. The recommended changes to the Catch Sharing Plan were developed through the Council's public process. This rulemaking would implement recreational Pacific halibut fishery management measures for 2023, which include season opening and closing dates. These management measures are consistent with the recommendations made by the Council in the 2023 Catch Sharing Plan as modified based on its 2022 recommendations and are detailed below.

Additionally, this proposed rule would amend the regulations codified at 50 CFR 300.63 relating to the Area 2A recreational fishery to include certain longstanding provisions in the Catch Sharing Plan. NMFS has previously implemented these provisions through the annual management measures; they are not new to the fishery. NMFS is also proposing non-substantive "housekeeping" changes to the codified regulations, to ensure they are up to date and clear.

Proposed Changes to the Area 2A Catch Sharing Plan

Each year at the Council's September meeting, members of the public have an opportunity to propose changes to the Catch Sharing Plan for consideration by the Council. At the September 2022 Council meeting, Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW) proposed changes to the Catch Sharing Plan. The Council voted to solicit public input on the changes recommended by WDFW and ODFW. WDFW and ODFW subsequently held public workshops on the proposed changes.

At its November 2022 meeting, the Council considered the results of the state-sponsored workshops on the proposed changes to the Catch Sharing Plan, along with public input provided at the 2022 September and November Council meetings, and made its recommendations for modifications to the Catch Sharing Plan. NMFS proposes to approve all of the Council's recommended changes to the Catch

Sharing Plan, which are discussed below.

1. In section 6.9 and 6.10 of the Catch Sharing Plan, the Council recommended that NMFS revise the season structure for the Washington and Columbia River subareas to allow fishing up to 7 days per week in August and September. Additional fishing days would provide late season opportunity to attain the allocation.

2. In section 6.9.1(d) of the Catch Sharing Plan, the Council recommended that NMFS revise the season structure in the Washington Puget Sound subarea to allow fishing up to 5 days per week in April and May during times of higher fishing productivity; and up to 7 days per week in June, August, and September.

3. In section 6.11.1(c) of the Catch Sharing Plan, the Council recommended adding an allocation-based threshold for increasing the daily bag limit in the Central Oregon Coast subarea earlier in the season. Specifically, if the combined all-depth and nearshore allocation for this subarea is 200,000 pounds or greater, NMFS may increase the daily bag limit to two fish per day, based on consultation between IPHC, ODFW, NMFS, and the Council, with the intent of taking the entire subarea allocation by September 30.

4. In section 6.11.1(d) of the Catch Sharing Plan, the Council recommended revising the season structure of the Central Oregon Coast subarea's spring all-depth fishery to be open up to 7 days per week every week starting May 1, provided the spring all-depth allocation is greater than 100,000 pounds. If the allocation is less than 100,000 pounds, then the season will open the second Thursday in May through June 30, and be open every Thursday through Saturday. In either case, weeks can be skipped to avoid adverse tides, then open every other week.

5. Section 6.11.1(g) and 6.11.2(g) of the Catch Sharing Plan currently stipulate that during the recreational all-depth halibut fishery in the central and southern Oregon coast subareas, when the groundfish fishery is restricted by depth and halibut are onboard the vessel, only sablefish, Pacific cod, and flatfish species may be taken and retained, possessed, or landed, except that yellowtail rockfish, widow rockfish, canary rockfish, redstriped rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, and blue/deacon rockfish may be retained, possessed, or landed when caught with long-leader gear (as defined at 50 CFR 660.351). The Council recommended allowing long-leader gear fishing and retention of sablefish, Pacific cod, and

other species of flatfish during the recreational halibut all-depth fishery in both Oregon Coast subareas and updating the CSP to reflect this.

6. In the Catch Sharing Plan, the Council also made various administrative edits to improve clarity and to reflect the transition of management of Area 2A non-tribal commercial directed fishery and issuing permits to Area 2A non-tribal commercial fisheries from the IPHC to NMFS in January 2023.

Additional discussion of these changes is included in the materials submitted to the Council at its September and November meetings, available at <https://www.pcouncil.org/council-meetings/previous-meetings/>. A version of the Catch Sharing Plan including these changes can be found at https://www.pcouncil.org/managed_fishery/pacific-halibut/.

Proposed 2023 Recreational Fishery Management Measures

As described above, NMFS proposes to implement recreational fishery management measures, including season dates for the 2023 fishery, consistent with the Council's recommendations in the 2023 Catch Sharing Plan. The Catch Sharing Plan includes a framework for setting days open for fishing by subarea; under this framework, each state submits final recommended season dates annually to NMFS during the proposed rule comment period. However, this proposed rule contains preliminary dates based either on the Catch Sharing Plan framework and/or recommendations received to date. In the final rule, NMFS will implement dates based on public comment, including comments from Oregon and California after each state has concluded its public meetings gathering input on season dates.

The final rule must be effective by April 6, in time for the start of recreational Pacific halibut fisheries. The 2023 Catch Sharing Plan provides the framework for the annual management measures and subarea allocations based on the 2023 Area 2A catch limit for Pacific halibut as set by the IPHC. The season dates and annual management measures in this rulemaking were developed through the Council where the public had the opportunity to participate. In order to ensure that these management measures are effective in time for the start of the recreational fisheries on April 6, NMFS will solicit public comments on this proposed rule for 15 days.

NMFS proposes Area 2A recreational fishery management measures

consistent with the Council's Catch Sharing Plan. After the opportunity for public comment, NMFS will publish a final rule approving the Catch Sharing Plan and promulgating the annual management measures for the Area 2A recreational fishery, as required by implementing regulations at 50 CFR 300.63(b)(1). If there is any discrepancy between the Catch Sharing Plan and federal regulations, federal regulations take precedence.

2023 Annual Recreational Management Measures

The recreational fishing subareas, allocations, fishing dates, and daily bag limits are as follows. These provisions may be modified through inseason action consistent with 50 CFR 300.63(c). All recreational fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the allocation for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

Washington Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca

The allocation for the subarea in Puget Sound and the U.S. waters in the Strait of Juan de Fuca is 79,031 lb.

(a) The fishing seasons are structured as follows:

(i) For the area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line at approximately 124°23.70' W long., NMFS is proposing to open the fishery on April 6–10, 13–17, 20–24, and April 27–May 1; May 4–8, 11–15, 18–22, and 26–28; and June 1–30. If unharvested allocation remains after June 30, NMFS may take inseason action to reopen the fishery in August and September, up to 7 days per week, or until there is not sufficient allocation for another full day of fishing and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one halibut of any size per day per person.

Washington North Coast Subarea

The allocation for landings into ports in the Washington North Coast subarea is 129,668 lb.

(a) NMFS is proposing to open the fishery on May 4, 6, 11, 13, 18, 20, 26, and 28; and June 1, 3, 8, 10, 15, 17, 22, 24, and 29. If unharvested allocation remains after June 30, NMFS may take inseason action to reopen the fishery in August and September, up to 7 days per

week, or until there is not sufficient allocation for another full day of fishing and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one halibut of any size per day per person.

Washington South Coast Subarea

The allocation for landings into ports in the South Coast subarea is 64,376 lb.

(a) NMFS is proposing to open the Washington South Coast primary fishery on May 4, 7, 11, 14, 18, 21, and 25; June 15, 18, 22, and 25. If unharvested allocation remains after June 30, NMFS may take inseason action to reopen the fishery in August and September, up to 7 days per week, until September 30 or until there is not sufficient allocation remaining for another full day of fishing and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825. The fishing season in the Washington South Coast northern nearshore area commences the Saturday subsequent to the closure of the primary fishery in May or June if allocation remains in the Washington South Coast subarea allocation, and continues 7 days per week until 68,555 lb (31.10 mt) is projected to be taken by the two fisheries combined and the fishery is therefore closed or on September 30, whichever is earlier. If the fishery is closed prior to September 30, or there is insufficient allocation remaining to reopen the Washington South coast, northern nearshore area for another fishing day, then any remaining allocation may be transferred in-season to another Washington coastal subarea by NMFS, in accordance with Federal regulations at 50 CFR 300.63(c).

(b) The daily bag limit is one halibut of any size per day per person.

Columbia River Subarea

The allocation for landings into ports in the Columbia River subarea is 18,875 lb.

(a) This subarea is divided into an all-depth fishery and a nearshore fishery. NMFS is proposing to open the all-depth fishery on May 4, 7, 11, 14, 18, 21, and 25; and June 1, 4, 8, 11, 15, 18, 22, 25, and 29. If unharvested allocation remains after June 30, NMFS may take inseason action to reopen the fishery in August and September, or until there is not sufficient allocation for another full day of fishing and the area is therefore closed. NMFS is proposing that the

nearshore fishery be open every Monday, Tuesday, and Wednesday beginning Monday May 8 until the nearshore allocation is taken, or on September 30, whichever is earlier. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Subsequent to this closure, if there is insufficient allocation remaining in the Columbia River subarea for another fishing day, then any remaining allocation may be transferred inseason to other Washington or Oregon subareas by NMFS, in accordance with Federal regulations at 50 CFR 300.63(c). Any remaining allocation would be transferred to each state in proportion to the allocation formula in the Catch Sharing Plan.

(b) The daily bag limit is one halibut of any size per day per person.

Oregon Central Coast Subarea

The allocation for landings into ports in the Oregon Central Coast subarea is 275,214 lb.

(a) NMFS is proposing to open the nearshore fishery on May 1. The fishery would be open 7 days per week until the allocation for the nearshore fishery is estimated to have been taken, or on October 31, whichever is earlier. The allocation to the nearshore fishery is 33,026 lb.

(ii) NMFS is proposing to open the spring all-depth fishery May 1 up to 7 days per week until July 31 or until there is not sufficient allocation remaining for another full day of fishing and the area is therefore closed. The allocation to the spring all-depth fishery is 173,385 lb.

(iii) In July, NMFS will announce, in accordance with notice procedures in Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526–6667 or (800) 662–9825, whether the fishery will re-open for the summer season in August, based on the overall Area 2A allocation. NMFS is proposing to open the fishery every other week on Thursday, Friday, and Saturday, beginning Friday, August 4; or until the combined spring season and summer season allocations in the Oregon Central Coast are estimated to have been taken and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Additional fishing days may be opened if enough allocation is available to allow for additional fishing days after the last day of the first scheduled open period (August 5). After

August 5, if 60,000 lb (27.2 mt) or greater remains from the combined nearshore, spring, and summer allocations, NMFS may take inseason action to open the fishery every Thursday, Friday, and Saturday, beginning August 17, and/or the fishery may be open up to 7 days a week beginning September 1, ending when there is insufficient allocation remaining or October 31, whichever is earlier. After September 6, if 30,000 lb (13.6 mt) or greater remains from the combined nearshore, spring, and summer allocations, and the fishery is not already open every Thursday, Friday and Saturday, NMFS may take inseason action to re-open the fishery every Thursday, Friday, and Saturday, beginning September 7, through October 31, until there is not sufficient allocation for another full day of fishing and the area is closed. NMFS will announce, in accordance with notice procedures at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526-6667 or (800) 662-9825, whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open, and what the bag limit is.

(b) The Central Oregon Coast subarea allocation (all-depth and nearshore combined) is 275,214 lb. NMFS is proposing to set the daily bag limit at two fish per day. NMFS will announce bag limits in accordance with notice procedures at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526-6667 or (800) 662-9825.

Southern Oregon Subarea

The allocation for landings into ports in the Southern Oregon subarea is 8,000 lb.

(a) NMFS is proposing to open the fishery May 1, 7 days per week until October 31 or the allocation is taken, whichever is earlier.

(b) The daily bag limit is one halibut per person with no size limit, unless otherwise specified through inseason action. NMFS will announce any bag limit changes in accordance with notice procedures at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526-6667 or (800) 662-9825.

California Coast Subarea

The allocation for landings into ports in the California Coast subarea is 39,520 lb.

(a) NMFS is proposing to open the fishery May 1 through November 15, or until the subarea allocation is estimated to have been taken and the season is therefore closed, whichever is earlier. NMFS will announce any closure in accordance with notice procedures at

§ 300.63(c)(3) and on the NMFS hotline (206) 526-6667 or (800) 662-9825.

(b) The daily bag limit is one halibut of any size per day per person.

Changes To Codified Regulations

NMFS is proposing to make housekeeping changes to regulations at 50 CFR 300.63. These changes include non-substantive edits to increase clarity of the regulations, updating outdated regulations to more accurately reflect the current operations of the fishery, reordering paragraphs to improve organization, and codifying certain management measures that have been unchanged over many years in the Council's Catch Sharing Plan. Specifically, these management measures include defining port of landing for catch of halibut. In addition, the rule proposes codifying descriptions of subareas within Area 2A, including geographic coordinates for those areas; none of these subareas are new. This rule also proposes to clarify NMFS's authority to take automatic action to close a recreational area or subarea once its allocation has been reached. This type of non-discretionary closure has been a regular component of the management of this fishery and NMFS is not proposing anything that is not consistent with this standard past practice. When and how these closures will occur will also continue to be described in the annual management measure rules such as this one. In addition, NMFS proposes to remove the January 1 deadline for publication of the annual proposed rule to approve changes to the Catch Sharing Plan and implement annual management measures from 300.63(b)(1). This change would allow for the annual proposed rule to be published after the annual meeting of the Commission, which decides the total constant exploitation yield for regulatory areas across the species' range in U.S. and Canadian waters, thereby allowing for public comment on the resulting subarea allocations.

The proposed changes in codified regulations are not expected to result in a change in the management of the fishery. The proposed amendments to the codified regulations would make those regulations consistent with longstanding fishery management measures and consistent with the Catch Sharing Plan. The management measures proposed to be codified have been implemented annually for many years and were recommended by the Council, which developed them with extensive public processes.

Classification

Under section 773 of the Halibut Act, the Pacific Fishery Management Council may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing by U.S. fishermen in Area 2A that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(c)). The proposed rule is consistent with the Council and NMFS's authority under the Halibut Act.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For Regulatory Flexibility Act (RFA) purposes only, NMFS has determined that halibut targeting charterboats are all small businesses. Charter fishing operations are classified under NAICS code 487210, with a corresponding Small Business Association size standard of \$14 million in annual receipts (13 CFR 121.201). No commercial fishing entities are directly affected by this rulemaking.

This proposed rule would revise the recreational Pacific halibut fishery management measures, including season dates and catch limits. This proposed rule would open the recreational fishery with 2023 season dates and subarea allocations impacting charterboats, anglers, and businesses relying on recreational fishing across all of Area 2A. Therefore, this rulemaking may affect some charterboat operations in Area 2A. These changes were uncontroversial throughout the Council's public process, and overall participation in the recreational fisheries is not expected to change. There are no large entities involved in the halibut fisheries off the West Coast. Since this action will only impact recreational charter vessels, which are small entities, none of these changes will have a disproportionately negative effect on small entities versus large entities.

In 2022, the IPHC issued 106 licenses to the charterboat fleet for Area 2A. Recent information on charterboat activity is not available, but prior analysis indicated that 60 percent of the IPHC charterboat license holders (around 64 vessels) participate in the Pacific halibut recreational fishery and may be affected by these regulations as those vessels operate in Area 2A. Private

vessels used for recreational fishing are not businesses and are therefore not included in the RFA analysis.

The major effect of halibut management on small entities will be from the catch limit decisions made by the IPHC, a decision independent from this proposed action. This proposed action would implement management measures including season dates and allocations for the recreational fishery, and approves minor changes to the Catch Sharing Plan to provide increased recreational opportunities under the allocations that result from the Area 2A catch limit. NMFS implements the provisions of the Catch Sharing Plan through the annual management measures in this proposed rule; the changes to the Catch Sharing Plan that NMFS is proposing to implement are considered minor, with minimal economic effects. Profitability is largely based on the catch limit decision made by the IPHC, with subarea allocations determined based on the Catch Sharing Plan framework and the allocation formulae recommended by the Council. Therefore, the proposed rule is unlikely to affect the profitability of the recreational fishery.

For the reasons described above, the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: February 28, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300, subpart E, as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61:

■ a. Revise definition of “charter vessel” to read as follows:

§ 300.61 Definitions.

* * * * *

Charter vessel, for purposes of §§ 300.65, 300.66, and 300.67, means a vessel used while providing or receiving sport fishing guide services for halibut, and, for purposes of § 300.63, means a vessel used for hire in recreational (sport) fishing for Pacific halibut, but not including a vessel without a hired operator.

* * * * *

■ 3. Revise § 300.63 to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) *General Provisions.* (1) Under 16 U.S.C. 773c, a fishery management council may develop regulations governing the domestic halibut fishery that do not conflict with the regulations set by the International Pacific Halibut Commission. NMFS may approve and implement such regulations. The Pacific Fishery Management Council has developed a catch sharing plan that provides a framework for allocation of Pacific halibut for Area 2A and sets management measures for fisheries in Area 2A. NMFS implements annual management measures consistent with the catch sharing plan through annual rules published in the **Federal Register**. Long term provisions included in and necessary to implement the catch sharing plan are included in the sections that follow.

(2) A portion of the Area 2A non-tribal commercial allocation is allocated as incidental catch in the salmon troll fishery in Area 2A pursuant to § 300.62. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings and will be promulgated in the annual salmon management measures described at 660 Subpart H. This fishery will occur between dates and times listed in the annual management measures as described at § 300.62, until there is not sufficient allocation and the season is closed by NMFS.

(3) A portion of the Area 2A Washington recreational (sport) allocation is allocated pursuant to § 300.62 as incidental catch in the sablefish primary fishery north of 46°53.30' N lat. (Pt. Chehalis, Washington), which is regulated under § 660.231. This fishing opportunity is only available in years in which the Washington recreational allocation is 214,110 lb (97.1 mt) or greater, provided

that a minimum of 10,000 lb (4.5 mt) is available to the sablefish fishery. Each year that this fishing opportunity is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register**. This fishery will occur between dates and times listed in annual management measures as described under § 300.62, until there is not sufficient allocation and the season is closed by NMFS.

(i) In years when the incidental catch of halibut in the sablefish primary fishery north of 46°53.30' N lat. is allowed, it is allowed only for vessels using longline gear that are registered to groundfish limited entry permits with sablefish endorsements and that possess a permit issued pursuant to paragraph (d) of this section.

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53.30' N lat. that were taken and retained as incidental catch authorized by this section in the sablefish primary fishery.

(4) The treaty Indian fishery is governed by § 300.64 and tribal regulations. The annual allocation for the fishery will be announced with the annual management measures as described under § 300.62.

(b) *Non-Tribal Fishery Election in Area 2A.* (1) A non-tribal vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(i) The recreational (sport) fishery as established in the annual domestic management measures issued pursuant to § 300.62 and paragraph c of this subsection;

(ii) The non-tribal commercial directed fishery for halibut established in the annual domestic management measures issued pursuant to § 300.62 and § 300.63(e) and/or the incidental retention of halibut during the sablefish primary fishery described at § 660.231; or

(iii) Incidental catch of halibut during the salmon troll fishery as authorized in the annual domestic management measures issued pursuant to § 300.62 and 660 Subpart H.

(2) No person shall fish for halibut in the recreational (sport) fishery in Area 2A from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A, or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken

in the sablefish primary fishery in Area 2A from a vessel that has been used during the same calendar year for incidental catch of halibut during the salmon troll fishery.

(4) No person shall fish for halibut in the non-tribal directed commercial halibut fishery and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that, during the same calendar year, has been used in the recreational (sport) halibut fishery in Area 2A or that is permitted for the recreational (sport) charter halibut fishery in Area 2A pursuant to 300.63(d).

(5) No person shall retain halibut incidentally caught in the salmon troll fishery in Area 2A taken on a vessel that, during the same calendar year, has been used in the recreational (sport) halibut fishery in Area 2A, or that is permitted for the recreational (sport) charter halibut fishery in Area 2A pursuant to paragraph (d) of this section.

(6) No person shall retain halibut incidentally caught in the salmon troll fishery in Area 2A taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery and/or retained halibut incidentally taken in the sablefish primary fishery for Area 2A or that is permitted to participate in these commercial fisheries pursuant to paragraph (d) of this section.

(c) *Recreational (sport) halibut fisheries in Area 2A.* (1) *Annual Recreational Fishery Rule.* Each year, NMFS will publish a rule to govern the annual recreational (sport) fisheries for the following year and will seek public comment. The rule will include annual management measures, such as annual fishing dates and allocations for each subarea within Area 2A. The subareas are defined in paragraph (c)(5) of this section. Annual management measures may be adjusted inseason by NMFS under paragraph (c)(6) of this section.

(2) *Port of Landing.* Any halibut landed into a port counts toward the allocation for the subarea in which that port is located, and the regulations governing the subarea of landing apply, regardless of the specific area of catch.

(3) *Automatic closure of recreational fisheries.* NMFS shall determine once an area or subarea has attained or is projected to attain its area or subarea allocation, and will take automatic action to close the fishery, via announcement in the **Federal Register** and concurrent notification on the NMFS hotline at (206) 526-6667 or (800) 662-9825 and the NOAA Fisheries website. Closures will be determined without prior notice or opportunity to

comment. These actions are nondiscretionary and the impacts must have been previously taken into account. Once the effective date of the closure is announced in the **Federal Register**, no person shall land, possess, or retain halibut in that area or subarea.

(4) *Groundfish Fisheries.* Vessels that participate in federal recreational groundfish fisheries, including those that fish for and retain halibut, are also governed by regulations at 50 CFR 660.360.

(5) *Recreational Fishery Subareas.* (i) *Washington.* The Washington recreational fishery is divided into the following subareas:

(A) *Washington Puget Sound and the U.S. Convention waters in the Strait of Juan de Fuca.* The Washington Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca subarea is located east of a line extending from 48°17.30' N lat., 124°23.70' W long., north to 48°24.10' N lat., 124°23.70' W long.

(B) *Washington North Coast Subarea.* The Washington North Coast subarea is located west of a line at approximately 124°23.70' W long. and north of the Queets River (47°31.70' N lat.).

(1) Recreational fishing for halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing with recreational gear in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is defined in groundfish regulations at 50 CFR 660.70(b).

(2) [RESERVED]

(C) *Washington South Coast Subarea.* The Washington South Coast subarea is located between the Queets River, WA (47°31.70' N lat.), and Leadbetter Point, WA (46°38.17' N lat.).

(1) This subarea is divided between the all-depth fishery (the Washington South Coast primary fishery) and the incidental nearshore fishery in the area from 47°31.70' N to 46°58.00' N lat. and east of a boundary line approximating the 30-fm (55-m) depth contour. The Washington South coast northern nearshore area is defined by straight lines connecting the following points in the order stated:

TABLE 1 TO PARAGRAPH (c)(5)(i)(C)(1)

Point	N lat.	W long.
1	47°31.70'	124°37.03'
2	47°25.67'	124°34.79'
3	47°12.82'	124°29.12'
4	46°58.00'	124°24.24'

(2) Recreational fishing for halibut is allowed within the South Coast Recreational YRCA and Westport Offshore Recreational YRCA. The South Coast Recreational YRCA is defined at 50 CFR 660.70(e). The Westport Offshore Recreational YRCA is defined at 50 CFR 660.70(f).

(D) *Columbia River Subarea.* The Columbia River subarea is located between Leadbetter Point, WA (46°38.17' N lat.), and Cape Falcon, OR (45°46.00' N lat.).

(1) The nearshore fishery extends from Leadbetter Point (46°38.17' N lat., 124°15.88' W long.) to the Columbia River (46°16.00' N lat., 124°15.88' W long.) by connecting the following coordinates in Washington: 46°38.17' N lat., 124°15.88' W long., 46°16.00' N lat., 124°15.88' W long., and connecting to the boundary line approximating the 40-fm (73-m) depth contour in Oregon as defined at 50 CFR 660.71(o). The remaining area in the Columbia River subarea is the all-depth fishery.

(2) Pacific Coast groundfish may not be taken and retained, possessed or landed when halibut are on board the vessel, except sablefish, Pacific cod, flatfish species, yellowtail rockfish, widow rockfish, canary rockfish, redstripe rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, blue/deacon rockfish, and lingcod caught north of the Washington-Oregon border (46°16.00' N lat.) may be retained when allowed by Pacific Coast groundfish regulations at 50 CFR 660.360, during days open to the all-depth Pacific halibut fishery.

(3) Long-leader gear (as defined at 50 CFR 660.351) may be used to retain groundfish during the all-depth Pacific halibut fishery south of the Washington-Oregon border, when allowed by Pacific Coast groundfish regulations at 50 CFR 660.360.

(ii) *Oregon.* The Oregon recreational fishery is divided into the following subareas:

(A) *Oregon Central Coast Subarea.* The Oregon Central Coast Subarea is located between Cape Falcon (45°46.00' N lat.) and Humbug Mountain (42°40.50' N lat.).

(1) The nearshore fishery (the “inside 40-fm” fishery) occurs shoreward of the boundary line approximating the 40-fm (73-m) depth contour between 45°46.00'

N lat. and 42°40.50' N lat. is defined at 50 CFR 660.71(o).

(2) During days open to all-depth halibut fishing when the groundfish fishery is restricted by depth, when halibut are on board the vessel, sablefish, Pacific cod, other species of flatfish (sole, flounder, sanddab), may be taken and retained, possessed or landed with long-leader gear (as defined at § 660.351), when allowed by groundfish regulations at 50 CFR 660.360. During days open to all-depth halibut fishing when the groundfish fishery is open to all depths, any groundfish species permitted under the groundfish regulations may be retained, possessed, or landed if halibut are onboard the vessel. During days only open to nearshore halibut fishing, flatfish species may not be taken and retained seaward of the 40-fm (73-m) depth contour if halibut are on board the vessel.

(3) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, as defined at 50 CFR 660.71(o), halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(4) Recreational fishing for halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut onboard. The Stonewall Bank YRCA is defined at 50 CFR 660.70(g)-(i).

(B) *Southern Oregon Subarea.* The Southern Oregon Subarea is located south of Humberg Mountain, Oregon (42°40.50' N lat.) to the Oregon/California Border (42°00.00' N lat.).

(1) During the recreational halibut all-depth fishery, when the groundfish fishery is restricted by depth and halibut are onboard the vessel, sablefish, Pacific cod, and other species of flatfish (sole, flounder, sanddab) may be retained, possessed, or landed, and yellowtail rockfish, widow rockfish, canary rockfish, redstriped rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, and blue/deacon rockfish may be taken and retained, possessed or landed, when caught with long-leader gear (as defined at § 660.351).

(2) [RESERVED]

(iii) *California Coast Subarea.* The California Coast Subarea is located south of the Oregon/California Border (42°00.00' N lat.) and along the California coast.

(6) *Inseason Management for Recreational (Sport) Halibut Fisheries in Area 2A.* (i) The Regional Administrator, NMFS West Coast Region, after consultation with the Pacific Fishery Management Council, the Commission, and the affected state(s), may modify regulations during the season after making the following determinations:

(A) The action is necessary to allow allocation objectives to be met.

(B) The action will not result in exceeding the allocation for the area.

(C) If any of the recreational (sport) fishery subareas north of Cape Falcon, Oregon are not projected to utilize their respective allocations, NMFS may take inseason action to transfer any projected unused allocation to another Washington recreational subarea.

(D) If any of the recreational (sport) fishery subareas south of Leadbetter Point, Washington, are not projected to utilize their respective allocations by their season ending dates, NMFS may take inseason action to transfer any projected unused allocation to another Oregon sport subarea.

(E) If the total estimated yelloweye rockfish bycatch mortality from recreational halibut trips in all Oregon subareas is projected to exceed 22 percent of the annual Oregon recreational yelloweye rockfish harvest guideline, NMFS may take inseason action to reduce yelloweye rockfish bycatch mortality in the halibut fishery while allowing allocation objectives to be met to the extent possible.

(ii) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of recreational (sport) fishing periods;

(B) Modification of recreational (sport) fishing bag limits;

(C) Modification of recreational (sport) fishing size limits;

(D) Modification of recreational (sport) fishing days per calendar week;

(E) Modification of subarea allocation; and

(F) Modification of the Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) restrictions off Oregon using YRCA expansions as defined in groundfish regulations at 50 CFR 660.70(g) or (h).

(iii) Notice procedures. Actions taken under this section will be published in the **Federal Register**. Notice of inseason management actions will be provided by a telephone hotline administered by the

West Coast Region, NMFS, at 206–526–6667 or 800–662–9825.

(iv) Effective dates.

(A) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the **Federal Register**. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the **Federal Register**.

(C) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded.

However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(d) *Pacific Halibut Permits for IPHC Regulatory Area 2A.* (1) *General.* (i) This section applies to persons and vessels that fish for Pacific halibut, or land and retain Pacific halibut, in IPHC Regulatory Area 2A. No person shall fish for Pacific halibut from a vessel, nor land or retain Pacific halibut on board a vessel, used either for commercial fishing or as a recreational charter vessel in IPHC regulatory area 2A, unless the NMFS West Coast Region has issued a permit valid for fishing in IPHC regulatory area 2A for that vessel.

(ii) A permit issued for a vessel operating in the Pacific halibut fishery in IPHC Regulatory Area 2A shall be valid for one of the following, per paragraph (b) of this section:

(A) The incidental catch of Pacific halibut during the salmon troll fishery specified in paragraph (a)(2) of this section;

(B) The incidental catch of Pacific halibut during the sablefish fishery specified in paragraph (a)(3) of this section;

(C) The non-tribal directed commercial fishery during the fishing periods specified in paragraph (e)(1) of this section;

(D) Both the incidental catch of Pacific halibut during the sablefish fishery specified in paragraph (a)(3) of this section and the non-tribal directed commercial fishery during the fishing periods specified in paragraph (e)(1) of this section; or

(E) The recreational charter fishery.

(iii) A permit issued under paragraph (d) of this section is valid only for the vessel for which it is registered. A

change in ownership, documentation, or name of the registered vessel, or transfer of the ownership of the registered vessel will render the permit invalid.

(iv) A vessel owner must contact NMFS if the vessel for which the permit is issued is sold, ownership of the vessel is transferred, the vessel is renamed, or any other reason for which the documentation of the vessel is changed as the change would invalidate the current permit. A new permit application is required if there is a change in any documentation of the vessel. To submit a new permit application, follow the procedures outlined under paragraph (d)(2) of this section. If the documentation of the vessel is changed after the deadline to apply for a permit has passed as described at paragraph (d)(2)(ii) of this section, the vessel owner may contact NMFS and provide information on the reason for the documentation change and all permit application information described at paragraph (d)(2) of this section. NMFS may issue a permit, or decline to issue a permit and the applicant may appeal per paragraph (d)(3) of this section.

(v) A permit issued under paragraph (d) of this section must be carried on board that vessel at all times and the vessel operator shall allow its inspection by any authorized officer. The format of this permit may be electronic or paper.

(vi) No individual may alter, erase, mutilate, or forge any permit or document issued under this section. Any such permit or document that is intentionally altered, erased, mutilated, or forged is invalid.

(vii) A permit issued under paragraph (d) of this section is valid only during the calendar year (January 1–December 31) for which it was issued.

(viii) NMFS may suspend, revoke, or modify any permit issued under this section under policies and procedures in title 15 CFR part 904, or other applicable regulations in this chapter.

(2) *Applications.* (i) *Application form.* To obtain a permit, an individual must submit a complete permit application to the NMFS West Coast Region Sustainable Fisheries Division (NMFS) through the NOAA Fisheries Pacific halibut permits web page at <https://www.fisheries.noaa.gov/permit/pacific-halibut-permits>. A complete application consists of:

(A) An application form that contains valid responses for all data fields, including information and signatures.

(B) A current copy of the U.S. Coast Guard Documentation Form or state registration form or current marine survey.

(C) Payment of required fees as discussed in paragraph (d)(2)(iv) of this section.

(D) Additional documentation NMFS may require as it deems necessary to make a determination on the application.

(ii) *Deadlines.* (A) Applications for permits for the directed commercial fishery in Area 2A must be received by NMFS no later than 2359 PST on February 15, or by 2359 PST the next business day in February if February 15 is a Saturday, Sunday, or Federal holiday.

(B) Applications for permits that allow for incidental catch of Pacific halibut during the salmon troll fishery or the sablefish primary fishery in Area 2A must be received by NMFS no later than 2359 PST March 1, or by 2359 PST the next business day in March if March 1 is a Saturday, Sunday, or Federal holiday.

(C) Applications for permits for recreational charter vessels, which allow for catch of Pacific halibut during the recreational fishery, must be received a minimum of 15 days before intending to participate in the fishery, to allow for processing the permit application.

(iii) *Application review and approval.* NMFS shall issue a vessel permit upon receipt of a completed permit application submitted on the NOAA Fisheries website no later than the day before the start date of the fishery the applicant selected. If the application is not approved, NMFS will issue an initial administrative decision (IAD) that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (d)(3) of this section. NMFS will decline to act on a permit application that is incomplete or if the vessel or vessel owner is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D.

(iv) *Permit fees.* The Regional Administrator may charge fees to cover administrative expenses related to processing and issuance of permits, processing change in ownership or change in vessel registration, divestiture, and appeals of permits. The amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs. Full payment of the fee is required at the time a permit application is submitted.

(3) *Appeals.* In cases where the applicant disagrees with NMFS' decision on a permit application, the applicant may appeal that decision to

the Regional Administrator. This paragraph (d)(3) describes the procedures for appealing the IAD on permit actions made in this title under this subpart.

(i) *Who may appeal?* Only an individual who received an IAD that disapproved any part of their application may file a written appeal. For purposes of this section, such individual will be referred to as the "permit applicant."

(ii) *Appeal process.*

(A) The appeal must be in writing, must allege credible facts or circumstances to show why the criteria in this subpart have been met, and must include any relevant information or documentation to support the appeal. The permit applicant may request an informal hearing on the appeal.

(B) Appeals must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE, Seattle, WA 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(C) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, and may request additional information to allow action on the appeal.

(D) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit provisions set forth in this section at the time of the application, based upon information relative to the application on file at NMFS and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(E) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined

appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(F) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's decision will constitute the final administrative action by NMFS on the matter.

(iii) *Timing of appeals.* (A) For permits issued under paragraph (d) of this section, if an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 60 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 60 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(B) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

(iv) *Address of record.* For purposes of the appeals process, NMFS will establish as the address of record, the address used by the permit applicant in initial correspondence to NMFS. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(v) *Status of permits pending appeal.*

(A) For all permit actions, the permit registration remains as it was prior to the request until the final decision has been made.

(B) [Reserved]

(e) *Non-tribal directed commercial fishery management.* Each year a portion of Area 2A's overall fishery limit is allocated consistent with the Pacific Fishery Management Council's Catch Sharing Plan to the non-tribal directed commercial fishery and published pursuant to § 300.62. The non-tribal directed commercial fishery takes place in the area south of Point Chehalis, WA (46°53.30' N lat.).

(1) *Management measures.* Annually, NMFS will determine and publish in

the **Federal Register** annual management measures for the upcoming fishing year for the non-tribal directed commercial fishery. This will include dates and lengths for the fishing periods for the Area 2A non-tribal directed commercial fishery, as well as the associated fishing period limits.

(i) *Fishing periods.* NMFS will determine the fishing periods, *e.g.*, dates and/or hours that permittees may legally harvest halibut in Area 2A, on an annual basis. This determination will take into account any recommendations provided by the Pacific Fishery Management Council and comments received by the public during the public comment period on the proposed annual management measures rule. The intent of these fishing periods is to ensure the Area 2A Pacific halibut directed commercial allocation is achieved but not exceeded.

(ii) *Fishing period limits.* NMFS will establish fishing period limits, *e.g.*, the maximum amount of Pacific halibut that a vessel may retain and land during a specific fishing period, and assign those limits according to vessel class for each fishing period. Fishing period limits may be different across vessel classes (except as described in paragraph (e)(1)(iii) of this section). NMFS will determine fishing period limits following the considerations listed in paragraph (e)(1)(ii)(A) of this section. The intent of these fishing period limits is to ensure that the Area 2A commercial directed fishery does not exceed the directed commercial allocation, while attempting to provide fair and equitable access across fishery participants to an attainable amount of harvest. The limits will be published in annual management measures rules in the **Federal Register** along with a description of the considerations used to determine them.

(A) *Considerations.* When determining fishing period(s) and associated fishing period limits for the directed commercial fishery, NMFS will consider the following factors:

- (1) The directed commercial fishery allocation;
- (2) Vessel class;
- (3) Number of fishery permit applicants and projected number of participants per vessel class;
- (4) The average catch of vessels compared to past fishing period limits;
- (5) Other relevant factors.

(B) *Vessel classes.* Vessel classes are based on overall length (defined at 46 CFR 69.9) shown in the following table:

TABLE 1 TO PARAGRAPH (e)(1)(ii)(B)

Overall length (in feet)	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56+	H

(iii) *Inseason action to add fishing periods and associated fishing period limits.* Fishing periods in addition to those originally implemented at the start of the fishing year may be warranted in order to provide the fishery with opportunity to achieve the Area 2A directed commercial fishery allocation, if performance of the fishery during the initial fishing period(s) is different than expected and the directed commercial allocation is not attained through the initial period(s). If NMFS makes the determination that sufficient allocation remains to warrant additional fishing period(s) without exceeding the allocation for the Area 2A directed commercial fishery, the additional fishing period(s) and fishing period limits may be added during the fishing year. If NMFS determines fishing period(s) in addition to those included in an annual management measures rule is warranted, NMFS will set the fishing period limits equal across all vessel classes. The fishing period(s) and associated fishing period limit(s) will be announced in the **Federal Register** and concurrent publication on the hotline. If the amount of directed commercial allocation remaining is determined to be insufficient for an additional fishing period, the allocation is considered to be taken and the fishery will be closed, as described at paragraph (e)(2) of this section.

(2) *Automatic closure of the non-tribal directed commercial fishery.* The NMFS Regional Administrator or designee will initiate automatic management actions without prior public notice or opportunity to comment. These actions are nondiscretionary and the impacts must have been previously been taken into account.

(i) If NMFS determines that the non-tribal directed commercial fishery has attained its annual allocation or is projected to attain its allocation if additional fishing was to be allowed, the Regional Administrator will take automatic action to close the fishery, via announcement in the **Federal Register** and concurrent notification on the telephone hotline at 206–526–6667 or 800–662–9825.

(ii) [Reserved]

(f) *Area 2A Non-Treaty Commercial Fishery Closed Areas.* (1) Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside a closed area, known as the nontrawl Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10' N lat. Between the U.S./Canada border and 46°16' N lat., the eastern boundary of the nontrawl RCA, is the shoreline. Between 46°16' N lat. and 40°10' N lat., the nontrawl RCA is defined along an eastern boundary by a line approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at 50 CFR 660.71(e). Between the U.S./Canada border and 40°10' N lat., the nontrawl RCA is defined along a western boundary approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at 50 CFR 660.73(a).

(2) Vessels that incidentally catch halibut while fishing in the sablefish primary fishery are required to follow area closures and gear restrictions defined in the groundfish regulations. It is unlawful to retain, possess or land halibut with limited entry fixed gear within the North Coast Commercial Yelloweye Rockfish Conservation Area as defined at 50 CFR 660.230. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.70.

(3) Vessels that incidentally catch halibut while fishing in the salmon troll fishery are required to follow area and gear restrictions defined in the groundfish regulations at 50 CFR 660.330. It is unlawful for a commercial salmon troll vessel to retain, possess, or land halibut within the Salmon Troll YRCA with salmon troll gear. Coordinates for the Salmon Troll YRCA are specified in groundfish regulations at 50 CFR 660.70, and in salmon regulations at 50 CFR 660.405.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No: 230216-0042]

RIN 0648-BL99

Fisheries of the Northeastern United States; Framework Adjustment 36 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement Framework Adjustment 36 to the Atlantic Sea Scallop Fishery Management Plan that establishes scallop specifications and other management measures for fishing years 2023 and 2024. Framework 36 would implement measures to protect small scallops to support rotational access area trips to the fleet in future years. This action would also revise regulatory text that is unnecessary, outdated, or unclear. This action is necessary to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource.

DATES: Comments must be received by March 20, 2023.

ADDRESSES: The New England Fishery Management Council has prepared a draft environmental assessment (EA) for this action that describes the proposed measures in Framework Adjustment 36 and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of Framework 36 to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and an Initial Regulatory Flexibility Analysis (IRFA). Copies of the draft of Framework 36, the draft EA, the IRFA, and information on the economic impacts of this proposed rulemaking are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/scallop-framework-36>.

You may submit comments on this document, identified by NOAA-NMFS-

2022-0142, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0142 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Policy Analyst, 978-282-8456.

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The New England Fishery Management Council sets scallop fishery catch limits and other management measures through specification or framework adjustments that occur annually or biennially. The Council adopted Framework 36 to the Atlantic Sea Scallop FMP on December 7, 2022. The Council submitted a draft of the framework, including a draft EA, for NMFS review and approval on December 20, 2022. This action proposes to approve and implement Framework 36, which establishes scallop specifications and other measures for fishing years 2023 and 2024, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2023, and default specifications for fishing year 2024, as recommended by the Council.

NMFS proposes to implement these Framework 36 measures as close as possible to the April 1 start of fishing

year 2023. If NMFS implements these measures after the start of the fishing year, the default allocation measures currently established for fishing year 2023 will go into place on April 1, 2023. The Council reviewed the proposed regulations in this rule as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACL), Annual Catch Targets (ACT), Annual Projected Landings (APL) and Set-Asides for the 2023 Fishing Year, and Default Specifications for Fishing Year 2024

The Council set the proposed OFL based on a fishing mortality rate (F) of 0.61, equivalent to the F threshold updated through the Northeast Fisheries Science Center's most recent scallop benchmark stock assessment that was completed in September 2020. The proposed ABC and the equivalent total ACL for each fishing year are based on

an F of 0.45, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 43.7 million lb (19,828 mt) for 2023 and 44.5 million lb (20,206 mt) for the 2024 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2024 when the Council develops the next framework adjustment.

Table 1 outlines the proposed scallop fishery catch limits. After deducting the incidental target total allowable catch (TAC), the research set-aside (RSA), and the observer set-aside, the remaining ACL available to the fishery is allocated according to the following fleet proportions established in Amendment 11 to the FMP (72 FR 20090, April 14, 2008): 94.5 percent is allocated to the limited access scallop fleet (*i.e.*, the larger "trip boat" fleet); 5 percent is allocated to the limited access general category (LAGC) individual fishing quota (IFQ) fleet (*i.e.*, the smaller "day boat" fleet); and the remaining 0.5 percent is allocated to limited access

scallop vessels that also have LAGC IFQ permits. Amendment 15 to the FMP (76 FR 43746, July 21, 2011) specified that no buffers to account for management uncertainty are necessary in setting the LAGC ACLs, meaning that the LAGC ACL is equal to the LAGC ACT. For the limited access fleet, the management uncertainty buffer is based on the F associated with a 75-percent probability of remaining below the F associated with ABC/ACL, which, using the updated Fs applied to the ABC/ACL, now results in an F of 0.39. Amendment 21 to the FMP (87 FR 1688, January 12, 2022) modified the ACL flowchart to account for the scallop biomass in the Northern Gulf of Maine (NGOM) as part of the legal limits in the fishery by adding biomass from the area into calculations of the OFL and ABC. This action moved the accounting of the NGOM ACL from only within the OFL into the OFL and ABC/ACL for the entire fishery. In addition, Amendment 21 created the NGOM Set-Aside to support a directed LAGC fishery (including NGOM and LAGC IFQ permitted vessels) in the NGOM Management Area.

TABLE 1—SCALLOP CATCH LIMITS (MT) FOR FISHING YEARS 2023 AND 2024 FOR THE LIMITED ACCESS AND LAGC IFQ FLEETS

Catch limits	2023 (mt)	2024 (mt) ¹
OFL	27,504	29,151
ABC/ACL (discards removed)	19,828	20,206
Incidental Landings	23	23
RSA	578	578
Observer Set-Aside	198	202
NGOM Set-Aside	175	130
ACL for fishery	18,853	19,403
Limited Access ACL	17,816	18,335
LAGC Total ACL	1,037	1,067
LAGC IFQ ACL (5 percent of ACL)	943	970
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	94	97
Limited Access ACT	15,441	15,891
APL (after set-asides removed)	10,368	(1)
Limited Access APL (94.5 percent of APL)	9,798	(1)
Total IFQ Annual Allocation (5.5 percent of APL) ²	570	428
LAGC IFQ Annual Allocation (5 percent of APL) ²	518	389
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) ²	52	39

¹ The catch limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2024 that will be based on the 2023 annual scallop surveys.

² As a precautionary measure, the 2024 IFQ and annual allocations are set at 75 percent of the 2023 IFQ Annual Allocations.

This action would deduct 1.275 million lb (578 mt) of scallops annually for 2023 and 2024 from the ABC for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.275-million-lb (578-mt) allocation, NMFS has already allocated 47,057 lb (21,345 kg) to previously funded multi-year projects as part of the

2022 RSA awards process. NMFS is reviewing proposals submitted for consideration of 2023 RSA awards and will be selecting projects for funding in the near future.

This action would also deduct 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 198 mt for 2023 and 202 mt for 2024. The

Council may adjust the 2024 observer set-aside when it develops specific, non-default measures for 2024.

Open Area Days-at-Sea (DAS) Allocations

This action would implement vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.*, full-time, part-time, and occasional) for 2023 and 2024 (Table 2).

Proposed 2023 DAS allocations are the same as those allocated to the limited access fleet in 2022. Framework 36 would set 2024 DAS allocations at 75 percent of fishing year 2023 DAS

allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2024 specifications action is delayed past the start of the 2024 fishing year. The

proposed allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeds its 2022 sub-ACL.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2023 AND 2024

Permit category	2023	2024 (default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.50

If NMFS implements these Framework 36 measures after the April 1 start of fishing year 2023, default DAS allocations, which were established in Framework Adjustment 34 to the FMP (87 FR 18277, March 30, 2022), would go into place on April 1, 2023. Full-time vessels would receive 18 DAS, part-time vessels would receive 7.20 DAS, and occasional vessels would receive 1.50

DAS. The allocations would later increase in accordance with Framework 36 when Framework 36 goes into effect. NMFS will notify all limited access permit holders of both default and Framework 36 DAS allocations so that vessel owners know what mid-year adjustments would occur should Framework 36 be approved and implemented after April 1, 2023.

Changes to Fishing Year 2023 Sea Scallop Access Area Boundaries

For fishing year 2023 and the start of 2024, Framework 36 would change the boundaries of Area II (Table 3) to include all of both areas formerly known as Closed Area II and Closed Area II-East. This area was expanded to better support rotational access in fishing year 2023.

TABLE 3—AREA II ACCESS AREA

Point	N latitude	W longitude	Note
All1	41°30'	67°20'	
All2	41°30'	(1)	(2)
All3	40°40'	(3)	(2)
All4	40°40'	67°20'	
All1	41°30'	67°20'	

¹ The intersection of 41°30' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N lat., 66°34.73' W long.

² From Point All2 connected to Point All3 along the U.S.-Canada Maritime Boundary.

³ The intersection of 40°40' N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40' N lat. and 65°52.61' W long.

Fishing Year 2023 Sea Scallop Closed Area Boundaries

Framework 36 would keep the New York Bight and Nantucket Lightship-West Scallop Rotational Areas closed to scallop fishing to optimize growth of the several scallop year classes within the closure area and to support scallop fishing in years following the 2023 fishing year.

This action would also close the Elephant Trunk (Table 4) and the Area I (Table 5) Scallop Rotational Areas. The Council is proposing to close these areas to support the growth of small scallops in the absence of fishing pressure.

TABLE 4—ELEPHANT TRUNK SCALLOP CLOSED AREA

Point	N latitude	W longitude
ET1	38°50'	74°20'
ET2	38°50'	73°30'
ET3	38°10'	73°30'
ET4	38°10'	74°20'
ET1	38°50'	74°20'

TABLE 5—AREA I SCALLOP CLOSED AREA

Point	N latitude	W longitude
AIA1	41°30'	68°30'
AIA2	40°58'	68°30'
AIA3	40°54.95'	68°53.37'
AIA4	41°30'	69°23'
AIA1	41°30'	68°30'

Nantucket Lightship-South-Deep and Nantucket Lightship-Triangle Scallop Rotational Areas Reverting to Open Area

Framework 36 would revert the Nantucket Lightship-South-Deep and Nantucket Lightship-Triangle Scallop Rotational Areas to part of the open area. These areas were previously managed as part of the area rotation program; however, there is not enough biomass to support rotational access on an equitable basis to the entire Limited Access fleet nor was there enough recruitment seen in the annual survey to support keeping these areas as part of the program. Based on this information, they no longer meet the criteria for

either closure or controlled access as defined in 50 CFR 648.55(a)(6). These areas would become part of the open area and could be fished as part of the DAS program or on LAGC IFQ open area trips. Because fishing year 2022 carryover access area fishing will continue in the Nantucket Lightship-South-Deep until May 30, 2023, both areas would not revert to open area until May 31, 2023.

Nantucket Lightship-North Scallop Rotational Area (NLS-N) To Support LAGC IFQ Access and Closed for the Limited Access Fleet for 90 Days Before Reverting to Open Area

Framework 36 would allocate LAGC IFQ access area trips that could be taken in either the NLS-N (Table 6) or Area II (Table 3) for the 2023 fishing year. Once the Regional Administrator has determined that the total number of LAGC IFQ access area trips have been or are projected to be taken, the Nantucket Lightship North Scallop Rotational Area shall become part of the open area for LAGC IFQ vessels.

Limited access vessels would be prohibited from fishing in the area during the first 90 days of fishing year 2023 (*i.e.*, through June 29, 2023). On June 30, 2023, the NLS–N would revert to part of the open area for the limited access fleet. This area could then be fished by the limited access fleet on DAS.

TABLE 6—NANTUCKET LIGHTSHIP-NORTH SCALLOP ROTATIONAL AREA

Point	N latitude	W longitude
NLSN1	40°50′	69°30′
NLSN2	40°50′	69°00′
NLSN3	40°28′	69°00′
NLSN4	40°28′	69°30′
NLSN1	40°50′	69°30′

Full-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 7 provides the proposed limited access full-time allocations for all of the access areas for the 2023 fishing year and the first 60 days of the 2024 fishing year. These allocations could be landed in as many trips as needed, so long as vessels do not exceed the possession limit (also in Table 7) on any one trip.

TABLE 7—PROPOSED SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2023 AND 2024

Rotational access area	Scallop per trip possession limit	2023 Scallop allocation	2024 Scallop allocation (default)
Area II	12,000 lb (5,443 kg)	24,000 lb (10,886 kg)	0 lb (0 kg).
Total .....	.....	24,000 lb (10,886 kg)	0 lb (0 kg).

Part-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 8 provides the proposed limited access part-time allocations for all of the

access areas for the 2023 fishing year and the first 60 days of the 2024 fishing year. These allocations could be landed in as many trips as needed, so long as

the vessels do not exceed the possession limit (also in Table 8) on any one trip.

TABLE 8—PROPOSED SCALLOP ACCESS AREA PART-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2023 AND 2024

Rotational access area	Scallop per trip possession limit	2023 Scallop allocation	2024 Scallop allocation (default)
Area II	9,600 lb (4,082 kg)	9,600 lb (4,354 kg)	0 lb (0 kg).
Total .....	.....	9,600 lb (4,354 kg)	0 lb (0 kg).

LAGC Measures

1. *ACL and IFQ Allocation for LAGC Vessels with IFQ Permits.* For LAGC vessels with IFQ permits, this action would implement a 943-mt ACL for 2023 and a 970-mt default ACL for 2024 (see Table 1). These sub-ACLs have no associated regulatory or management requirements but provide a ceiling on overall landings by the LAGC IFQ fleets. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. Framework 28 to the FMP (82 FR 15155, March 27, 2017) changed the way the LAGC IFQ allocations are set from a direct percentage of the ACL to a percentage of the APL. The purpose of this change was to help ensure that the allocation of potential catch between the fleets is more consistent with the concept of spatial management by allocating catch to the LAGC IFQ fleet based on harvestable scallops instead of total biomass. Since Framework 28 was implemented in 2017, the LAGC IFQ allocation has been equal to 5.5 percent of the projected landings (5 percent for

LAGC IFQ vessels and 0.5 percent for LAGC IFQ vessels that also have a limited access scallop permit). The annual allocation to the LAGC IFQ-only fleet for fishing years 2023 and 2024 based on APL would be 518 mt for 2023 and 389 mt for 2024 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL.

If NMFS implements these Framework 36 measures after the April 1 start of the 2023 fishing year, the default 2023 IFQ allocations would go into place automatically on April 1, 2023. Because this action would implement IFQ allocations that are less than the default allocations, NMFS will notify IFQ permit holders of both default 2023 and Framework 36 IFQ allocations so that vessel owners know what mid-year adjustments would occur should Framework 36 be approved after the April 1, 2023, start of fishing year 2023.

2. *ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits.* For limited access scallop vessels with IFQ permits, this action would implement a 94-mt ACL for 2023

and a default 97-mt ACL for 2024 (see Table 1). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits would be 52 mt for 2023 and 39 mt for 2024 (see Table 1). Each vessel's IFQ would be calculated from these allocations based on APL. Because this action would implement IFQ allocations that are less than the default allocations, NMFS will notify IFQ permit holders of both default 2023 and Framework 36 IFQ allocations so that vessel owners know what mid-year adjustments would occur should Framework 36 be approved after the April 1, 2023, start of fishing year 2023.

3. *LAGC IFQ Trip Allocations for Scallop Access Areas.* Framework 36 would allocate LAGC IFQ vessels a fleet-wide number of trips for fishing year 2023 and no default trips for fishing year 2024 (see Table 9). The scallop catch associated with the total

number of trips for all areas combined (571 trips) for fishing year 2023 is equivalent to the 5.5 percent of total projected catch from access areas.

Once the Regional Administrator has determined that the total number of LAGC IFQ access area trips have been or are projected to be taken, the Nantucket Lightship North Scallop

Rotational Area shall become part of the open area for LAGC IFQ vessels, but Area II would then be closed to LAGC IFQ fishing.

TABLE 9—FISHING YEARS 2023 AND 2024 LAGC IFQ TRIP ALLOCATIONS FOR SCALLOP ACCESS AREAS

Scallop access area	2023	2024 ¹
Nantucket Lightship-North/Area II	571	0
Total	571	0

¹ The LAGC IFQ access area trip allocations for the 2024 fishing year are subject to change through a future specifications action or framework adjustment.

4. NGOM Scallop Fishery Landing Limits. This action proposes total allowable landings (TAL) in the NGOM of 434,311 lb (197,000 kg) for fishing year 2023. This action would deduct 25,000 lb (11,340 kg) of scallops annually for 2023 and 2024 from the NGOM TAL to increase the overall Scallop RSA to fund scallop research. In addition, this action would deduct 1 percent of the NGOM ABC from the NGOM TAL for fishing years 2023 and 2024 to support the industry-funded

observer program to help defray the cost to scallop vessels that carry an observer (Table 10).

Amendment 21 developed landing limits for all permit categories in the NGOM and established an 800,000-lb (362,874-kg) NGOM Set-Aside trigger for the NGOM directed fishery, with a sharing agreement for access by all permit categories for allocation above the trigger. Allocation above the trigger (*i.e.*, the NGOM APL) will be split 5 percent for the NGOM fleet and 95

percent for limited access and LAGC IFQ fleets. Framework 36 would set an NGOM Set-Aside of 380,855 lb (172,753 kg) for fishing year 2023 and a default NGOM Set-Aside of 285,641 lb (211,365 kg) for fishing year 2024. Because the NGOM Set-Aside for fishing years 2023 and 2024 is below the 800,000-lb (362,874-kg) trigger, Framework 36 would not allocate any landings to the NGOM APL. Table 10 describes the breakdown of the NGOM TAL for the 2023 and 2024 (default) fishing years.

TABLE 10—NGOM SCALLOP FISHERY LANDING LIMITS FOR FISHING YEAR 2023 AND 2024

Landings limits	2023		2024 ¹	
	lb	kg	lb	kg
NGOM TAL	434,311	197,000	318,573	³ 114,502
1 percent NGOM ABC for Observers	10,538	4,780	7,932	³ 3,598
RSA Contribution	25,000	11,340	25,000	11,340
NGOM Set-Aside	380,855	² 172,753	285,641	129,565
NGOM APL	0	0	0	0

¹ The landings limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment.

² For fishing year 2023 the NGOM Set-Aside has been reduced by 17,918 lb (8,127 kg) to account for a limited access general category NGOM total allowable catch overage in 2021.

³ The catch limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2024 that will be based on the 2023 annual scallop surveys.

5. Scallop Incidental Landings Target TAL. This action proposes a 50,000-lb (22,680-kg) scallop incidental landings target TAL for fishing years 2023 and 2024 to account for mortality from vessels that catch scallops while fishing for other species and ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions

This action allows vessels participating in RSA projects to harvest RSA compensation from the open area only. All vessels are prohibited from harvesting RSA compensation pounds in all other access areas. Vessels are prohibited from fishing for RSA compensation in the NGOM unless the

vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project. Finally, Framework 36 prohibits the harvest of RSA from any access areas under default 2024 measures. At the start of 2024, RSA compensation may only be harvested from open areas. The Council will re-evaluate this default prohibition measure in the action that would set final 2024 specifications.

Regulatory Corrections Under Regional Administrator Authority

This proposed rule includes three revisions to address regulatory text that is unnecessary, outdated, or unclear. In addition, this proposed rule includes changes to regulatory text throughout that would change the in-shell possession limit of scallops from a bushel conversion (1 bushel of in-shell

scallops = 8 lb (3.6 kg) of scallop meats) to a weight conversion (8.33 (3.78 kg) lb of in-shell scallops = 1 lb (0.45 kg) of scallop meats). NMFS is making this adjustment to provide more uniformity among the possession limit measurements by revising the in-shell possession limit to a widely accepted poundage conversion, and by making other necessary clarifications. The revision to the in-shell possession limit is resource neutral because NMFS already uses this conversion to charge an LAGC vessel's IFQ and/or the NGOM Set-Aside. Furthermore, this change will continue to support the boutique in-shell scallop fishery by retaining an in-shell possession limit for this fleet. These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate

regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first revisions at § 648.2 ‘bushel’ definition, § 648.14(i)(2)(ii)(A) and (B), (iii)(B), (vi)(D), § 648.51(a), throughout § 648.52, and at § 648.59(b)(3)(i), change the in-shell possession limit of scallops from a bushel conversion to a lb conversion. The second revisions, at § 648.14(i)(1)(i), (ii), (iv)(A) and (B), would clarify that these paragraphs are referring to Federal scallop permits. The third revision at § 648.14(i)(1)(vi)(A)(2) would clarify that a vessel can transit Habitat Management Areas provided that its gear is stowed and not available for immediate use as defined in § 648.2. Finally, the fourth revision at § 648.52(d) would update a reference to Scallop Rotational Access Area allocations.

Classification

NMFS is issuing this rule pursuant to sections 304(b)(1)(A) of the Magnuson-Stevens Act, which provides specific authority for implementing this action. Pursuant to section 305(d) of the Magnuson-Stevens Act, this action is necessary to carry out the Atlantic Sea Scallop FMP, to allow NMFS to implement measures developed in Framework Adjustment 36 to the Atlantic Sea Scallop FMP for fishing year 2023. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Sea Scallop FMP and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared for Framework 36, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows:

Description of the Reasons Why Action by the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, This Proposed Rule

This action proposes the management measures and specifications for the Atlantic sea scallop fishery for 2023, with 2024 default measures. A

description of the action, why it is being considered, and the legal basis for this action are contained in the Council’s Framework 36 document and the preamble of this proposed rule, and are not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Federal Rules Which May Duplicate, Overlap or Conflict With This Proposed Rule

The proposed regulations do not create overlapping regulations with any state regulations or other Federal laws.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed regulations would affect all vessels with Limited Access, LAGC IFQ, and LAGC NGOM scallop permits. Framework 36 (Section 5.6) and the LAGC IFQ Performance Evaluation (2017) provide extensive information on the number of vessels that would be affected by the proposed regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**). There were 315 vessels that held full-time limited access permits in FY2021, including 250 dredge, 54 small-dredge, and 11 scallop trawl permits. In the same year, there were also 29 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits in 2021. In 2019, NMFS reported that there were a total of 300 IFQ only permits, with 212 issued and 88 in a Confirmation of Permit History (CPH). There were a total of 110 NGOM permits issued in 2019. About 114 of the IFQ vessels and 53 NGOM vessels actively fished for scallops in fishing year 2021. The remaining IFQ permits likely leased out scallop IFQ allocations with their permits in CPH.

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than \$11 million annually (see 50 CFR 200.2). Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common

management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, “ownership entities” are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an “ownership entity.” For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one “ownership entity,” that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate “ownership entity” for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2021 permits and contains average gross sales associated with those permits for calendar years 2019 through 2021. Matching the potentially impacted 2021 fishing year permits described above (limited access and LAGC IFQ) to calendar year 2021 ownership data results in 147 distinct ownership entities for the limited access fleet and 87 distinct ownership entities for the LAGC IFQ fleet. Based on the Small Business Administration (SBA) guidelines, 139 of the limited access distinct ownership entities and 87 LAGC IFQ entities are categorized as small. Eight limited access and no LAGC IFQ entities are categorized as large business entities with annual fishing revenues over \$11 million in 2021. There were 52 distinct small business entities with NGOM permits in 2021.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council’s preferred alternative (Section 4.3.3.2) in Framework 36 (see **ADDRESSES**) would allocate each full limited access vessel 24 open area DAS and 2 access area trips (*i.e.*, 2 Area II trips at 12,000 lb (5,443 kg)) amounting to 24,000 lb (10,886 kg) in fishing year 2023. This is estimated to result in about 22.86 million lb (10.37 million kg) of landings after research and observer set asides are accounted for. The limited access share of 94.5 percent is around 21.6 million lb (9.8 million kg) (Table 12). The LAGC IFQ share (5.5 percent allocation for both IFQ only and limited access vessels with IFQ permits) will be about 1.257 million lb (0.570 million kg)

(Section 4.4.2, Table 13). Total landings, including set-asides to support research and observer coverage is projected to be about 25.01 million lb (11.34 million kg) (Table 12).

The preferred alternative (Section 4.3.3.2) is expected to have negative impacts on the net revenues and profits of small entities regulated by this action in fishing year 2023 (Framework 36) compared to the fishing year 2022 (Framework 34) scenario. The decline in revenue per entity between fishing year 2022 levels and fishing year 2023 is a result of declining allocations between these two fishing years. Projected landings for limited access fleet are expected to decline by about 8.09 million lb (3.67 million kg) under the Framework 36 preferred alternative compared to the Framework 34 preferred alternative. As described in the Economic Impacts Section 6.6.1, and summarized in Tables 11 and 12, fleetwide net revenue for the limited access vessels (including revenue from the LAGC IFQ vessels) would be lower for the preferred alternative in Framework 36 (Section 4.3.2.2) by about \$82 million (in 2022 dollars) compared to the preferred alternative in Framework 34. Net revenue for limited access vessels in fishing year 2023 under the Framework 36 preferred alternative would be \$0.053 million lower per entity as compared to Framework 34 preferred alternative in fishing year 2022 (Table 12). Thus, the preferred alternative (Section 4.3.2.2) would have 2.43 percent lower net revenue compared to the Framework 34 preferred alternative.

Under the preferred alternative (Section 4.3.2.2), allocations for the LAGC IFQ fishery, including the limited access vessels with IFQ permits, will be about 27.2 percent lower than the allocation that was implemented for fishing year 2022 under Framework 34. In terms of net revenue, this difference is expected to be of similar magnitude

and negative for the preferred alternative relative to fishing year 2022 levels. Therefore, the Framework 36 preferred alternative will have negative economic impacts on the LAGC IFQ fishery compared to fishing year 2022 levels (Table 13).

The economic benefits of all of the alternatives considered in Framework 36, including the proposed alternative, would exceed economic benefits of No Action. The specification alternatives considered in Framework 36 are very similar, with each alternative allocating to the same access area allocations. Differences between the options are driven by the number of DAS allocated, which range from 22 to 24 DAS and trip limits range from 10,000 lb (4,536 kg) to 14,000 lb (6,350 kg). The Council's preferred alternative, Alternative 3, Option 2 (4.3.3.2) (see **ADDRESSES**) would result in a lower allocation to the limited access and LAGC IFQ components in 2023. This is expected to result in lower revenues compared to the Framework 34 preferred alternative in fishing year 2022. The percentage change in net revenue per business entity for all Framework 36 alternatives is expected to decline between -11.56 percent and 2.71 percent compared to the Framework 34 preferred alternative. Under the preferred alternative in Framework 36, net revenues per entity with limited access permits are estimated to be below fishing year 2022 levels by -2.43 percent in fishing year 2023 (Table 12).

The Council considered four NGOM TAL options for fishing year 2023 that ranged from 357,149 lb (162,000 kg) (Option 1) to 511,472 lb (232,000 kg) (Option 4). All TAL options would result in lower revenues compared to No Action except Option 4, which are default measures set in Framework 34. The preferred alternative (Alternative 2, Option 3) would have a slightly lower TAL (434,311 lb (197,000 kg)) compared to the Alternative 2 Option 4, but higher

revenues than Option 1 and Option 2. When compared to No Action, the lower TAL of Option 3 would also result in lower revenues and economic benefits for entities in this fishery with an estimated decrease in net revenues by about 15 percent compared to No Action (Table 14).

Under the sharing arrangement approved for the NGOM Management Area in Amendment 21, Framework 36 would not allocate pounds to the LAGC IFQ or limited access components for fishing year 2023 because the NGOM set-aside did not exceed 800,000 lb (362,874 kg). Therefore, Action 2 would not have direct impacts on the limited access component. More research is planned for this area in 2023, which will help to increase the understanding of biomass in the NGOM management area. This will lead to better management of the NGOM resource with positive biological and economic impacts over the long-term on both LAGC and limited access vessels.

Economic impacts of Framework 36 preferred alternatives, including fishery specifications, access area trip allocations for the limited access and LAGC IFQ fisheries, NGOM measures, and other measures to reduce fishery impacts are expected to be negative for the scallop vessels and small business entities compared to the fishing year 2022 baseline implemented through Framework 34. We have determined that the preferred alternative is nevertheless optimal because it would minimize risks associated with stock biomass uncertainties while protecting small scallops and minimizing bycatch of species such as yellowtail and windowpane flounder. Furthermore, the preferred alternative intentionally leaves biomass in the water to increase the likelihood that a similar DAS allocation and associated F rate, along with access area fishing in Area II trip will be available for the following fishing year.

TABLE 11—SHORT-TERM ECONOMIC IMPACTS FOR FY2023 COMPARED WITH FY2022: ESTIMATED LANDINGS (mil. lb/mil. kg), REVENUES, PRODUCER SURPLUS AND TOTAL ECONOMIC BENEFITS
[In 2001 constant dollars, mil. dollars]

Alternatives/runs Sections=>	Framework 36 alternatives								FW34's preferred alternative (in 2001\$)	FW34's preferred alternative (in 2021\$)
	Alt1 NA	Alt2 Opt1	Alt2 Opt2	Alt3 Opt1	Alt3 Opt2 (preferred)	Alt4 Opt1	Alt4 Opt2	Alt5 SQ		
	4.3.1 NA	4.3.2.1 22d10k	4.3.2.2 24d10k	4.3.3.1 22d12k	4.3.3.2 24d12k	4.3.4.1 22d14k	4.3.4.2 24d14k	4.3.5 SQ		
Landings mil lb	20.214	22.619	23.719	23.909	25.007	25.207	26.305	28.300	34.04	34.04
Landings mil kg	9.17	10.26	10.76	10.84	11.34	11.43	11.93	12.84	15.44	15.44
Revenue	\$211.76	\$234.05	\$243.91	\$246.22	\$255.98	\$258.36	\$268.02	\$286.25	\$303.95	437.37
Producer Surplus (PS)	\$157.55	\$175.18	\$182.93	\$186.10	\$193.75	\$196.90	\$204.46	\$220.04	\$244.10	351.25
Total Economic Benefits (CS+PS)	\$166.21	\$185.99	\$194.77	\$198.14	\$206.87	\$210.24	\$218.93	\$236.57	\$253.85	365.27

TABLE 11—SHORT-TERM ECONOMIC IMPACTS FOR FY2023 COMPARED WITH FY2022: ESTIMATED LANDINGS (mil. lb/mil. kg), REVENUES, PRODUCER SURPLUS AND TOTAL ECONOMIC BENEFITS—Continued
[In 2001 constant dollars, mil. dollars]

Alternatives/runs	Framework 36 alternatives								FW34's preferred alternative	FW34's preferred alternative
Sections=>	Alt1 NA	Alt2 Opt1	Alt2 Opt2	Alt3 Opt1	Alt3 Opt2 (preferred)	Alt4 Opt1	Alt4 Opt2	Alt5 SQ		
Economic variables	4.3.1 NA	4.3.2.1 22d10k	4.3.2.2 24d10k	4.3.3.1 22d12k	4.3.3.2 24d12k	4.3.4.1 22d14k	4.3.4.2 24d14k	4.3.5 SQ	(in 2001\$)	(in 2021\$)
Net Values or Difference from FY2022 (FW34's Preferred Alternative projection) values:										
Landings mil lb	-13.83	-11.42	-10.32	-10.13	-9.03	-8.83	-7.73	-5.74	0.00	.....
Landings mil kg	-6.27	-5.18	-4.68	-4.59	-4.10	-4.01	-3.51	-2.60	0.00	.....
Revenue	-\$92.19	-\$69.90	-\$60.05	-\$57.73	-\$47.97	-\$45.59	-\$35.94	-\$17.70	\$0.00	.....
Producer Surplus (PS)	-\$86.56	-\$68.93	-\$61.17	-\$58.01	-\$50.35	-\$47.21	-\$39.65	-\$24.06	\$0.00	.....
Total Economic Benefits (CS+PS)	-\$87.63	-\$67.86	-\$59.08	-\$55.71	-\$46.98	-\$43.61	-\$34.92	-\$17.28	\$0.00	.....

Note: A negative sign indicates a lower value for a FW36 alternative compared to the FW34's preferred alternative.

TABLE 12—NET SCALLOP REVENUE FOR LIMITED ACCESS VESSELS IN FY2023 AND PERCENT CHANGE FROM THE FY2022
[Revenues in 2022 dollars]

Alternatives/runs	Unit	FW36 alternatives (economic values in million dollars) (in 2022\$)							FR34's preferred alternative
Description		Alt. 1	Alt. 2 Opt. 1	Alt. 2 Opt. 2	Alt. 3 Opt. 1	Alt. 3 Opt. 2 (preferred)	Alt. 4 Opt. 1	Alt. 4 Opt. 2	
		4.3.1 NA	4.3.2.1 22d10k	4.3.2.2 24d10k	4.3.3.1 22d12k	4.3.3.2 24d12k	4.3.4.1 22d14k	4.3.4.2 24d14k	(in 2022\$)
Estimated scallop APL landings mil lbs.	mil lb	20.214	22.619	23.720	23.909	25.007	25.208	26.306	34.039
Estimated LA scallop landings (94.5% net of set asides) mil lbs.	mil kg	9.17	10.26	10.76	10.84	11.34	11.43	11.93	15.44
No. of Entities (Average in 2019–2021) both small and large.	mil lb	17.07	19.34	20.38	20.56	21.60	21.79	22.83	29.690
	mil kg	7.74	8.77	9.24	9.33	9.80	9.88	10.36	13.47
Estimated revenues for scallop APL \$mil.	Counts	146	146	146	146	146	146	146	177
Estimated LA revenues from scallop \$ mil.	mil dollars	\$329.77	\$364.48	\$379.83	\$383.44	\$398.63	\$402.34	\$417.38	\$476.51
Estimated Net Revenue for scallop APL \$mil.	mil dollars	\$278.50	\$311.71	\$326.42	\$329.78	\$344.33	\$347.79	\$362.20	\$415.63
Estimated LA net revenue from scallop \$mil.	mil dollars	\$301.733	\$331.499	\$344.615	\$349.126	\$362.089	\$366.606	\$379.420	\$444.55
Net scallop revenue per Entity \$mil.	mil dollars	\$254.82	\$283.50	\$296.15	\$300.27	\$312.77	\$316.90	\$329.26	\$387.75
% change in net revenue compared to SQ (fw34 pref alt).	mil dollars	\$1.741	\$1.937	\$2.024	\$2.052	\$2.137	\$2.166	\$2.250	\$2.191
	Percent	-20.51%	-11.56%	-7.61%	-6.33%	-2.43%	-1.14%	2.71%	0.00%

Note: Landings and net revenues net of set asides, such as research set aside scallop, etc.

TABLE 13—IMPACTS OF THE LAGC IFQ ALLOCATION FOR THE FISHING YEAR 2022

FW36 alternatives	Framework 36 alternatives							FW34's preferred alternative
Sections	4.3.1	4.3.2.1	4.3.2.2	4.3.3.1	4.3.3.2 (preferred)	4.3.4.1	4.3.4.2	
Descriptions:								
Allocation for IFQ only vessels (5%) (lb) ..	903,247	1,023,509	1,078,515	1,087,994	1,142,890	1,152,921	1,207,816	1,570,904
Allocation for IFQ only vessels (5%) (kg)	409,706	464,255	489,206	493,505	518,406	522,956	547,856	712,549
Allocation for LA vessels with IFQ permits (0.5%) (lb)	90,325	102,351	107,851	108,799	114,289	115,292	120,782	157,090
Allocation for LA vessels with IFQ permits (0.5%) (kg)	40,971	46,426	48,920	49,350	51,841	52,296	54,786	71,255
Total Allocation * for IFQ fishery (5.5%) (lb)	993,572	1,125,860	1,186,366	1,196,794	1,257,179	1,268,213	1,328,597	1,727,994
Total Allocation * for IFQ fishery (5.5%) (kg)	450,676	510,681	538,126	542,856	570,246	575,251	602,641	783,804
% Change in estimated landings (and revenue) per business entity from SQ (FW34 Pref Alt)	-42.5%	-34.8%	-31.3%	-30.7%	-27.2%	-26.6%	-23.1%	0.0%

* APL with set aside removed.

TABLE 14—IMPACTS OF THE PREFERRED ALTERNATIVE 2 OPTION 3 AND OTHER ALTERNATIVES FOR NGOM SCALLOP FISHERY

[2023 Fishing year and monetary values in 2022 dollars]

Data and values		FY2023				
		Alternative 1 (no action)	Alternative 2			
			Option 1	Option 2	Option 3 (preferred)	Option 4
			F = 0.15	F = 0.18	F = 0.15	F = 0.18
LA/RSA share—scallop lbs	lb		25,000	25,000	25,000	25,000
	kg		11,340	11,340	11,340	11,340
1% NGOM ABC for Observers	lb		10,538	10,538	10,538	10,538
	kg		4,780	4,780	4,780	4,780
LAGC share—scallop lbs	lb	448,062	303,693	367,627	380,855	458,016
	kg	203,237	137,753	166,753	172,753	207,752
Total Pounds w/RSA, observers, etc	lb		357,149	421,083	434,311	511,472
	kg		162,000	191,000	197,000	232,000
Impacts on the LAGC NGOM share—scallop lbs.:						
• Estimated LAGC revenue		\$6,953,922	\$4,713,315	\$5,705,571	\$5,910,870	\$7,108,408
• DAS		2,240	1,518	1,838	1,904	2,290
• Trip costs (\$1,000 per DAS)		\$2,240,310	\$1,518,465	\$1,838,135	\$1,904,275	\$2,290,080
• Net revenue		\$4,713,612	\$3,194,850	\$3,867,436	\$4,006,595	\$4,818,328
• Net revenue net of No Action		\$0	(\$1,518,762)	(\$846,176)	(\$707,018)	\$104,716
Net revenue net of No Action %		0.00%	−32.2%	−18.0%	−15.0%	2.2%

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 16, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

Subpart A—General Provisions

■ 2. In § 648.2, revise the definition “bushel” to read as follows:

§ 648.2 Definitions.

* * * * *

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft³ (53.24 L) of surfclams or ocean quahogs in shell.

* * * * *

■ 3. In § 648.14, revise paragraphs (i)(1)(i) and (ii), (i)(1)(iv)(A) and (B), (i)(1)(vi)(A)(2), (i)(2)(ii)(A), (i)(2)(ii)(B), and paragraphs (i)(2)(iii)(B), (i)(2)(vi)(B) and (D), and (i)(3)(v)(E) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(i) *Permit requirement.* Fish for, possess, or land scallops without the vessel having been issued and carrying onboard a valid Federal scallop permit in accordance with § 648.4(a)(2), unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

(ii) *Gear and crew requirements.* Have a shucking or sorting machine on board a vessel while in possession of more than 600 lb (272.2 kg) of shucked scallops, unless that vessel has not been issued a Federal scallop permit and fishes exclusively in state waters.

* * * * *

(iv) * * *

(A) Land, offload, remove, or otherwise transfer; or attempt to land, offload, remove or otherwise transfer; scallops from one vessel to another, unless that vessel has not been issued a Federal scallop permit and fishes exclusively in state waters.

(B) Sell, barter, or trade, or otherwise transfer scallops from a vessel; or attempt to sell, barter or trade, or otherwise transfer scallops from a vessel; for a commercial purpose, unless the vessel has been issued a valid Federal scallop permit pursuant to § 648.4(a)(2), or the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters.

* * * * *

(vi) * * *

(A) * * *

(2) Transit or enter the Habitat Management Areas specified in § 648.370, except as provided by § 648.370(i).

* * * * *

(2) * * *

(ii) * * *

(A) Possess more than 40 lb (18.1 kg) of shucked, or 333 lb (151 kg) of in-shell scallops, or participate in the scallop DAS or Area Access programs, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program.

(B) While under or subject to the DAS allocation program, in possession of more than 40 lb (18.1 kg) of shucked scallops or 333 lb (151 kg) of in-shell scallops, or fishing for scallops in the EEZ:

* * * * *

(iii) * * *

(B) Fish for, possess, or land more than 3,332 lb (1,511 kg) of in-shell scallops inside the VMS Demarcation Line on or by a vessel, except as provided in the state waters exemption, as specified in § 648.54.

* * * * *

(vi) * * *

(B) Transit the Area II Scallop Rotational Area or the New York Bight Scallop Rotational Area, as defined in § 648.60(b) and (j), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(C) * * *

(D) Possess more than 3,332 lb (1,511 kg) of in-shell scallops outside the boundaries of a Scallop Access Area by a vessel that is declared into the Scallop Access Area Program as specified in § 648.59.

* * * * *

(3) * * *

(v) * * *

(E) Transit the Area II Scallop Rotational Area or New York Bight Scallop Rotational Area, as defined in § 648.60(b) and (j), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

■ 4. In § 648.51, revise paragraphs (a) introductory text and (f)(1) to read as follows:

§ 648.51 Gear and crew restrictions

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access scallop permit under § 648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 333 lb (151 kg) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

* * * * *

(f) * * *

(1) *Restrictions.* A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.59, may not fish for scallops with a trawl

net in the Area II Rotational Area specified in § 648.60(b).

* * * * *

■ 5. In § 648.52, revise paragraphs (a) through (f) to read as follows:

§ 648.52 Possession and landing limits.

(a) *IFQ trips*—(1) *Open area trips.* A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery in the open area, as specified in § 648.10(f), or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272 kg) of shucked scallops, or possess more than 4,998 lb (2,267 kg) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 6,664 lb (3,023 kg) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip, or other fishery requiring a VMS declaration, and not fishing in a scallop access area.

(2) *Access areas trips.* A vessel issued an IFQ scallop permit that is declared into the IFQ Scallop Access Area Program, as specified in § 648.10(f), may not possess or land, per trip, more than 800 lb (363 kg) of shucked scallops, or possess more than 6,664 lb (3,023 kg) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 6,664 lb (3,023 kg) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop access area trip.

(b) *NGOM trips.* A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery and fishing against the NGOM Set-Aside as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked scallops, or possess more than 1,666 lb (756) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 3,332 lb (1,511 kg) of in-shell scallops

seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) *Incidental trips.* A vessel issued an Incidental scallop permit, or an IFQ scallop permit that is not declared into the IFQ scallop fishery or on a properly declared NE multispecies, surfclam, or ocean quahog trip or other fishery requiring a VMS declaration as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked scallops, or possess more than 333 lb (151 kg) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 666 lb (302 kg) of in-shell scallops seaward of the VMS Demarcation Line.

(d) *Limited access vessel access area trips.* Owners or operators of vessels with a limited access scallop permit that have properly declared into the Scallop Access Area Program as described in § 648.59 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(3).

(e) *Limited access vessel open area in-shell scallop possession limit.* Owners or operators of vessels issued limited access permits are prohibited from fishing for, possessing, or landing per trip more than 3,332 lb (1,511 kg) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) *Limited access vessel access area in-shell scallop possession limit.* A limited access vessel that is declared into the Scallop Area Access Program as described in § 648.59, may not possess more than 3,332 lb (1,511 kg) of in-shell scallops outside of the Access Areas described in § 648.60.

* * * * *

■ 6. In § 648.53, revise paragraphs (a)(9) and (b)(3) to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(9) *Scallop fishery catch limits.* The following catch limits will be effective for the 2023 and 2024 fishing years:

TABLE 2 TO PARAGRAPH (a)(9)—SCALLOP FISHERY CATCH LIMITS

Catch limits	2023 (mt)	2024 (mt) ¹
OFL	27,504	29,151
ABC/ACL (discards removed)	19,828	20,206
Incidental Landings	23	23
RSA	578	578
Observer Set-Aside	198	202
NGOM Set-Aside	175	130
ACL for fishery	18,853	19,403
Limited Access ACL	17,816	18,335
LAGC Total ACL	1,037	1,067
LAGC IFQ ACL (5 percent of ACL)	943	970
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	94	97
Limited Access ACT	15,441	15,891
APL (after set-asides removed)	10,368	(1)
Limited Access APL (94.5 percent of APL)	9,798	(1)
Total IFQ Annual Allocation (5.5 percent of APL) ²	570	428
LAGC IFQ Annual Allocation (5 percent of APL) ²	518	389
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) ²	52	39

¹ The catch limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2024 that will be based on the 2023 annual scallop surveys. The 2024 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

² As specified in paragraph (a)(6)(iii)(B) of this section, the 2024 IFQ annual allocations are set at 75 percent of the 2023 IFQ Annual Allocations.

(b) * * * vessels for fishing years 2023 and 2024
(3) *DAS allocations.* The DAS are as follows:
allocations for limited access scallop

TABLE 3 TO PARAGRAPH (b)(3)—SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2023	2024 ¹
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

¹ The DAS allocations for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. The 2024 DAS allocations are set at 75 percent of the 2023 allocation as a precautionary measure.

* * * * *

■ 7. In § 648.59, revise paragraphs (a)(2) and (3), (b)(3)(i), (b)(6)(ii), (c), (e)(1) and (2), (g)(1), (g)(3)(v), and (g)(4)(ii) to read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(a) * * *

(2) *Transiting a Scallop Rotational Closed Area.* No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the New York Bight Scallop Rotational Area, as defined in § 648.60(j), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is

stowed and not available for immediate use as defined in § 648.2.

(3) *Transiting a Scallop Rotational Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Access Area Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Area II Scallop Rotational Area, as defined in § 648.60(b), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and

not available for immediate use as defined in § 648.2.

* * * * *

(b) * * *

(3) * * *

(i) *Limited access vessel allocations and possession limits.*

(A) Except as provided in paragraph (c) of this section, the specifications or framework adjustment processes defined in § 648.55 determine the total amount of scallops, in weight, that a limited access scallop vessel may harvest from Scallop Access Areas during applicable seasons specified in § 648.60. A vessel may not possess or land in excess of its scallop allocation assigned to specific Scallop Access Areas, unless authorized by the Regional Administrator, as specified in paragraph (d) of this section, unless the vessel owner has exchanged an area-specific scallop allocation with another vessel owner for additional scallop allocation in that area, as specified in paragraph (b)(3)(ii) of this section. A vessel may harvest its scallop allocation

on any number of trips in a given fishing year, provided that no single trip exceeds the possession limits specified in the specifications or framework adjustment processes defined in § 648.55, unless authorized by the Regional Administrator, as specified in

paragraphs (c) and (d) of this section. No vessel declared into the Scallop Access Areas may possess more than 3,332 lb (1,511 kg) of in-shell scallops outside of the Scallop Rotational Area boundaries defined in § 648.60.

(B) The following access area allocations and possession limits for

limited access vessels shall be effective for the 2023 and 2024 fishing years:

(1) *Full-time vessels.*

(i) For a full-time limited access vessel, the possession limit and allocations are:

TABLE 1 TO PARAGRAPH (b)(3)(i)(B)(1)(i)

Rotational access area	Scallop possession limit	2023 Scallop allocation	2024 Scallop allocation (default)
Area II	12,000 lb (5,443 kg) per trip	24,000 lb (10,886 kg)	0 lb (0 kg).
Total .....	.....	24,000 lb (10,886 kg)	0 lb (0 kg).

(ii) [Reserved]

(2) *Part-time vessels.*

(i) For a part-time limited access vessel, the possession limit and allocations are as follows:

TABLE 2 TO PARAGRAPH (b)(3)(i)(B)(2)(i)

Rotational access area	Scallop possession limit	2023 Scallop allocation	2024 Scallop allocation (default)
Area II	9,600 lb (4,082 kg) per trip	9,600 lb (4,354 kg)	0 lb (0 kg).
Total .....	.....	9,600 lb (4,354 kg)	0 lb (0 kg).

(ii) [Reserved]

(3) *Occasional limited access vessels.*

(i) For the 2023 fishing year only, an occasional limited access vessel is allocated 2,000 lb (907 kg) of scallops with a trip possession limit at 2,000 lb of scallops per trip (907 kg per trip). Occasional limited access vessels may harvest the 2,000 lb (907 kg) allocation from Area II Access Area.

(ii) For the 2024 fishing year, occasional limited access vessels are not allocated scallops in any rotational access area.

* * * * *

(6) * * *

(ii) Vessels fishing in the Area II Scallop Rotational Area defined in § 648.60(b) are prohibited from fishing with trawl gear as specified in § 648.51(f)(1).

* * * * *

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel may fish

any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Closed Area II Access Area at the end of fishing year 2022, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Closed Area II Access Area is open in fishing year 2023 (April 1, 2023 through May 30, 2023).

* * * * *

(e) * * *

(1) 2023: Nantucket Lightship-North Scallop Rotational Area only for LAGC IFQ vessels during the first 90 days of fishing year 2023.

(i) through (ii) [Reserved]

(2) 2024: No access areas.

* * * * *

(g) * * *

(1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in § 648.60 or in paragraph

(g)(3)(iv) of this section, subject to any additional restrictions specified in § 648.60, subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in § 648.55, provided the vessel complies with the requirements specified in paragraphs (b)(1), (2), and (6) through (9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Area II and Nantucket Lightship North Scallop Rotational Area specified in § 648.60, when open, provided the vessel complies with the requirements specified in § 648.59 and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

* * * * *

(3) * * *

(v) *LAGC IFQ access area allocations.* The following LAGC IFQ access area trip allocations will be effective for the 2023 and 2024 fishing years:

TABLE 3 TO PARAGRAPH (g)(3)(v)

Scallop access area	2023	2024 ¹
Nantucket Lightship-North/Area II	571	0
Total	571	0

¹ The LAGC IFQ access area trip allocations for the 2024 fishing year are subject to change through a future specifications action or framework adjustment.

(4) * * *

(ii) *Other species*. Unless issued an LAGC IFQ scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Area II Rotational Area specified in § 648.60, and the Nantucket Lightship North Scallop Access Area specified in paragraph (g)(3)(iv) of this section is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and

under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

* * * * *

- 8. In § 648.60,
- a. Revise paragraphs (b) and (c);
- b. Remove and reserve paragraphs (d) and (e);
- c. Revise paragraph (g);
- d. Remove and reserve paragraph (h);
- e. Revise paragraphs (i) and (j); and
- f. Add paragraph (k).

The revisions and additions read as follows:

§ 648.60 Sea Scallop Rotational Areas.

* * * * *

(b) *Area II Scallop Rotational Area*—

(1) *Area II Scallop Rotational Area boundary*. The Area II Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 1 TO PARAGRAPH (b)(1)

Point	N latitude	W longitude	Note
All1	41°30'	67°20'	
All2	41°30'	(1)	(2)
All3	40°40'	(3)	(2)
All4	40°40'	67°20'	
All1	41°30'	67°20'	

¹ The intersection of 41°30' N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30' N lat., 66°34.73' W long.

² From Point All2 connected to Point All3 along the U.S.-Canada Maritime Boundary.

³ The intersection of 40°40' N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40' N lat. and 65°52.61' W long.

(2) *Season*. (i) A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Area II Scallop Rotational Area, defined in paragraph (b)(1) of this section, during the period of August 15 through November 15 of each year the Area II Access Area is open to scallop vessels, unless transiting pursuant to § 648.59(a).

(ii) [Reserved]

(c) *Area I Scallop Rotational Area*. The Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (c)

Point	N latitude	W longitude
AIA1	41°30'	68°30'
AIA2	40°58'	68°30'
AIA3	40°54.95'	68°53.37'
AIA4	41°30'	69°23'
AIA1	41°30'	68°30'

(d) through (e) [Reserved]

* * * * *

(g) *Nantucket Lightship-North Scallop Rotational Area*. (1) *Boundaries*. The Nantucket Lightship North Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 3 TO PARAGRAPH (g)(1)

Point	N latitude	W longitude
NLSN1	40°50'	69°30'
NLSN2	40°50'	69°00'
NLSN3	40°28'	69°00'
NLSN4	40°28'	69°30'
NLSN1	40°50'	69°30'

(2) *Season*. (i) For the 2023 fishing year, a limited access vessel may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship North Scallop Rotational Area, defined in paragraph (g)(1) of this

section, during the period of April 1 through June 29, unless transiting pursuant to § 648.59(a). One June 30, the Nantucket Lightship North Scallop Rotational Area shall become part of the open area for limited access vessels.

(ii) For the 2023 fishing year, upon a determination from the Regional Administrator that the total number of LAGC IFQ access area trips have been or are projected to be taken, the Nantucket Lightship North Scallop Rotational Area shall become part of the open area for LAGC IFQ vessels.

(h) [Reserved]

(i) *Nantucket Lightship-West Scallop Rotational Area*. The Nantucket Lightship-West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 4 TO PARAGRAPH (i)

Point	N latitude	W longitude
NLSW1	40°43.44'	70°20'
NLSW2	40°43.44'	70°00'
NLSW3	40°43.44'	69°30'
NLSW4	40°20'	69°30'
NLSW5	40°20'	70°00'
NLSW6	40°26.63'	70°20'
NLSW1	40°43.44'	70°20'

(j) *New York Bight Scallop Rotational Area*. The New York Bight Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 5 TO PARAGRAPH (j)

Point	N latitude	W longitude
NYB1	40°00'	73°20'
NYB2	40°00'	72°30'
NYB3	39°20'	72°30'
NYB4	39°20'	73°20'
NYB1	40°00'	73°20'

(k) *Elephant Trunk Scallop Rotational Area*. The Elephant Trunk Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 6 TO PARAGRAPH (k)

Point	N latitude	W longitude
ET1	38°50'	74°20'
ET2	38°50'	73°30'
ET3	38°10'	73°30'
ET4	38°10'	74°20'
ET1	38°50'	74°20'

■ 9. In § 648.62, revise paragraph (b)(1) to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(b) * * *

(1) The following landings limits will be effective for the NGOM for the 2023 and 2024 fishing years.

TABLE 1 TO PARAGRAPH (b)(1)

Landings limits	2023	2024 ¹
NGOM TAL	434,311 lb (197,000 kg)	318,573 (114,502 kg). ³
1 percent NGOM ABC for Observers	10,538 lb (4,780 kg)	7,932 (3,598 kg). ³
RSA Contribution	25,000 lb (11,340 kg)	25,000 lb (11,340 kg).
NGOM Set-Aside ²	380,855 lb (172,753 kg)	285,641 lb (129,565 kg).
NGOM APL	0 lb (0 kg)	0 lb (0 kg)

¹ The landings limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment.

² For fishing year 2023 the NGOM Set-Aside has been reduced by 17,918 lb (8,127 kg) to account for a limited access general category NGOM total allowable catch overage in 2021.

³ The catch limits for the 2024 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2024 that will be based on the 2023 annual scallop surveys.

* * * * *

[FR Doc. 2023-03654 Filed 3-2-23; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 88, No. 42

Friday, March 3, 2023

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by April 3, 2023. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Fruit, Nuts, and Specialty Crops—Substantive Change.

OMB Control Number: 0535–0039.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204 which specifies that “The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .”. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The National Agricultural Statistics Service (NASS) is seeking approval for this substantive change request to the Fruit, Nuts, and Specialty Crops surveys information collection request. NASS seeks approval to make substantive changes to the Maple Syrup Survey. The Maple Syrup Survey questionnaire changes and resulting data series that will not add any additional burden for the Fruit, Nuts, and Specialty Crops Survey information collection request.

The changes to the questionnaire and data series are a consolidation of production and sales data that resulted from members of the Maple Industry approaching NASS with suggestions to improve the Maple data series and resulting questionnaire.

Need and Use of the Information:

Data reported on fruit, nut, and specialty crops are used by NASS to estimate crop acreage, yield, production, utilization, price, and value in States with significant commercial production. These estimates are essential to farmers, processors, importers and exporters, shipping companies, cold storage facilities and handlers in making production and marketing decisions. Estimates from these inquiries are used by market order administrators in their determination of expected crop supplies under federal and State market orders.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 74,450.
Frequency of Responses: Reporting: On occasion; Annually; Semi-annually; Quarterly; Monthly; Weekly.
Total Burden Hours: 31,610.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–04431 Filed 3–2–23; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0019]

Bovine Tuberculosis Status Evaluation of Eight Mexican Regions and Intent To Classify Those Regions for Bovine Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are classifying eight Mexican regions for bovine tuberculosis as follows: The State of Sonora as Level II; the Yucatán Peninsula region (States of Yucatán and Quintana Roo, and part of the State of Campeche), the Huasteca region (parts of the States of Puebla, Veracruz, and Hidalgo), part of the State of Chihuahua, and part of the State of Durango as Level III; and part of the State of Coahuila, part of the State of Nuevo León, and the State of Tamaulipas as Level IV. These recognitions are based on an evaluation we have prepared in connection with this action, which we made available for review and comment.

DATES: This change in disease status will be recognized on March 3, 2023.

FOR FURTHER INFORMATION CONTACT: Dr. Kari Coulson, Import Risk Analyst, Regionalization Evaluation Services, Strategy and Policy, VS, APHIS, USDA, 920 Main Campus Drive, Venture II, 3rd floor, Raleigh, NC 27606; AskRegionalization@usda.gov; (919) 480–9876.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 93, subpart D (§§ 93.400 through 93.442, referred to below as part 93 or the subpart), contain requirements for the importation of ruminants into the United States to address the risk of introducing or

disseminating diseases of livestock within the United States. Part 93 currently contains provisions that address the risk that imported bovines (cattle or bison) may introduce or disseminate bovine tuberculosis within the United States. Within part 93, § 93.437 contains the requirements for classification of foreign regions for bovine tuberculosis and § 93.438 contains the process for requesting regional classification for bovine tuberculosis.

In accordance with § 93.437(f), the Animal and Plant Health Inspection Service (APHIS) maintains lists of all Level I, Level II, Level III, Level IV, and Level V regions for bovine tuberculosis and adds foreign regions classified in accordance with § 93.438 to these lists. In accordance with § 93.437(e), regions that do not have a program that meets APHIS requirements for bovine tuberculosis classification, have a prevalence of bovine tuberculosis in their domestic bovine herds equal to or greater than 0.5 percent, or are unassessed by APHIS with regard to bovine tuberculosis are considered to be Level V.

In accordance with the process in § 93.438, we published a notice¹ in the **Federal Register** on August 26, 2022 (87 FR 52500–52502, Docket No. APHIS–2021–0019), in which we announced the availability, for review and comment, of an evaluation of the State of Sonora; the Yucatán Peninsula region (States of Yucatán and Quintana Roo, and part of the State of Campeche); the Huasteca region (parts of the States of Puebla, Veracruz, San Luis Potosí, and Hidalgo); part of the State of Chihuahua, part of the State of Durango; part of the State of Coahuila; part of the State of Nuevo León; and the State of Tamaulipas. We detailed the findings and conclusions in a document titled “APHIS Evaluation of Eight Mexican Regions for Bovine Tuberculosis (*M. bovis*) Classification” (March 2022). The notice proposed to classify the Sonora region as Level II for bovine tuberculosis; the Yucatán Peninsula (States of Yucatán and Quintana Roo, and part of the State of Campeche), Huasteca (including parts of the States of Puebla, Veracruz, and Hidalgo, but excluding San Luis Potosí), Chihuahua, and Durango regions as Level III for bovine tuberculosis; and the Coahuila, Nuevo León, and Tamaulipas regions as Level IV for bovine tuberculosis.

We solicited comments on the notice for 60 days ending October 25, 2022. We did not receive any comments.

Therefore, based on the evaluation, we are classifying these eight regions of Mexico for bovine tuberculosis as described above and adding to the lists of regions classified for bovine tuberculosis status which is maintained on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions> and scrolling down to “Bovine Tuberculosis.” Copies of the list are also available via postal mail, fax, or email from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 27th day of February 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–04374 Filed 3–2–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–041]

Truck and Bus Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review in Part, and Intent To Rescind in Part; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain exporters/producers of truck and bus tires from the People's Republic of China (China) received countervailable subsidies during the period of review (POR) from January 1, 2021, through December 31, 2021. In addition, we are rescinding the review with respect to 12 companies and announcing our preliminary intent to rescind this review with respect to three other companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable March 3, 2023.

FOR FURTHER INFORMATION CONTACT:

Theodore Pearson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631.

Background

On February 15, 2019, Commerce published in the **Federal Register** the countervailing duty (CVD) order on truck and bus tires from China.¹ On April 12, 2022, Commerce published the notice of initiation of an administrative review of the *Order* for the period January 1, 2021, through December 31, 2021.² On May 19, 2022, Commerce selected Qingdao Ge Rui Da Rubber Co., Ltd as the sole mandatory respondent in this administrative review.³ On October 14, 2022, Commerce exercised its discretion to extend the preliminary results of this administrative review by 120 days, until February 28, 2022.⁴

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁵ A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix 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 <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by the *Order* are truck and bus tires. For a complete description of the scope, *see* the Preliminary Decision Memorandum.⁶

¹ *See Truck and Bus Tires from the People's Republic of China: Amended Final Determination and Countervailing Duty Order*, 84 FR 4434 (February 15, 2019) (*Order*).

² *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 21619 (April 12, 2022).

³ *See* Memorandum, “Respondent Selection,” dated May 19, 2022.

⁴ *See* Memorandum, “Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2021,” dated October 14, 2022.

⁵ *See* Memorandum, “Decision Memorandum for the Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part, and Preliminary Intent to Rescind in Part; 2021: Truck and Bus Tires from the People's Republic of China,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ *See* Preliminary Decision Memorandum.

¹ To view the notice and the evaluation, go to www.regulations.gov and enter APHIS–2021–0019 in the Search field.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each subsidy program found countervailable, we preliminarily find that there is a subsidy, (*i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific).⁷ For a full description of the methodology underlying our conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received timely-filed withdrawal requests with respect to the following 12 companies: Zhongce Rubber Group Co., Ltd.; Giti Tire (Anhui) Company Ltd., Giti Tire (Fujian) Company Ltd., Giti Tire Global Trading Pte. Ltd.; Weifang Shunfuchang Rubber and Plastic Products Co., Ltd.; Double Coin Group (Jiangsu) Tyre Co., Ltd.; Double Coin Tyre Group (Shanghai) Imp & Exp Co., Ltd.; Qingdao Awesome International Trade Co., Ltd.; Qingdao Fullrun Tyre Corp. Ltd.; Shandong Haohua Tire Co., Ltd.; Shandong Kaixuan Rubber Co., Ltd.; and Shandong Transtone Tyre Co., Ltd., pursuant to 19 CFR 351.213(d)(1).⁸ Because the withdrawal requests were timely filed, and no other parties requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect to these 12 companies.

Intent To Rescind Administrative Review, in Part

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.⁹ Normally,

upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.¹⁰ Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated countervailing duty assessment rate calculated for the review period.¹¹ According to the CBP import data on the record, there are three companies, Bridgestone (Shenyang) Tire Co., Ltd., Chongqing Hankook Tire Co., Ltd., and Jiangsu Hankook Tire Co., Ltd., subject to this review that did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we intend to rescind this administrative review with respect to these three companies, in accordance with 19 CFR 351.213(d)(3).¹²

Preliminary Rate for Non-Selected Companies Under Review

There are two companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides the basis for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and/or producers individually examined, excluding any rates that are zero, *de minimis*, or based entirely on facts available. In this review, the

preliminary rate calculated for Qingdao Ge Rui Da Tire Company (GRT) the sole mandatory respondent, was not zero, *de minimis*, or based entirely on facts available. Therefore, for the companies for which a review was requested that were not selected as mandatory company respondents, and for which Commerce did not receive a timely request for withdrawal of review, Commerce based the preliminary subsidy rate on the preliminary rate calculated for GRT.

Preliminary Results of Review

We preliminarily find the following net countervailable subsidy rates for the period January 1, 2021, through December 31, 2021, are as follows:

Manufacturer/exporter	Subsidy rate (percent <i>ad valorem</i>)
Qingdao Ge Rui Da Rubber Co., Ltd. ¹³	13.33
Review-Specific Average Rate Applicable to the Following Companies¹⁴	
Joyall (Weihai) Tire Co., Ltd.	13.33
Triangle Tyre Co., Ltd	13.33

Verification

While we did not receive a request for verification party, as provided in section 782(i)(3) of the Act, Commerce intends to verify the part of the information relied upon for its final results. Specifically, Commerce intends to verify usage of the export buyer's credit program as discussed in the Preliminary Decision Memorandum.¹⁵ Commerce intends to notify parties of its verification procedures.

Disclosure and Public Comment

We will disclose to parties in this review, the calculations performed for these preliminary results within five days after the date of publication of this notice.¹⁶ Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Commerce will notify

⁷ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁸ See Preliminary Decision Memorandum at "Partial Rescission of Administrative Review."

⁹ See, e.g., *Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015*,

82 FR 14349 (March 20, 2017); and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017*, 84 FR 14650 (April 11, 2019).

¹⁰ See 19 CFR 351.212(b)(2).

¹¹ See 19 CFR 351.213(d)(3).

¹² The three companies are: Bridgestone (Shenyang) Tire Co., Ltd., Chongqing Hankook Tire Co., Ltd., and Jiangsu Hankook Tire Co., Ltd.

¹³ As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Qingdao Ge Rui Da Tire Company: Cooper Tire (China) Investment Co. Ltd.; Cooper Tire Asia-Pacific (Shanghai) Trading Co., Ltd.; Cooper (Kunshan) Tire Co., Ltd.; Qingdao Yiyuan Investment Co., Ltd.; Goodyear Dalian Tire Company Limited; and Goodyear Tire Management Company (Shanghai) Ltd.

¹⁴ This rate is based on the rate for the respondent that was selected for individual review, excluding rates that are zero, *de minimis*, or based entirely on facts available. See section 735(c)(5)(A) of the Act.

¹⁵ See Preliminary Decision Memorandum at section "Application of FA and AFA: Export Buyer's Credits."

¹⁶ See 19 CFR 351.224(b).

interested parties of the deadline for the submission of case briefs. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs unless otherwise modified by Commerce.¹⁷ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.¹⁸

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

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, filed electronically using ACCESS. An electronically-filed request must be received successfully, and in its entirety, by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice. Hearing requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be determined.

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respondents listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this

administrative review. If the rate calculated in the final results is zero or *de minimis*, no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producers/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. For the companies for which this review is rescinded, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2021, through December 31, 2021, in accordance with 19 CFR 351.212(c)(1)(i). For the companies remaining in the review, we intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Notification to Interested Parties

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: February 27, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Non-Selected Companies Under Review
- V. Partial Rescission of Administrative Review
- VI. Intent to Rescind Administrative Review, In Part
- VII. Diversification of China's Economy
- VIII. Use of Faces Otherwise Available and Application of Adverse Inferences
- IX. Subsidies Valuation
- X. Interest Rate, Discount Rate, Input, Electricity, and Land Benchmarks
- XI. Analysis of Programs
- XII. Recommendation

[FR Doc. 2023–04436 Filed 3–2–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–146]

Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances 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 producers and exporters of certain freight rail couplers and parts thereof (freight rail couplers) From the People's Republic of China (China) during the period of investigation January 1, 2021, through December 31, 2021.

DATES: Applicable March 3, 2023.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Paul Gill, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–5673, 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 18, 2022,

¹⁷ See 19 CFR 351.309(d)(1).

¹⁸ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period*, 85 FR 29615 (May 18, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Commerce published the notice of initiation of this investigation.¹ On December 2, 2022, Commerce postponed the preliminary determination of this investigation until February 27, 2023.² 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 <http://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 freight rail couplers from China. 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 We received comments from several parties concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations of freight rail couplers as it appeared in the *Initiation Notice*, which are listed in the Preliminary Decision Memorandum.⁶ We are

currently evaluating the scope comments filed by the interested parties and intend to issue our preliminary decision regarding the scope of the AD and CVD investigations shortly. We will 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.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 703(e)(1) of the Act, we preliminarily find that critical circumstances exist with respect to imports of subject merchandise from Chongqing Tongyao, Qingdao Sanheshan, the non-responsive companies,⁷ and all other producers and/or exporters. For a full discussion of our preliminary critical circumstances determination, *see* the "Critical Circumstances" section of the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found 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.⁸

Commerce notes that, in making these findings, it relied on facts available and, because Commerce finds that necessary information was missing from the record and because respondents did not act to the best of their ability to respond to Commerce's requests for information, Commerce drew an adverse inference in selecting from among the facts otherwise available.⁹ For further

information, *see* the "Use of Facts Otherwise Available and Adverse Inferences" section in the Preliminary Decision Memorandum.

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 zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise available, Commerce may use "any reasonable method" to establish the estimated subsidy rate for all other producers or exporters. In this investigation, Commerce preliminarily determined the individually estimated subsidy rate for each of the individually examined respondents based entirely on facts available under section 776 of the Act. This is the only rate available in this proceeding for deriving the all-others rate. Consequently, pursuant to sections 703(d) and 705(c)(5)(A)(ii) of the Act, Commerce established the all-others rate by applying the countervailable subsidy rate assigned to the mandatory respondents.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent ad valorem)
Chongqing Changzheng Heavy Industry Co., Ltd	265.99
Chongqing Tongyao Transportation Equipment Co	265.99
CRRC Qiqihar Co., Ltd	265.99
Nanjing Zhongsheng Rolling Stock Components Co. Ltd	265.99
Ningbo Minghui Metal Technology Co., Ltd	265.99
Qingdao Lianshan Casting Co., Ltd	265.99
Qingdao Sanheshan Precision Casting Co., Ltd	265.99

¹ See *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 87 FR 64440 (October 25, 2022) (*Initiation Notice*).

² See *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination*, 87 FR 74128 (December 2, 2022).

³ See Memorandum, "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Certain Freight

Rail Couplers and Parts Thereof from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

⁵ See *Initiation Notice*, 87 FR 64441.

⁶ See Preliminary Decision Memorandum at 1–22.

⁷ The non-responsive companies are: (1) Chongqing Changzheng Heavy Industry Co., Ltd.; (2) CRRC Qiqihar Co., Ltd.; (3) Nanjing Zhongsheng

Rolling Stock Components Co. Ltd.; (4) Ningbo Minghui Metal Technology Co., Ltd.; (5) Qingdao Lianshan Casting Co., Ltd.; (6) Shaanxi Haiduo Railway Technology Development Co., Ltd.; and (7) Shanghai Voith Xiagujin Chuang Coupler Technology Co., Ltd.

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ See sections 776(a) and (b) of the Act.

Company	Subsidy rate (percent ad valorem)
Shaanxi Haiduo Railway Technology Development Co., Ltd	265.99
Shanghai Voith Xiagujin Chuang Coupler Technology Co., Ltd	265.99
All Others	265.99

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, because we find that critical circumstances exist for Chongqing Tongyao, Qingdao Sanheshan, the non-responsive companies, and all other producers and/or exporters, 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 90 days prior to 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.

Disclosure

Normally, Commerce discloses its calculations and analysis performed in connection with the preliminary determination to interested parties within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied total AFA in the calculation of the benefit for Chongqing Tongyao, Qingdao Sanheshan, and the non-responsive companies, and the applied AFA rates are based on rates calculated in prior proceedings, there are no calculations to disclose.

Verification

Because the examined respondents in this investigation did not provide information Commerce requested and Commerce preliminarily determines that each of the examined respondents have been uncooperative, it will not conduct verification.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs on the preliminary decision regarding the scope of the AD and CVD investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents

simultaneously on the records of the ongoing AD and CVD freight rail couplers 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 20 days after the date of publication of the preliminary determination. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁰ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.¹¹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, 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, parties will be notified of the time and date for the hearing.¹²

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 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 freight rail couplers from China are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: February 27, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers certain freight railcar couplers (also known as "fits" or "assemblies") and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler bodies but may also include other items (*e.g.*, coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the investigation include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.*, knuckles and coupler bodies) are included within the scope of the investigation when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or non-subject parts, whether assembled or unassembled, whether mounted or unmounted, or if joined with non-subject merchandise, such as other non-subject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other non-subject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of this investigation meet or exceed the AAR specifications of M-211, "Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler

¹⁰ See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

¹¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹² See 19 CFR 351.310(d).

Parts” and/or AAR M-215 “Coupling Systems,” or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of non-subject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

The couplers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished railcars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.5000 if imported as an Instrument of International Traffic. Subject merchandise may also be imported under HTSUS statistical reporting number 7325.99.5000. These HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Injury Test
- V. Diversification of China's Economy
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Analysis of Programs
- VIII. Critical Circumstances
- IX. Recommendation

[FR Doc. 2023-04438 Filed 3-2-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board or TTAB) will hold a meeting on Monday, March 20, 2023. The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry. This will be the first meeting of the 2023–2024 term of the TTAB. The main purpose of this introductory meeting is for Board members to discuss the effects of the COVID-19 pandemic on the travel and tourism industry. The final agenda will be posted on the Department of Commerce website for the Board at <https://www.trade.gov/ttab-meetings> at least two days prior to the meeting.

DATES: Monday, March 20, 2023, 11:00 a.m.–12:30 p.m. EDT. The deadline for members of the public to register for the meeting or to submit written comments for dissemination prior to the meeting is 5:00 p.m. EDT on Wednesday, March 15, 2023.

ADDRESSES: The meeting will be held virtually. The access information will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted by email to TTAB@trade.gov.

FOR FURTHER INFORMATION CONTACT:

Jennifer Aguinaga, the United States Travel and Tourism Advisory Board, National Travel and Tourism Office, U.S. Department of Commerce; telephone: 202–482–2404; email: TTAB@trade.gov.

SUPPLEMENTARY INFORMATION:

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. Any member of the public requesting to join the meeting is asked to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Members of the public wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of

their prepared remarks by 5:00 p.m. EDT on Wednesday, March 15, 2023, for inclusion in the meeting records and for circulation to the members of the Board.

In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Aguinaga at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on Wednesday, March 15, 2023, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be transmitted to the Board but may not be considered during the meeting. Copies of Board meeting minutes will be available within 90 days of the meeting.

This Notice is published pursuant to the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C., App., 9(c). It has been determined that the Committee is necessary and in the public interest. The Committee was established pursuant to Commerce's authority under 15 U.S.C. 1512, established under the FACA, as amended, 5 U.S.C. App., and with the concurrence of the General Services Administration.

Jennifer Aguinaga,

Designated Federal Officer, United States Travel and Tourism Advisory Board.

[FR Doc. 2023-04377 Filed 3-2-23; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-902]

Utility Scale Wind Towers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that utility scale wind towers (wind towers) from the Republic of Korea (Korea) were sold in the United States at less than normal value during the period of review (POR) February 14, 2020, through July 31, 2021.

DATES: Applicable March 3, 2023.

FOR FURTHER INFORMATION CONTACT:

Adam Simons or Macey Mayes, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230; telephone: (202) 482–6172 or (202) 482–4473, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers one producer/exporter of the subject merchandise, Dongkuk S&C Co., Ltd. (Dongkuk). On August 29, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment.¹ For a summary of the events that occurred since the *Preliminary Results*, as well as a full discussion of the issues raised by parties for these final results, see the Issues and Decision Memorandum.²

Scope of the Order³

The merchandise subject to the *Order* is wind towers. The product is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000 and may also be classified under HTSUS subheading 7308.20.0020 or 8502.31.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive.⁴

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

¹ See *Utility Scale Wind Towers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review; 2020–2021*, 87 FR 54195 (September 2, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Utility Scale Wind Towers from the Republic of Korea,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 55811 (October 7, 2021); see also *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 85 FR 52546 (August 26, 2020) (*Order*).

⁴ For a complete description of the scope of the *Order*, see the *Preliminary Results* PDM.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, we made certain changes to the preliminary weighted-average dumping margin for Dongkuk.

Finals Results of Review

We determine that the following weighted-average dumping margin exists for the respondent for the period February 14, 2020, through July 31, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Dongkuk S&C Co., Ltd	2.49

Disclosure of Calculations

We intend to disclose the calculations performed for Dongkuk to interested parties in this proceeding within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), Dongkuk reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's “automatic assessment” practice will apply to entries of subject merchandise during the POR produced by Dongkuk for which the company did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate of 5.41 percent if there is no

rate for the intermediate company(ies) involved in the transaction.⁵

Commerce intends to issue liquidation instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.41 percent, the all-others rate established in the LTFV investigation.⁶ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to

⁵ See *Order*; and *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders*, 85 FR 56213 (September 11, 2020) (correcting the date that the provisional measures period expired). For a full discussion of the “automatic assessment” practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁶ See *Order*, 85 FR at 52547.

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 27, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Changes Since the *Preliminary Results*
- IV. Discussion of the Issues
 - Comment 1: Whether Commerce Should Revise Its Steel Plate Cost Smoothing Adjustment
 - Comment 2: Whether Additional Revenues for U.S. Sales Should Be Included in the U.S. Price Calculation
 - Comment 3: Reallocating Indirect Costs Based on Direct Materials Consumed
- V. Recommendation

[FR Doc. 2023-04435 Filed 3-2-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-840]

Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain frozen warmwater shrimp (shrimp) from India is being, or is likely to be, sold in the United States at less than normal value (NV) during the period of review (POR) February 1, 2021, through January 31, 2022.

DATES: Applicable March 3, 2023.

FOR FURTHER INFORMATION CONTACT:

Terre Keaton Stefanova or Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–6172, respectively.

Background

On April 12, 2022, based on a timely request for review, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the antidumping duty order on shrimp from India.¹ This review covers 187 producers and/or exporters of the subject merchandise. Commerce selected two mandatory respondents for individual examination: Megaa Moda Pvt. Ltd. (Megaa Moda) and NK Marine Exports LLP (NK Marine). For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.²

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp. The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.04, 0306.17.00.05, 0306.17.00.07, 0306.17.00.08, 0306.17.00.10, 0306.17.00.11, 0306.17.00.13, 0306.17.00.14, 0306.17.00.16, 0306.17.00.17, 0306.17.00.19, 0306.17.00.20, 0306.17.00.22, 0306.17.00.23, 0306.17.00.25, 0306.17.00.26, 0306.17.00.28, 0306.17.00.29, 0306.17.00.41, 0306.17.00.42, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 21619 (April 12, 2022).

² See Memorandum, “Decision Memorandum for the Preliminary Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

product description remains dispositive.³

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as Appendix I 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>.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period February 1, 2021, through January 31, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Megaa Moda Pvt. Ltd	7.92
NK Marine Exports LLP	1.43
Companies Not Selected for Individual Review ⁴	3.76

Review-Specific Average Rate for Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when

³ For a complete description of the scope of the order, see the Preliminary Decision Memorandum.

⁴ The exporters or producers not selected for individual review are listed in Appendix II.

calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding any margins that are zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.” For these preliminary results, we have preliminarily calculated a weighted-average dumping margin for these companies using the calculated rates of the mandatory respondents, Megaa Moda and NK Marine, which are not zero or *de minimis*, or determined entirely on the basis of facts available.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.⁵ Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.⁶ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.⁷ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁸ Case and rebuttal briefs should be filed using ACCESS.⁹ An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁰

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.¹¹ Hearing requests should contain: (1) the party's

name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹²

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice in the **Federal Register**, unless otherwise extended.¹³

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹⁴ Pursuant to 19 CFR 351.212(b)(1), because both respondents reported the entered value for all of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's “automatic assessment” will apply to entries of subject merchandise during the POR produced by Megaa Moda or NK Marine for which these companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹⁵

For the companies which were not selected for individual review, we will assign an assessment rate based on the review-specific average rate, calculated as noted in the “Preliminary Results of Review” section, above. This rate is an average of the cash deposit rates calculated for Megaa Moda and NK

Marine. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.¹⁶

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered by this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation.¹⁷ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant

⁵ See 19 CFR 351.224(b).

⁶ See 19 CFR 351.309(c).

⁷ See 19 CFR 351.309(d).

⁸ See 19 CFR 351.309(c)(2) and (d)(2).

⁹ See 19 CFR 351.303.

¹⁰ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹¹ See 19 CFR 351.310(c).

¹² See 19 CFR 351.310(d).

¹³ See section 751(a)(3)(A) of the Act.

¹⁴ See 19 CFR 351.212(b)(1).

¹⁵ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁶ See section 751(a)(2)(C) of the Act.

¹⁷ See *Notice of Amended Final Determination of Sale at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (February 1, 2005).

entries during this review period. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 27, 2023.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

Appendix II

Review-Specific Average Rate Applicable to Companies Not Selected for Individual Review

1. Abad Fisheries
2. Accelerated Freeze Drying Co.
3. ADF Foods Ltd.
4. Albys Agro Private Limited
5. Al-Hassan Overseas Private Limited
6. Allana Frozen Foods Pvt. Ltd.
7. Allanasons Ltd.
8. Alps Ice & Cold Storage Private Limited
9. Amaravathi Aqua Exports Private Limited
10. Amarsagar Seafoods Private Limited
11. Amulya Seafoods
12. Anantha Seafoods Private Limited
13. Anjaneya Seafoods
14. Asvini Agro Exports
15. Ayshwarya Seafood Private Limited
16. B R Traders
17. Baby Marine Eastern Exports
18. Baby Marine Exports
19. Baby Marine International
20. Baby Marine Sarass
21. Baby Marine Ventures
22. Balasore Marine Exports Private Limited
23. BB Estates & Exports Private Limited
24. Bell Exim Private Limited
25. Bhatsons Aquatic Products
26. Bhavani Seafoods
27. Bhimraj Exports Private Limited
28. Bijaya Marine Products
29. Blue-Fin Frozen Foods Pvt. Ltd.
30. Blue Water Foods & Exports P. Ltd.
31. Blue Park Seafoods Pvt. Ltd.
32. Britto Seafood Exports Pvt Ltd.
33. Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co.
34. Canaan Marine Products
35. Capithan Exporting Co.
36. Cargomar Private Limited
37. Chakri Fisheries Private Limited
38. Chemmeens (Regd)
39. Cherukattu Industries (Marine Div)
40. Cochin Frozen Food Exports Pvt. Ltd.
41. Cofoods Processors Private Limited

42. Continental Fisheries India Private Limited
43. Coreline Exports
44. Corlim Marine Exports Pvt. Ltd.
45. CPF (India) Private Limited
46. Crystal Sea Foods Private Limited
47. Danica Aqua Exports Private Limited
48. Datla Sea Foods
49. Deepak Nexgen Foods and Feeds Private Limited
50. Delsea Exports Pvt. Ltd.
51. Devi Sea Foods Limited ¹⁸
52. Dwaraka Sea Foods
53. Empire Industries Limited
54. Entel Food Products Private Limited
55. Esmario Export Enterprises
56. Everblue Sea Foods Private Limited
57. Febin Marine Foods Private Limited
58. Fedora Sea Foods Private Limited
59. Food Products Pvt., Ltd./Parayil Food Products Pvt., Ltd.
60. Fouress Food Products Private Limited
61. Frontline Exports Pvt. Ltd.
62. G A Randerian Ltd.
63. Gadre Marine Exports (AKA Gadre Marine Exports Pvt. Ltd.)
64. Galaxy Maritech Exports P. Ltd.
65. Geo Aquatic Products (P) Ltd.
66. Grandtrust Overseas (P) Ltd.
67. GVR Exports Pvt. Ltd.
68. Hari Marine Private Limited
69. Haripriya Marine Export Pvt. Ltd.
70. HIC ABF Special Foods Pvt. Ltd.
71. Highland Agro
72. Hiravati Exports Pvt. Ltd.
73. Hiravati International Pvt. Ltd.
74. Hiravati Marine Products Private Limited
75. HMG Industries Ltd.
76. HN Indigos Private Limited
77. Hyson Exports Private Limited
78. Hyson Logistics and Marine Exports Private Limited
79. Indian Aquatic Products
80. Indo Aquatics
81. Indo Fisheries
82. Indo French Shellfish Company Private Limited
83. International Freezefish Exports
84. Jinny Marine Traders
85. Jude Foods India Private Limited
86. K.V. Marine Exports
87. Karunya Marine Exports Private Limited
88. Kaushalya Aqua Marine Product Exports Pvt. Ltd.
89. Kay Kay Exports
90. Kings Infra Ventures Limited
91. Kings Marine Products
92. Koluthara Exports Ltd.
93. Libran Foods
94. Lito Marine Exports Private Limited
95. Mangala Sea Products
96. Marine Harvest India
97. Milsha Agro Exports Pvt. Ltd.
98. Milsha Sea Products
99. Minaxi Fisheries Private Limited
100. Mindhola Foods LLP
101. Minh Phu Group
102. MMC Exports Limited
103. MTR Foods
104. Naik Frozen Foods Private Limited
105. Naik Oceanic Exports Pvt. Ltd./Rafiq Naik Exports Pvt. Ltd.
106. Naik Seafoods Ltd.
107. NAS Fisheries Pvt. Ltd.
108. Nine Up Frozen Foods
109. Nutrient Marine Foods Limited
110. Oceanic Edibles International Limited
111. Paragon Sea Foods Pvt. Ltd.
112. Paramount Seafoods
113. Pesca Marine Products Pvt., Ltd.
114. Pijikay International Exports P Ltd.
115. Poyilakada Fisheries Private Limited
116. Pravesh Seafood Private Limited
117. Premier Exports International
118. Premier Marine Foods
119. Premier Seafoods Exim (P) Ltd.
120. Protech Organo Foods Private Limited
121. Raju Exports
122. Rajyalakshmi Marine Exports
123. Ram's Assorted Cold Storage Limited
124. Raunaq Ice & Cold Storage
125. RDR Exports
126. RF Exports Private Limited
127. Rising Tide
128. Riyarchita Agro Farming Private Limited
129. Rupsha Fish Private Limited
130. R V R Marine Products Private Limited
131. S Chanchala Combines Private Limited
132. Safara Food International
133. Sagar Samrat Seafoods
134. Sahada Exports
135. Sai Aquatechs Private Limited
136. Salet Seafoods Pvt. Ltd.
137. Samaki Exports Private Limited
138. Sanchita Marine Products Private Limited
139. Sasondock Matsyodyog Sahakari Society Ltd.
140. Sea Doris Marine Exports
141. Seagold Overseas Pvt. Ltd.
142. Seasaga Enterprises Private Limited/Seasaga Group
143. Shimpo Exports Private Limited
144. Shimpo Seafoods Private Limited
145. Shiva Frozen Food Exp. Pvt. Ltd.
146. Shroff Processed Food & Cold Storage P Ltd.
147. Sigma Seafoods
148. Silver Seafood
149. Sita Marine Exports
150. Sonia Fisheries
151. Sreeragam Exports Private Limited
152. Sri Sakkthi Cold Storage
153. Srikanth International
154. SSF Ltd.
155. Star Agro Marine Exports Private Limited
156. Star Organic Foods Private Limited
157. Stellar Marine Foods Private Limited
158. Sterling Foods
159. Sun Agro Exim
160. Supran Exim Private Limited
161. Suvarna Rekha Exports Private Limited
162. Suvarna Rekha Marines P Ltd.
163. TBR Exports Private Limited
164. Teekay Marines Private Limited
165. Tej Aqua Feeds Private Limited
166. The Waterbase Limited
167. Torry Harris Seafoods Ltd.
168. Triveni Fisheries P Ltd.
169. U & Company Marine Exports

¹⁸ Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from the order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part*, 75 FR 41813, 41814 (July 19, 2010). Accordingly, we initiated this administrative review with respect to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

170. Ulka Sea Foods Private Limited
 171. Uniloids Biosciences Private Limited
 172. Vinroyal Marine Exports Ltd.
 173. Unitriveni Overseas Private Limited
 174. Vaisakhi Bio-Marine Private Limited
 175. Varma Marine
 176. Vasai Frozen Food Co.
 177. Veronica Marine Exports Private Limited
 178. Victoria Marine & Agro Exports Ltd.
 179. Vinner Marine
 180. Vitality Aquaculture Pvt. Ltd.
 181. VKM Foods Private Limited
 182. VRC Marine Foods LLP
 183. West Coast Fine Foods (India) Private Limited
 184. West Coast Frozen Foods Private Limited
 185. Zeal Aqua Limited

[FR Doc. 2023-04437 Filed 3-2-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-837]

Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Preliminary Results and Preliminary Intent To Rescind, in Part, the Countervailing Duty Administrative Review; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain exporters/producers of certain cut-to-length plate (CTL plate) from the Republic of Korea (Korea) received countervailable subsidies during the period of review (POR), January 1, 2021, through December 31, 2021. We invite interested parties to comment on these preliminary results.

DATES: Applicable March 3, 2023.

FOR FURTHER INFORMATION CONTACT: David Lindgren, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1671.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, Commerce published in the **Federal Register** the countervailing duty (CVD) order on CTL plate from Korea.¹ On April 12, 2022,

¹ See *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000) (*Order*).

Commerce published in the **Federal Register** its initiation of the CVD administrative review of the *Order* for the period January 1, 2021, to December 31, 2021.² On May 2, 2022, Commerce selected Hyundai Steel Company (Hyundai Steel) as the sole mandatory respondent in this administrative review.³

On October 5, 2022, Commerce extended the deadline for issuance of the preliminary results of this review by 120 days, until February 28, 2023, in accordance with 19 CFR 351.213(h)(2).⁴

A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁵ The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The product covered by this *Order* is certain cut-to-length carbon-quality steel plate. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Preliminary Intent To Rescind Administrative Review, in Part

Based on our analysis of U.S. Customs and Border Protection (CBP) data and comments received from interested parties, we preliminarily determine that two companies, BDP International and Sung Jin Steel Co., Ltd, had no reviewable shipments, sales or entries of subject merchandise during the POR.

Absent any evidence of shipments placed on the record, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the administrative review of these companies in the final results of review.

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 21619 (April 12, 2022) (*Initiation Notice*).

³ See Memorandum, "Respondent Selection," dated May 2, 2022.

⁴ See Memorandum, "Extension of Deadline for Preliminary Results," dated October 5, 2022.

⁵ See Memorandum, "Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, 2021: Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

For further information, see "Preliminary Intent to Rescind Administrative Review, in Part" in the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this CVD administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.*, a financial contribution by an "authority" that confers a benefit to the recipient, and that the subsidy is specific.⁶ For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Rate for Non-Selected Companies Under Review

There are four companies for which a review was requested.⁷ Of those, as discussed above, we intend to rescind the review for two companies that had no reviewable entries during the POR. In addition, Commerce selected one mandatory respondent, Hyundai Steel, for individual examination. Because the rate calculated for mandatory respondent Hyundai Steel is above *de minimis* and not based entirely on facts available, we have applied the subsidy rate calculated for the mandatory respondent to Dongkuk Steel Mill Co., Ltd., the remaining company subject to this review. This methodology is consistent with our practice for establishing an all-others subsidy rate pursuant to section 705(c)(5)(A) of the Act. For further information on the non-selected respondent rate, refer to the section in the Preliminary Decision Memorandum entitled "Non-Selected Companies Under Review."

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates for the period January 1, 2021, through December 31, 2021:

Company	Net countervailable subsidy rate (percent)
Hyundai Steel Company	1.10
Dongkuk Steel Mill Co., Ltd	1.10

⁶ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁷ See *Initiation Notice*, 87 FR at 21635.

Assessment Rate

In accordance with 19 CFR 351.221(b)(4)(i), Commerce has preliminarily assigned subsidy rates as indicated above. Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Rate

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days after the date of publication of this notice in the **Federal Register**.⁸ Case briefs may be submitted to the Assistant Secretary for Enforcement and Compliance.⁹ Interested parties will be notified of the timeline for the submission of such case briefs at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁰ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief

summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹¹

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using ACCESS.¹² Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.¹³ If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.¹⁴ Parties should confirm the date and time of the hearing two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised by parties in their comments, within 120 days after the date of publication of these preliminary results.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: February 27, 2023.

Abdelali Elouaradia,
Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Review
- IV. Preliminary Intent to Rescind Administrative Review, In Part
- V. Non-Selected Company Under Review
- VI. Scope of the Order
- VII. Subsidies Valuation Information
- VIII. Use of Facts Otherwise Available

¹¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹² See 19 CFR 351.310(c).

¹³ *Id.*

¹⁴ See 19 CFR 351.310.

IX. Analysis of Programs
X. Recommendation

[FR Doc. 2023–04440 Filed 3–2–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–129, C–570–130]

Certain Walk-Behind Lawn Mowers and Parts Thereof From the People's Republic of China: Notice of Intent To Rescind Circumvention Inquiry on the Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) notifies interested parties that it intends to rescind a circumvention inquiry to determine whether certain lawn mowers assembled or completed in the United States by attaching Chinese cutting deck shells (attached to at least one significant non-engine component) to internal combustion engines are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain walk-behind lawn mowers and parts thereof (lawn mowers) from the People's Republic of China (China). Interested parties are invited to comment on this intent to rescind.

DATES: Applicable March 3, 2023.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Natasia Harrison, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760 or (202) 482–1240, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2022, Commerce initiated a circumvention inquiry to determine whether certain lawn mowers assembled or completed in the United States by attaching Chinese cutting deck shells (attached to at least one significant non-engine component) to internal combustion engines are circumventing the AD and CVD orders on lawn mowers from China under section 781(a) of the Tariff Act of 1930, as amended (the Act).¹ On December 12,

¹ See *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Initiation of a Circumvention Inquiry on the*

⁸ See 19 CFR 351.224(b).

⁹ See 19 CFR 351.309(c).

¹⁰ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

2022, in accordance with 19 CFR 351.226(f)(2), Ningbo Daye Garden Machinery Co., Ltd., Ningbo Lingyue Intelligent Equipment Co., Ltd., and Daye North America, Inc. (collectively, Daye) submitted comments and factual information in response to the *Initiation Notice*.² On January 10, 2023, in accordance with 19 CFR 351.226(f)(2), MTD Products Inc. and its parent company, Stanley Black & Decker, Inc. (collectively, the petitioner), filed comments and factual information to rebut, clarify, or correct the comments and information submitted by Daye on December 12, 2022.³ The preliminary determination of this circumvention inquiry is currently due on March 27, 2023.⁴

For a full discussion of the basis for our intent to rescind this circumvention inquiry, see the Memorandum of Intent to Rescind.⁵ A list of topics discussed in the Memorandum of Intent to Rescind is included as the appendix to this notice. The Memorandum of Intent to Rescind 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 Memorandum of Intent to Rescind can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Antidumping and Countervailing Duty Orders, 87 FR 65033 (October 27, 2022) (*Initiation Notice*), and accompanying Circumvention Initiation Memorandum; see also *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 86 FR 36703 (July 13, 2021); and *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination*, 86 FR 36702 (July 13, 2021) (collectively, *Orders*).

² See Daye's Letter, "Daye's Comments and Submission of Factual Information in Response to the Department's Circumvention Inquiry Initiation" dated December 12, 2022.

³ See Petitioner's Letter, "Comments and Factual Information Submitted by MTD Products, Inc and Stanley Black & Decker, Inc. to Rebut, Clarify, or Correct Daye's Submission of Factual Information," dated January 10, 2023. MTD Products, Inc. was the petitioner in the investigation. See *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 37417 n.1 (June 22, 2020).

⁴ See 19 CFR 351.226(e)(1); and *Initiation Notice*, 87 FR at 65035.

⁵ See Memorandum, "Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Memorandum of Intent to Rescind Circumvention Inquiry on the Antidumping and Countervailing Duty Orders," dated concurrently with, and hereby adopted by, this notice (Memorandum of Intent to Rescind).

Scope of the Orders

The products covered by these *Orders* are lawn mowers from China. A full description of the scope of the *Orders* is provided in the Memorandum of Intent to Rescind.

Merchandise Subject to the Circumvention Inquiry

The merchandise subject to this circumvention inquiry are lawn mower sub-assemblies imported from China and comprised of a cutting deck shell attached to at least one other significant non-engine component, such as, but not limited to, a handle, wheels, grass catcher bag, or an electronic starter. These sub-assemblies are assembled or completed in the United States by attaching internal combustion engines to produce rotary walk-behind lawn mowers of the type that would be subject to the *Orders*.⁶ The cutting deck shell is the portion of the lawn mower—typically of aluminum or steel—that houses and protects a user from a rotating blade. Cutting deck shells are typically entered under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8433.11 or 8433.90.

Intent To Rescind Circumvention Inquiry

As explained above, this circumvention inquiry covers cutting deck shells attached to at least one other significant non-engine component, such as, but not limited to, a handle, wheels, grass catcher bag, or an electronic starter. We find that the inquiry merchandise is excluded from the scope of the orders because it is not imported as "at a minimum, a sub-assembly comprised of an engine and a cutting deck shell attached to one another." We also find that it is not appropriate to conduct a circumvention inquiry on such excluded merchandise. Therefore, Commerce intends to rescind this circumvention inquiry, in accordance with 19 CFR 351.226(f)(6). For more explanation, see the Memorandum of Intent to Rescind.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce notified U.S. Customs and Border Protection (CBP) of the initiation of this circumvention inquiry and directed CBP to continue the suspension of liquidation of entries of products

⁶ This inquiry does not include lawn mowers assembled or completed in the United States using small vertical engines from China that are covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225 cc, and parts thereof. See *Initiation Notice*, 87 FR at 65034 n.11.

subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Orders*.⁷ If Commerce rescinds this circumvention inquiry pursuant to 19 CFR 351.226(f)(6), Commerce will inform CBP accordingly and instruct CBP to continue to suspend entries of lawn mowers from China that are subject to the *Orders* at the applicable rate(s) in effect on the date of entry until specific liquidation instructions are issued.

Public Comment

Interested parties are invited to comment on this notice of intent to rescind this circumvention inquiry. Interested parties may submit comments no later than 14 days after the date of publication of this notice and rebuttal comments, limited to issues raised in the comments, no later than seven days after the time limit for filing comments. Parties who submit comments or rebuttal comments in this circumvention inquiry are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁸

Commerce will issue a final decision in this circumvention inquiry, in which we will address comments submitted by parties.

Dated: February 27, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Circumvention Initiation Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Intent to Rescind the Circumvention Inquiry
- VI. Recommendation

[FR Doc. 2023-04439 Filed 3-2-23; 8:45 am]

BILLING CODE 3510-DS-P

⁷ See CBP Message No. 2305407, dated November 1, 2022.

⁸ See generally 19 CFR 351.309(c)(2) and (d)(2) for guidance.

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Agency Information Collection Activities, Submission for Office of Management and Budget (OMB) Review and Emergency Approval; Comment Request; CHIPS Full-Application Information Collection**

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for emergency review and approval 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.

Agency: National Institute of Standards and Technology (NIST).

Title: CHIPS Full Application.

OMB Control Number: 0693-XXXX.

Form Number(s): N/A.

Type of Request: Emergency submission, New Information Collection Request.

Number of Respondents: 140 respondents.

Average Hours per Response: 125 hours.

Burden Hours: 17,500 hours.

Needs and Uses: Businesses and other entities applying for CHIPS Act funding under the CHIPS Incentive Program must submit a full application via a web portal at <https://applications.chips.gov/>. The full application includes a series of sections, each described below. It includes a project plan, supplemented by more detailed narrative and analytical sections that demonstrate how the application addresses each dimension of the merit review framework:

- Cover Page with general information;
- Covered Incentive—a letter from a state or local government entity to demonstrate that the applicant has been offered a qualifying covered incentive;
- Description of Projects—a detailed description of proposed project(s) in the application;
- Applicant Profile—descriptive information about the applicant;
- Alignment with Economic and National Security Objectives—a description of how the project(s) meets economic and national security objectives;

- Commercial Strategy—a description of the commercial strategy;

- Financial Information—a detailed description of the financial plan, including Microsoft Excel spreadsheets with financial models;

- Project Technical Feasibility—the applicant must demonstrate the technical feasibility of each proposed project;

- Organization Information

- Workforce Development Plan—Each applicant must document their expected workforce needs for their facility (including both construction and operations phases) and provide a strategy to meet such needs in a workforce development plan;

- Broader Impacts—Each applicant must provide an overview of the broader impacts of the proposed project(s); and

- Standard Forms—All applicants should submit standard forms as follows:

- SF-328, Certificate Pertaining to Foreign Interests

- CD-511, Certification Regarding Lobbying

- SF-LLL, Disclosure of Lobbying Activities (if applicable)

- In addition, applicants will be informed during the application review process if these forms are required:

- SF-424, Application for Federal Assistance

- For the construction component of projects, the SF-424C and SF-424D

- For the workforce development component of projects, as well as any operational activities, the SF-424A

Affected Public: Businesses and other entities applying for CHIPS Act funding.

Frequency: Once per application.

Respondent's Obligation: Mandatory to be eligible for CHIPS Act funding.

Legal Authority: CHIPS Act of 2022 (Division A of Pub. L. 117-167).

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 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. To ensure consideration, comments regarding this proposed

information collection must be received on or before March 17, 2023.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023-04434 Filed 3-2-23; 8:45 am]

BILLING CODE 3510-60-P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Agency Information Collection Activities, Submission for Office of Management and Budget (OMB) Review and Emergency Approval; Comment Request; CHIPS Environmental Questionnaire**

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for emergency review and approval 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.

Agency: National Institute of Standards and Technology (NIST).

Title: CHIPS Environmental Questionnaire.

OMB Control Number: 0693-XXXX.

Form Number(s): N/A.

Type of Request: Emergency submission, New Information Collection Request.

Number of Respondents: 200 respondents.

Average Hours per Response: 8 hours.

Burden Hours: 1,600 hours.

Needs and Uses: Businesses and other entities applying for CHIPS Act funding are required to submit a pre-application or application via a form available at <https://applications.chips.gov/>. One form in both applications is the Environmental Questionnaire. The purpose of the Environmental Questionnaire is to ensure that the Department of Commerce is aware, in broad terms, of relevant environmental considerations, and can work with the potential applicant to ensure that the applicant can provide all required environmental information during the full application and due diligence stages when applying for funding. Each applicant must provide the requested information on the Environmental

Questionnaire using the template which will be made available on the CHIPS Incentives Program application portal.

Information to be collected includes information pertaining to an applicant's:

- Project Description
- Project Site/Affected Environment
- Resource Consumption Rates and Effluent Emissions Streams and Impacts
- Tribal, Historic, and Cultural Resources
- Project Setting
- Vegetation Resources.
- Conservation Areas
- Coastal Zones and Navigable Waters
- Wetlands
- Floodplains
- Endangered Species
- Land Use and Zoning
- Solid Waste Management
- Hazardous or Toxic Substances
- Impacts to Water Quality/Water Resources
- Water Supply and Distribution System
- Wastewater Collection and Treatment Facilities
- Environmental Justice & Socioeconomics
- Transportation (Streets, Traffic and Parking)
- Air Quality
- Greenhouse Gases and their Environmental Effects
- Noise
- Health and Safety
- Permits and other Government Agency Involvement
- Public Notification/Controversy
- Environmental Experience and Approach

Affected Public: Businesses and other entities applying for CHIPS Act funding.

Frequency: Once per application.

Respondent's Obligation: Voluntary.

Legal Authority: CHIPS Act of 2022 (Division A of Pub. L. 117–167).

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 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. To ensure consideration, comments regarding this proposed

information collection must be received on or before March 17, 2023.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–04442 Filed 3–2–23; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities, Submission for Office of Management and Budget (OMB) Review and Emergency Approval; Comment Request; CHIPS Pre-Application Information Collection

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for emergency review and approval 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.

Agency: National Institute of Standards and Technology (NIST).

Title: CHIPS Pre-Application.

OMB Control Number: 0693–XXXX.

Form Number(s): N/A.

Type of Request: Emergency submission, New Information Collection Request.

Number of Respondents: ~140 respondents.

Average Hours per Response: 40 hours.

Burden Hours: 5,600 hours.

Needs and Uses: Businesses and other entities applying for CHIPS Act funding under the CHIPS Incentive Program may, but are not required to, submit a pre-application via a form available at <https://applications.chips.gov/> to obtain feedback before submitting a full application. The pre-application phase creates an opportunity for dialogue between the Department of Commerce and the applicant to ensure the applicant is ready to meet program requirements and address program priorities.

Information to be collected includes:

- A Cover Page with general contact and project information;
- A Project Plan that describes each project expected to be included in the

future full application. The project plan should explain how each project satisfies the program description and the evaluation criteria in the CHIPS Incentive Program—Commercial Fabrication Facilities Notice of Funding Opportunity;

- Financial Information summarizing financial information for the applicant and the project(s), as well as a detailed sources and uses of funds, including overview of CHIPS incentive request;
- Workforce Development

Information describing the applicant's approach to recruit, train, and retain a diverse and skilled set of workers to fill the good jobs that will be created to operate its semiconductor facilities.

Affected Public: Businesses and other entities applying for CHIPS Act funding.

Frequency: Once per application.

Respondent's Obligation: Voluntary.

Legal Authority: CHIPS Act of 2022 (Division A of Pub. L. 117–167).

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 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. To ensure consideration, comments regarding this proposed information collection must be received on or before March 17, 2023.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2023–04441 Filed 3–2–23; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2023–0003]

Manual of Patent Examining Procedure, Ninth Edition, Revision of July 2022

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: To provide updates to patent examination policy and procedures in a single source, which will improve access to essential guidance for all

stakeholders and help to ensure issuance of robust and reliable patents that promote and protect innovation, the United States Patent and Trademark Office (USPTO or Office) issued a revision of the Ninth Edition of the Manual of Patent Examining Procedure (MPEP), published in February 2023 (July 2022 revision). The MPEP provides patent examiners and the public with a reference work on the practices and procedures relative to the prosecution of patent applications and other proceedings before the USPTO. The MPEP contains instructions to examiners, as well as other material in the nature of information and interpretation, and outlines the current procedures that examiners are required or authorized to follow in the normal examination of patent applications and during other Office proceedings.

ADDRESSES: The USPTO prefers that suggestions for improving the form and content of the MPEP be submitted via email to mpepfeedback@uspto.gov or via the IdeaScale® tool available at <https://uspto-mpep.ideascale.com/a/index>. Written comments may also be submitted by mail addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Editor, Manual of Patent Examining Procedure.

FOR FURTHER INFORMATION CONTACT: Jeanne Clark, Editor of the MPEP, at Jeanne.Clark@uspto.gov or 571-272-7714; Monique Cole Gary, Patent Examination Policy Advisor, at Monique.Cole@uspto.gov or 571-272-1463; or Kathy Mosser, Patent Examination Policy Advisor, at Kathleen.Mosser@uspto.gov or 571-272-3435.

SUPPLEMENTARY INFORMATION: The USPTO issued a revision to the Ninth Edition of the MPEP, published in February 2023, which provides USPTO patent examiners, applicants, attorneys, agents, representatives of applicants, and other members of the public with a reference work on the practices and procedures relative to the prosecution of patent applications before the USPTO. The MPEP contains instructions to examiners, as well as other material in the nature of information and interpretation, and outlines the current procedures that examiners are required or authorized to follow in the normal examination of patent applications and during other Office proceedings. Although the MPEP does not have the force of law or the force of the rules in 37 CFR, it “is well known to those registered to practice in the [US]PTO and reflects the presumptions under which the [US]PTO operates.” *Critikon*,

Inc. v. Becton Dickinson Vascular Access, Inc., 120 F.3d 1253, 1257 (Fed. Cir. 1997).

In the February 2023 publication of the MPEP revision, sections of chapters 100, 200, 400–1500, 1700, 1800, 2000–2200, 2400, 2500, and 2700–2900 have been updated. The updated sections have a revision indicator of [R–07.2022], meaning these sections have been updated to reflect USPTO patent practice and relevant case law as of July 31, 2022. In addition, Chapter FPC—Form Paragraphs Consolidated, the Foreword, Introduction, Subject Matter Index, and all appendices except Appendix I and Appendix P have been updated. The changes in the February 2023 publication are discussed in the Change Summary for the Ninth Edition, Revision 07.2022. The Change Summary is available in three renditions at <https://www.uspto.gov/MPEP>. Citation to a section in the current revision of the MPEP should be to “e9 r07.2022,” e.g., MPEP 2163 (e9 r07.2022).

The February 2023 publication of the revision of the Ninth Edition of the MPEP may be viewed or downloaded free of charge from the USPTO website at <https://www.uspto.gov/MPEP> and is available to search online at <https://mpep.uspto.gov>. Archived copies of each of the prior revisions and editions of the MPEP continue to be available for reference on the USPTO website at <https://www.uspto.gov/web/offices/pac/mpep/old/index.htm>.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023-04345 Filed 3-2-23; 8:45 am]

BILLING CODE 3510-16-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 service(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) and service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: April 2, 2023.

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 service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Warehouse Services

Mandatory for: Naval Air War Center Air Division, Naval Air Systems Command, Granite City, IL

Designated Source of Supply: Professional Contract Services, Inc., Austin, TX

Contracting Activity: DEPT OF THE NAVY, NAVAL AIR WARFARE CENTER AIR DIV

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

7520-01-058-9976—Pen, Ballpoint, Stick, Hexagonal Barrel, Green, Medium Point
7510-00-161-6211—Cup, Supply, Self-Stacking, Clear

Designated Source of Supply: Alphapointe, Kansas City, MO

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s): 4820-00-052-4651—Valve, Ball, Piping

Designated Source of Supply: The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL

Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s): 8340-00-262-2397—Cover, Tent

Designated Source of Supply: APEX, Inc., Anadarko, OK

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s): 6645-01-467-8479—Clock, Wall, Black Custom Logo,

22" Diameter
Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY)
 NSN(s)—Product Name(s): 7520-01-455-7233—Pen, Ballpoint, Stick Type, Recycled, Green Ink, Medium Point
Designated Source of Supply: West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY)
 NSN(s)—Product Name(s): 7520-01-451-9180—Pen, Ballpoint, Retractable, Essential LVX, Red, Medium Point
 7520-01-451-9181—Pen, Ballpoint, Retractable, Essential LVX, Blue, Medium Point
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY)
 NSN(s)—Product Name(s): 7520-01-492-8463—Pen, Retractable, Neon, LVX Ink Gripper, Black, Fine point
 7520-01-492-8464—Pen, Retractable, Neon, LVX Ink Gripper, Black, Medium point
Designated Source of Supply: Midwest Enterprises for the Blind, Inc., Kalamazoo, MI
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY)
 NSN(s)—Product Name(s): 2540-00-737-3311—Cushion, Seat Back
Designated Source of Supply: APEX, Inc., Anadarko, OK
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH
Service(s)
Service Type: Parts Machining Service
Mandatory for: Arizona Industries for the Blind, 515 N 51st Ave. #130, Phoenix, AZ
Designated Source of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROP SUPPORT C&E HARDWARE
Service Type: Parts Machining Service
Mandatory for: The Lighthouse for the Blind, Inc., 2601 South Plum, Seattle, WA
Designated Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROP SUPPORT C&E HARDWARE
Service Type: Parts Machining Service
Mandatory for: WISCRAFT, Inc., 5316 West State Street, Milwaukee, WI
Designated Source of Supply: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROP SUPPORT C&E HARDWARE
Service Type: Parts Machining
Mandatory for: DLA Wide (Off-Site—515 N 51st Ave. #130, Phoenix, AZ)

Designated Source of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT CE HARDWARE
Service Type: Parts Machining
Mandatory for: DLA Wide (Off-Site—2601 South Plum St., Seattle, WA)
Designated Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT CE HARDWARE
Service Type: Parts Machining
Mandatory for: DLA Wide (Off-Site—5316 West State St., Milwaukee, WI)
Designated Source of Supply: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT CE HARDWARE
Service Type: Sourcing, Warehousing, Assembly and Kitting
Mandatory for: Montana Army National Guard, 1956 MT Majo Street, Fort Harrison, MT
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPT OF THE ARMY, W7NK USPFO ACTIVITY MT ARNG
Service Type: Janitorial/Custodial
Mandatory for: North Dakota Maintenance Office & Bismarck Warehouse, Bismarck ND
Designated Source of Supply: Pride, Inc., Bismarck, ND
Contracting Activity: ENERGY, DEPARTMENT OF, WESTERN-UPPER GREAT PLAINS REGION
Service Type: Janitorial/Custodial
Mandatory for: North Dakota Maintenance Office, 707 North Bismarck Expressway, Bismarck, ND
Designated Source of Supply: Pride, Inc., Bismarck, ND
Contracting Activity: ENERGY, DEPARTMENT OF, WESTERN-UPPER GREAT PLAINS REGION
Service Type: Janitorial/Custodial
Mandatory for: Bureau of Land Management, Farmington District Office, 6251 College Boulevard, Farmington, NM
Designated Source of Supply: Presbyterian Medical Services, Santa Fe, NM
Contracting Activity: BUREAU OF LAND MANAGEMENT, NM—NEW MEXICO STATE OFFICE

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023-04403 Filed 3-2-23; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) and service(s) from 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 02, 2023.

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 12/9/2022 and 12/16/2023, 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):*

7520-01-457-0719—File, Horizontal Desk, 12" × 8½" × 15", 6 Shelf, Black
 7520-01-457-0721—File, Horizontal Desk, 12" × 8½" × 10", 4 Shelf, Black
 7520-01-457-0723—File, Horizontal Desk, 12" × 8½" × 12½", 5 Shelf, Black
 7520-01-457-0724—File, Horizontal Desk, 12" × 8½" × 7⅞", 3 Shelf, Black
 7520-01-457-0725—File, Horizontal Desk, 12" × 8½" × 17⅞", 7 Shelf, Black
 7520-01-457-0726—File, Horizontal Desk, 12" × 8½" × 19⅝", 8 Shelf, Black

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):

7510-01-590-1503—Laser Toner Cartridge, 12X

Mandatory Source of Supply: TRI Industries NFP, Vernon Hills, IL

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

Service(s)

Service Type: Switchboard Operation

Service Type: Mailroom Operation & Administrative Supp

Mandatory for: Veterans Affairs Medical Center: 718 Smyth Road, Manchester, NH

Mandatory Source of Supply: Northern New England Employment Services, Portland, ME

Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 608-MANCHESTER

Service Type: Custodial Services

Mandatory for: USDA, APHIS, PPQ, 843 13th Court, Unit 7, Riviera Beach, FL

Mandatory Source of Supply: Gulfstream Goodwill Industries, Inc., West Palm Beach, FL

Contracting Activity: ANIMAL AND PLANT HEALTH INSPECTION SERVICE, USDA APHIS MRPBS

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023-04404 Filed 3-2-23; 8:45 am]

BILLING CODE 6353-01-P

CONSUMER PRODUCT SAFETY COMMISSION**Sunshine Act Meeting**

TIME AND DATE: Wednesday, March 1, 2023; 10:00 a.m.

PLACE: This will be a hybrid meeting; held virtually and in Bethesda, MD.

STATUS: Commission Meeting—Closed to the Public.

MATTER TO BE CONSIDERED: *Briefing Matter.*

CONTACT PERSON FOR MORE INFORMATION:

Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301-504-7479 (Office) or 240-863-8938 (Cell).

Dated: February 28, 2023.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2023-04469 Filed 3-1-23; 11:15 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE**Department of the Army****Programmatic Environmental Assessment for Armored Multi-Purpose Vehicle Fielding**

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army (Army) has completed a Programmatic Environmental Assessment (PEA) analyzing the impacts of fielding the Armored Multi-Purpose Vehicle (AMPV) at various Army installations in accordance with Department of Defense (DoD) and Army guidance. The Army is making the PEA and a draft Finding of No Significant Impact (FONSI) available for public comment. The PEA identifies no significant environmental impacts from implementing the proposed action. The draft FONSI concludes that preparing an environmental impact statement is not required and, therefore, one will not be prepared.

DATES: Comments must be received by April 3, 2023 to be considered in the preparation of the PEA.

ADDRESSES: Written comments should be sent by mail to U.S. Army Environmental Command, ATTN: AMPV Public Comments, 2455 Reynolds Rd., Mail Stop 112, JB SA-Fort Sam Houston, TX 78234-7588. Comments can also be sent via email to: usarmy.jbsa.imcom-aec.mbx.nepa@army.mil with AMPV Public Comments as the subject.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Kropp with the U.S. Army Environmental Command Public Affairs Office at (210) 466-1590 or at (210) 466-1655 or send email to: usarmy.jbsa.imcom-aec.mbx.public-mailbox@army.mil for assistance.

SUPPLEMENTARY INFORMATION: The Army has prepared this PEA in accordance with the National Environmental Policy Act of 1969 (NEPA) (Title 42 of the *United States Code* Section 4321); Council on Environmental Quality (CEQ) NEPA regulations (Title 40 of the

Code of Federal Regulations CFR parts 1500-1508); and the Army's NEPA implementing regulation, *Environmental Analysis of Army Actions* (32 CFR part 651).

The proposed action is to field the AMPV to replace five mission roles currently provided by M113s, to include associated operations, soldier-training, and maintenance activities. The purpose of the proposed action is to establish fielding locations for the AMPV, in order to train the Army's Active Component and Reserve Component, including the Army National Guard, Armored Brigade Combat Teams (ABCTs), and other units at Army installations in the United States, consistent with the Army Modernization Strategy. The AMPV is the replacement for the M113 armored personnel carrier, which dates back to the 1960s. It is a major effort of the Army's Next Generation Combat Vehicle Cross Functional Team. The proposed action is needed to improve the safety and survivability of soldiers and provide for improved integrated network capability and interoperability across the spectrum of combat vehicle mission roles.

The PEA includes some installation-specific analysis in addition to general analyses that would be applicable to most locations. This PEA serves as an overview of the AMPV system and may or may not require additional NEPA analysis at individual installations. The programmatic approach avoids unnecessary duplicate NEPA analyses, better informs decision makers, and encourages active public involvement.

The installations considered for fielding of the AMPV in the PEA and draft FONSI are: Fort Benning, GA; Fort Bliss, TX; Fort Bragg, NC; Fort Campbell, KY; Fort Carson, CO; Fort Gordon, GA; Fort Hood, TX; Fort Irwin, CA; Fort Jackson, SC; Fort Lee, VA; Fort Riley, KS; Fort Sill, OK; Fort Stewart, GA; Joint Base Lewis McCord-Yakima Training Center, WA; Joint Base San Antonio-Fort Sam Houston and Joint Base San Antonio-Camp Bullis, TX (Army Support Activity); Camp Dawson-Kingwood, WV; Camp McCain, MS; Orchard Combat Training Center, ID; Camp Perry, OH; James A. Garfield Joint Military Training Center, OH; Camp Ravenna, OK; Camp Ripley, MN; Camp Shelby, MS; Fort Indiantown Gap, PA; Fort Pickett, VA; Gowen Field, ID; McCrady Training Site, SC; MTA Limestone Hills, MT, and the Volunteer Training Site, TN.

The PEA analyzes the potential environmental and socioeconomic impacts associated with the Proposed Action, including direct, indirect, and

cumulative effects. The analysis includes minimization measures, standard operating procedures, and best management practices routinely employed by the installations to reduce potential adverse effects of the proposed action.

The Army identified one reasonable alternative that would meet the purpose of and need for the Proposed Action: Field AMPV units to installations in order to replace, on a one-to-one ratio, the equivalent mission roles currently fulfilled by M113 variants. The AMPV would serve five mission roles currently provided by the M113, and would also include associated operational activities, soldier training, and AMPV maintenance activities. Though minor adjustments in the variant mix may occur, ABCT structures and manpower would remain largely unchanged as a result of AMPV fielding. Approximately 130 vehicles of the M113 family are part of each ABCT, and each would be replaced by an AMPV.

The Army also carried forward a No Action Alternative for detailed analysis in the PEA. While the No Action Alternative would not satisfy the purpose of or need for the proposed action, this alternative was retained to provide a comparative baseline against which to analyze the effects of the action alternative.

Resources analyzed in the PEA include air quality, biological resources, cultural resources, geological and soil resources, land use and compatibility, traffic and transportation, and water resources. Based on the analysis presented in the PEA, effects of the proposed action on these resources are expected to be negligible, minor, less than significant, or significant but mitigatable.

When considering implementing an individual proposed action, installations would complete the environmental checklist for AMPV fielding included in the PEA's appendices to determine whether tiering from the PEA and FONSI would be appropriate and what type of additional site-specific NEPA documentation, if any, would be required. If an installation determines that it requires additional NEPA analysis tiered from the PEA, the installation would be required to complete the appropriate NEPA documentation before making any irreversible and irretrievable commitments of resources related to that action. Tiering from the PEA, when appropriate, would avoid or reduce the costs of repetitive, similar analyses and enable installations to focus resources on only those site-specific

environmental issues that require more in-depth analyses.

Government agencies, Native American Tribes, and the public are invited to submit written comments on the PEA and/or draft FONSI. The public comment period begins with the publication of this Notice of Availability in the **Federal Register** and will last for 30 days. The PEA and draft FONSI are available to the public on the U.S. Army Environmental Command's NEPA Documents web page at <https://aec.army.mil/index.php?cID=352>. If you cannot access the PEA online, please submit a request to the U.S. Army Environmental Command at usarmy.jbsa.aec.mbx@army.mil or via mail at U.S. Army Environmental Command, ATTN: Public Affairs, 2455 Reynolds Rd., Mail Stop 112, JBSA-Fort Sam Houston, TX 78234-7588.

Following the public comment period, the Army will consider all public comments and prepare a Final FONSI or Notice of Intent to prepare an Environmental Impact Statement prior to making a decision regarding the Proposed Action. Comments must be received or postmarked April 3, 2023 to be considered during the decision-making process.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023-04401 Filed 3-2-23; 8:45 am]

BILLING CODE 3711-02-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20-2259-001.

Applicants: New York Transco, LLC, New York Independent System Operator, Inc.

Description: Compliance filing: New York Transco, LLC submits tariff filing per 35: NY Transco compliance re: FERC December 29, 2022 order on formula rate revisions to be effective 1/27/2020.

Filed Date: 2/27/23.

Accession Number: 20230227-5034.

Comment Date: 5 p.m. ET 3/20/23.

Docket Numbers: ER22-1229-001.

Applicants: MATL LLP.

Description: Compliance filing: Compliance Filing ER22-1229 to be effective 2/23/2023.

Filed Date: 2/27/23.

Accession Number: 20230227-5023.

Comment Date: 5 p.m. ET 3/20/23.

Docket Numbers: ER22-2773-002.

Applicants: Smoky Mountain Transmission LLC.

Description: Tariff Amendment: Amended and Restated Interconnection Agreement to be effective 9/2/2022.

Filed Date: 2/27/23.

Accession Number: 20230227-5169.

Comment Date: 5 p.m. ET 3/20/23.

Docket Numbers: ER23-1180-000.

Applicants: Sierra Pacific Power Company.

Description: Tariff Amendment: Notice of Termination Filing to be effective 2/27/2023.

Filed Date: 2/24/23.

Accession Number: 20230224-5177.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23-1181-000.

Applicants: Sierra Pacific Power Company.

Description: Tariff Amendment: Notice of Termination Filing to be effective 2/27/2023.

Filed Date: 2/24/23.

Accession Number: 20230224-5179.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23-1182-000.

Applicants: Nevada Power Company.

Description: Tariff Amendment: Notice of Termination Filing to be effective 2/27/2023.

Filed Date: 2/24/23.

Accession Number: 20230224-5180

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23-1183-000.

Applicants: Censtar Energy Corp.

Description: Notice of Cancellation of Market Based Rate Tariff of CenStar Energy Corp.

Filed Date: 2/24/23.

Accession Number: 20230224-5246.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23-1184-000.

Applicants: Oasis Power, LLC.

Description: Notice of Cancellation of Market Based Rate Tariff of Oasis Power, LLC.

Filed Date: 2/24/23.

Accession Number: 20230224-5248.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23-1185-000.

Applicants: Perigee Energy, LLC.

Description: Notice of Cancellation of Market Based Rate Tariff of Perigee Energy, LLC.

Filed Date: 2/24/23.

Accession Number: 20230224-5249.

Comment Date: 5 p.m. ET 3/17/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 27, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-04380 Filed 3-2-23; 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 & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23-33-000.

Applicants: Bay Gas Storage Company, LLC.

Description: § 284.123 Rate Filing: Bay Gas Storage 2022 Annual Adjustment to Company Use Percentage to be effective 3/1/2023.

Filed Date: 2/27/23.

Accession Number: 20230227-5038.

Comment Date: 5 p.m. ET 3/20/23.

Docket Numbers: RP23-463-000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: Non-Conforming Service Agreement IGI Resources Amendment to be effective 3/27/2023.

Filed Date: 2/24/23.

Accession Number: 20230224-5194.

Comment Date: 5 p.m. ET 3/8/23.

Docket Numbers: RP23-464-000.

Applicants: Millennium Pipeline Company, L.L.C.

Description: Annual Report of Operational Purchases and Sales of Millennium Pipeline Company, LLC.

Filed Date: 2/24/23.

Accession Number: 20230224-5202.

Comment Date: 5 p.m. ET 3/8/23.

Docket Numbers: RP23-465-000.

Applicants: Guardian Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Electric Power Cost Recovery Surcharge Adjustment—Spring 2023 to be effective 4/1/2023.

Filed Date: 2/27/23.

Accession Number: 20230227-5024.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23-466-000.

Applicants: Florida Gas Transmission Company, LLC.

Description: § 4(d) Rate Filing: RNG Tariff Provisions to be effective 3/27/2023.

Filed Date: 2/27/23.

Accession Number: 20230227-5068.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23-467-000.

Applicants: TransColorado Gas Transmission Company LLC.

Description: § 4(d) Rate Filing: TC Quarterly FL&U Update Feb. 2023 to be effective 4/1/2023.

Filed Date: 2/27/23.

Accession Number: 20230227-5109.

Comment Date: 5 p.m. ET 3/13/23.

Docket Numbers: RP23-468-000.

Applicants: Midwestern Gas Transmission Company.

Description: § 4(d) Rate Filing: Annual Fuel Retention Percentage Adjustment—2023 Rate to be effective 4/1/2023.

Filed Date: 2/27/23.

Accession Number: 20230227-5148.

Comment Date: 5 p.m. ET 3/13/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP19-78-009.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: Compliance filing: Corrected Opinion No. 885 Compliance Filing-Docket Nos. RP19-78-000, et al. to be effective N/A.

Filed Date: 2/27/23.

Accession Number: 20230227-5026.

Comment Date: 5 p.m. ET 3/13/23.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/>

[docs-filing/efiling/filing-req.pdf](#). For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: February 27, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-04381 Filed 3-2-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA-02-2023-2005; FRL-10426-01-R2]

Proposed CERCLA Cost Recovery Settlement for the JJW Metal Recycling Fire Superfund Site, Located at 756 Los Colobos Street, Carolina, Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region 2, of a proposed cost recovery settlement agreement ("Settlement") pursuant to CERCLA with Cidra Excavation, LLC ("Settling Party") for the JJW Metal Recycling Fire Superfund Site ("Site"), located at 756 Los Colobos Street, Carolina, Puerto Rico.

DATES: Comments must be submitted on or before April 3, 2023.

ADDRESSES: Requests for copies of the proposed Settlement and submission of comments must be via electronic mail. Comments should reference the JJW Metal Recycling Fire Superfund Site, Index No. CERCLA-02-2023-2005. For those unable to communicate via electronic mail, please contact the EPA employee identified below.

FOR FURTHER INFORMATION CONTACT: Walter Sainsbury, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007-1866. Email: sainsbury.walter@epa.gov Telephone: 212-637-3177.

SUPPLEMENTARY INFORMATION: The Settling Party will pay \$25,000 to the EPA Hazardous Substance Superfund in partial reimbursement of EPA's past response costs paid in connection with the Site. This payment shall be made within 30 days of the Effective Date of the Settlement. The Settlement includes

a covenant by EPA not to sue or to take administrative action against the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover EPA's past response costs as provided in the Settlement. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Settlement. EPA will consider all comments received and may modify or withdraw its consent to the Settlement if comments received disclose facts or considerations that indicate that the proposed Settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, New York, New York 10007-1866.

Pasquale Evangelista,

Director, Superfund & Emergency Management Division, U.S. Environmental Protection Agency Region 2.

[FR Doc. 2023-04422 Filed 3-2-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-059]

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 February 17, 2023 10 a.m. EST Through February 27, 2023 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. 20230035, Final, USAF, ID, Airspace Optimization for Readiness for Mountain Home Air Force Base, Review Period Ends: 04/03/2023, Contact: Austin Naranjo 208-828-6800.

EIS No. 20230036, Final, FERC, NC, Southside Reliability Enhancement Project, Review Period Ends: 04/03/2023, Contact: Office of External Affairs 866-208-3372.

EIS No. 20230037, Draft, NRC, REG, Draft Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437)

Volume 1 and 2, Revision 2, Comment Period Ends: 05/02/2023, Contact: Kevin T. Folk 301-415-6944. **EIS No. 20230038**, Final, NOAA, CA, Amendment 6 to the Fishery Management Plan for West Coast Highly Migratory Species Fisheries: Authorization of Deep-set Buoy Gear, Review Period Ends: 04/03/2023, Contact: Karter Harmon 317-517-7783.

Dated: February 27, 2023.

Marthea Rountree,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023-04397 Filed 3-2-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10746-01-R9]

Revision of Approved State Primacy Program for the State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the State of Nevada revised its approved State primacy program under the Federal Safe Drinking Water Act (SDWA) by adopting regulations that effectuate the Federal Radionuclides Rule. The Environmental Protection Agency (EPA) has determined that Nevada's revision request meets the applicable SDWA program revision requirements and the regulations adopted by Nevada are no less stringent than the corresponding Federal regulations. Therefore, EPA approves this revision to Nevada's approved State primacy program. However, this determination on Nevada's request for approval of a program revision shall take effect in accordance with the procedures described below in the **SUPPLEMENTARY INFORMATION** section of this notice after the opportunity to request a public hearing.

DATES: A request for a public hearing must be received or postmarked before April 3, 2023.

ADDRESSES: Documents relating to this determination that were submitted by Nevada as part of its program revision request are available for public inspection online at <https://ndep.nv.gov/posts>. In addition, documents relating to this determination are available by appointment between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, except official State or Federal holidays, at the following address:

Nevada Division of Environmental Protection, Administration Office, 901 South Stewart Street, Suite 4001, Carson City, NV 89701. Please contact the Bureau of Safe Drinking Water at (775) 687-9521 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Samantha Bishop, EPA Region 9, Drinking Water Section; via telephone at (415) 972-3411 or via email address at bishop.samantha@epa.gov.

SUPPLEMENTARY INFORMATION:

Background. EPA approved Nevada's initial application for primary enforcement authority ("primacy") of drinking water systems on February 27, 1978 (43 FR 8030). Since initial primacy approval, EPA has approved various revisions to Nevada's primacy program. For the revision covered by this action, EPA promulgated the Federal Radionuclides Rule at 40 CFR 141.25, 141.26 and 141.66. EPA promulgated National Interim Primary Drinking Water Regulations (NIPDWRs) for radioactivity in drinking water on July 9, 1976. The 1986 amendments to the Safe Drinking Water Act finalized the NIPDWRs and required EPA to promulgate Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for radionuclides, radon and uranium. On December 7, 2000, EPA revised the Radionuclides Rule which modified the monitoring provisions for community water systems and established a new drinking water standard for uranium and new analytical methods (65 FR 76708). On August 25, 2004, EPA published minor corrections to the Radionuclides Rule that clarified rule language and provided a detection limit for uranium (69 FR 52176). EPA has determined that Nevada has adopted into state law Radionuclides Rule requirements that are comparable to and no less stringent than the Federal requirements. EPA has also determined that the State's program revision request meets all of the regulatory requirements for approval, as set forth in 40 CFR 142.12, including a side-by-side comparison of the Federal requirements demonstrating the corresponding State authorities, additional materials to support special primacy requirements of 40 CFR 142.16, a review of the requirements contained in 40 CFR 142.10 necessary for States to attain and retain primary enforcement responsibility, and a statement by the Nevada Attorney General certifying that Nevada's laws and regulations to carry out the program revision were duly adopted and are enforceable. The Attorney General's statement also affirms that there are no environmental

audit privilege and immunity laws that would impact Nevada's ability to implement or enforce the Nevada laws and regulations pertaining to the program revision. Therefore, EPA approves this revision of Nevada's approved State primacy program. The Technical Support Document, which provides EPA's analysis of Nevada's program revision request, is available by submitting a request to the following email address: R9dw-program@epa.gov. Please note "Technical Support Document" in the subject line of the email.

Public Process. Any interested person may request a public hearing on this determination. A request for a public hearing must be received or postmarked before April 3, 2023 and addressed to the Regional Administrator of EPA Region 9, via the following email address: R9dw-program@epa.gov, or by contacting the EPA Region 9 contact person listed above in this notice by telephone if you do not have access to email. Please note "State Program Revision Determination" in the subject line of the email. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a timely request for a public hearing is made, then EPA Region 9 may hold a public hearing. Any request for a public hearing shall include the following information: 1. The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; 2. A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and 3. The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 9 does not receive a timely request for a hearing or a request for a hearing was denied by the Regional Administrator for being frivolous or insubstantial, and the Regional Administrator does not elect to hold a hearing on their own motion, EPA's approval shall become final and effective on April 3, 2023, and no further public notice will be issued.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g-2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: February 23, 2023.

Martha Guzman Aceves,
Regional Administrator, EPA Region 9.

[FR Doc. 2023-04389 Filed 3-2-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-10635-01-R9]

Clean Air Act Operating Permit; Apache County, Arizona; Petition for Objection to State Operating Permit for Springerville Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order, dated January 19, 2023, denying the petition to object to a Clean Air Act (CAA) title V operating permit issued to the Tucson Electric Power Company Springerville Generating Station located in Apache County, Arizona. The Order responds to a June 20, 2022 petition submitted by the Sierra Club and the National Parks Conservation Association (the "Petitioners") requesting that the EPA object to the final operating permit No. 65614 issued by the Arizona Department of Environmental Quality (ADEQ). The Order constitutes a final action on the petition addressed therein.

DATES: Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final agency action, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of March 3, 2023.

ADDRESSES: Copies of the petitions and Orders are available at <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>. For additional information, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, EPA Region IX, 75 Hawthorne Street (AIR-3-1), San Francisco, California 94105. By phone at (415) 972-3811, or by email at beckham.lisa@epa.gov.

SUPPLEMENTARY INFORMATION: The CAA affords the EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state and local permitting authorities under title V of the CAA, 42 U.S.C. 7661-7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA

Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after the comment period closed.

On June 20, 2022, the Petitioners submitted a petition to the EPA pursuant to section 505(b)(2) of the CAA and 40 CFR 70.8(d). The petition requested that the EPA object to significant permit revision No. 91093 to the CAA title V operating permit issued by the ADEQ for Tucson Electric Power Company Springerville Generating Station (Permit No. 65614) in Apache County, Arizona. On January 19, 2023, the Administrator issued an Order denying the petition.

The Order provides additional information, including a summary of the claims raised and the EPA's bases for denying the claims raised by the Petitioners. Please see the **ADDRESSES** section above to access a copy of the Order.

Dated: February 23, 2023.

Martha Guzman Aceves,
Regional Administrator, Region IX.

[FR Doc. 2023-04391 Filed 3-2-23; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION

[Docket No. 22-31]

TPG Pressure, Inc. Complainant v. Epic Freight Solutions LLC., and Omni Logistics LLC, Respondents; Notice of Filing of Amended Complaint and Assignment

Served: February 27, 2023.

Notice is given that a First Amended Verified Complaint has been filed with the Federal Maritime Commission (Commission) by TPG Pressure, Inc. hereinafter "Complainant," against Epic Freight Solutions LLC and Omni Logistics LLC, hereinafter "Respondents." Complainant states that it is a corporation organized in the State of Texas. Complainant identifies the Respondents as limited liability companies with current mailing addresses in Dallas, Texas. Complainant states that Epic Freight Solutions LLC is organized under the laws of the State of Wyoming, and Omni Logistics LLC is organized under the laws of the State

Delaware. Both are identified by Complainant as a Non-Vessel-Operating Common Carriers and common carriers or ocean transportation intermediaries.

Complainant alleges that Respondents violated 46 U.S.C. 41102(c), 41102(d), and 41104(a) in their practices and assessments of charges, including demurrage and other non-freight charges, related to the movement of containers. The full text of the complaint can be found in the Commission's Electronic Reading Room at <https://www2.fmc.gov/readingroom/proceeding/22-31/>.

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by November 29, 2023, and the final decision of the Commission shall be issued by June 12, 2024.

William Cody,
Secretary.

[FR Doc. 2023-04413 Filed 3-2-23; 8:45 am]

BILLING CODE 6730-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on "AHRQ National Research Service Award Institutional Research Training Grant (T32) (RFA-HS-22-001)". This SEP meeting will be closed to the public.

DATES: March 9-10th, 2023.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 427-1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members

of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for "AHRQ National Research Service Award Institutional Research Training Grant (T32) (RFA-HS-22-001)" are to be reviewed and discussed at this meeting. 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.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 27, 2023.

Marquita Cullom,
Associate Director.

[FR Doc. 2023-04414 Filed 3-2-23; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Community Preventive Services Task Force (CPSTF)

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

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the next meeting of the Community Preventive Services Task Force (CPSTF) on April 19-20, 2023.

DATES: The meeting will be held on Wednesday, April 19, 2023, from 9 a.m.-5 p.m., EDT, and Thursday, April 20, 2023, from 9 a.m.-5 p.m., EDT.

ADDRESSES: The meeting will be available to the public via web conference.

FOR FURTHER INFORMATION CONTACT: Kenya Turner, Office of Science; Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-10, Atlanta, GA 30329; Telephone: (404) 718-4592; Email: CPSTF@cdc.gov.

SUPPLEMENTARY INFORMATION:

Meeting Accessibility: The CPSTF meeting will be available to the public via web conference.

CDC will send web conference information to registrants upon receipt of their registration. All meeting attendees must register by April 12, 2023, to receive the web conference information for the meeting. CDC will email web conference information from the CPSTF@cdc.gov mailbox.

To register for the meeting, individuals should send an email to CPSTF@cdc.gov and include the following information: name, title, organization name, organization address, phone number, and email.

Public Comment: Individuals who would like to make public comments during the April 2023 meeting must state their desire to do so with their registration and provide their name and organizational affiliation and the topic to be addressed (if known). The requestor will receive instructions for the public comment process for this meeting after the request is received. A public comment period follows the CPSTF's discussion of each systematic review and will be limited to no more than three minutes per person. Public comments will become part of the meeting summary.

Background on the CPSTF: The CPSTF is an independent, nonfederal panel whose members are appointed by the CDC Director. CPSTF members represent a broad range of research, practice, and policy expertise in prevention, wellness, health promotion, and public health. The CPSTF was convened in 1996 by HHS to identify community preventive programs, services, and policies that increase health, longevity, save lives and dollars, and improve Americans' quality of life. CDC is mandated to provide ongoing administrative, research, and technical support for the operations of the CPSTF. During its meetings, the CPSTF considers the findings of systematic reviews of existing research and practice-based evidence and issues recommendations. CPSTF recommendations are not mandates for compliance or spending. Instead, they provide information about evidence-based options that decision makers and affected community members can consider when they are determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents. The CPSTF's recommendations, along with the systematic reviews of the evidence on which they are based, are compiled on

the Community Guide website (www.thecommunityguide.org).

Matters proposed for discussion: The agenda will consist of deliberation on systematic reviews of literature, and the meeting is open to the public via web conference. Topics for the April 2023 meeting will include Mental Health, Substance Use, Preparedness and Response, Cancer, and Oral Health. Information regarding the start and end times for each day, and any updates to agenda topics, will be available on the Community Guide website (www.thecommunityguide.org) closer to the date of the meeting.

The meeting agenda is subject to change without notice.

Dated: February 27, 2023.

Tiffany Brown,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2023-04354 Filed 3-2-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3440-PN]

Medicare and Medicaid Programs: Application From the Joint Commission (TJC) for Continued CMS Approval of Its Critical Access Hospital (CAH) Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with request for comment.

SUMMARY: This notice acknowledges the receipt of an application from the Joint Commission for continued recognition as a national accrediting organization for critical access hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by April 3, 2023.

ADDRESSES: In commenting, refer to file code CMS-3440-PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <https://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare &

Medicaid Services, Department of Health and Human Services, Attention: CMS-3440-PN, P.O. Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3440-PN, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Caecilia Blondiaux, (410) 786-2190.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on [Regulations.gov](https://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a critical access hospital (CAH), provided that certain requirements are met by the CAH. Sections 1820(c)(2) and 1820(e) of the Social Security Act (the Act), establish statutory authority for states and the Secretary of the Department of Health and Human Services (the Secretary) to determine criteria for facilities seeking designation as a CAH. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 485, subpart F specify the conditions that a CAH must meet to participate in the Medicare program, the scope of

covered services, and the conditions for Medicare payment for CAHs.

Generally, to enter into an agreement, a CAH must first be certified by a state survey agency as complying with the applicable conditions or requirements set forth in part 485 of our regulations. Thereafter, the CAH is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act states that if a provider entity demonstrates through accreditation by an approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements for that entity. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Centers for Medicare & Medicaid Services (CMS) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AO are set forth at § 488.5.

The Joint Commission (TJC) has submitted an application for continued CMS-approval of its CAH accreditation program. TJC's current term of approval for its CAH accreditation program expires November 21, 2023.

II. Approval of Accreditation Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting

body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this notice is to inform the public of TJC's request for continued approval of its CAH accreditation program. This notice also solicits public comment on whether the TJC's requirements meet or exceed the Medicare conditions of participation (CoPs) for CAHs.

III. Evaluation of Deeming Authority Request

TJC submitted all the necessary materials to enable us to make a determination concerning its request for continued CMS approval of its CAH accreditation program. This application was determined to be complete on January 26, 2023. Under 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national AO), our review and evaluation of the TJC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the TJC's standards for CAHs and hospitals as compared with CMS' CAH and hospital CoPs.
- TJC's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of the TJC's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ TJC's processes and procedures for monitoring a CAH found out of compliance with TJC's program requirements. These monitoring procedures are used only when the TJC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9.

++ TJC's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ TJC's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of the TJC's staff and other resources, and its financial viability.

++ TJC's capacity to adequately fund required surveys.

++ TJC's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ TJC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ TJC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of public comments we normally receive on **FEDERAL REGISTER** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: February 28, 2023.

Evell J. Barco Holland,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023-04423 Filed 3-2-23; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Next Generation of Enhanced Employment Strategies Project (OMB #0970-0545)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) within the Administration for Children and Families (ACF) is proposing an extension to the data collection activities conducted for the Next Generation of Enhanced Employment Strategies (NextGen) Project (Office of Management and Budget (OMB) #0970-0545). The project is rigorously evaluating innovative interventions to promote employment and economic security among low-income individuals with complex challenges. The project includes an experimental impact study, descriptive study, and cost study. This extension will allow additional time to conduct study intake, collect data from NextGen programs and staff, and conduct participant data collections. No changes are proposed to the data collection instruments.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. You can also obtain copies of the proposed collection of information by emailing opreinfocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OPRE is conducting the NextGen Project to build the evidence around effective strategies for helping low-income individuals find and sustain employment. This project will

identify and test innovative employment programs designed to help people facing complex challenges secure economic independence. The project is partnering with the Social Security Administration to incorporate a focus on employment-related early interventions for people with current or foreseeable disabilities who have limited work history and are potential applicants for Supplemental Security Income.

We seek approval for an extension without change for the currently approved data collection activities. For the impact study, this includes: (1) Baseline survey and identifying and contact information data collection, (2)

a first follow-up survey, and (3) a second follow-up survey. For the descriptive study, this includes (1) service receipt tracking, (2) a staff characteristics survey, (3) a program leadership survey, (4) semi-structured program discussions (conducted with program leaders, supervisors, partners, staff, and providers), (5) semi-structured employer discussions, and (6) in-depth participant interviews. For the cost study, this includes an Excel-based cost workbook.

Respondents: Program staff, program partners, employer staff, and individuals enrolled in the NextGen Project. Program staff and partners may include case managers, health

professionals, workshop instructors, job developers, supervisors, managers, and administrators. Employers may include administrators, human resources staff, and worksite supervisors.

Annual Burden Estimates

This extension request does not change the average burden per response for any of the data collections. The annual burden estimates under this request are for an additional 3 years of data collection. The number of respondents has been updated to reflect the estimated number over the next 3 years.

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Baseline survey and identifying and contact information—participants	3,000	1	0.42	1,260	420
Baseline survey and identifying and contact information—staff	120	25	0.42	1,260	420
First follow-up survey—participants	3,100	1	0.83	2,573	858
Second follow-up survey—participants	3,360	1	0.83	2,789	930
Service receipt tracking—program staff	80	150	0.08	960	320
Staff characteristics survey—staff	20	1	0.42	8	3
Program leadership survey—program leaders	5	1	0.25	1	1
Semi-structured program discussion guide—program leaders	4	1	1.5	6	2
Semi-structured program discussion guide—program supervisors and partners	8	1	1.0	8	3
Semi-structured program discussion guide—program staff and providers	8	1	1.0	8	3
Semi-structured program discussion guide—employers	8	1	1.0	8	3
In-depth participant interviews—participants	20	1	2.0	40	13
Cost workbook—program staff	24	1	32.0	768	256

Estimated Total Annual Burden Hours: 3,232.

Authority: Section 413 of the Social Security Act, as amended by the FY 2017 Consolidated Appropriations Act, 2017 (Pub. L. 115–31).

John M. Sweet, Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–04433 Filed 3–2–23; 8:45 am]

BILLING CODE 4184–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research Enhancement Awards: Molecular Genetics and Genomics.

Date: March 20, 2023.

Time: 9:00 a.m. to 3:00 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 Catherine Burgess, Ph.D., Scientific Review Officer,

Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8034, rebecca.burgess@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Multimodal Approaches in Neuropsychiatric Disorders.

Date: March 21, 2023.

Time: 12:00 p.m. to 5:00 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: Mary G. Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–915–6301, marygs@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: March 22, 2023.

Time: 8:00 a.m. to 6:00 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: Imoh Sunday Okon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301-347-8881, imoh.okon@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neuroscience Assays, Diagnostics, Instrumentation, and Interventions.

Date: March 22–23, 2023.

Time: 9:00 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: Thomas Zeyda, Ph.D., Scientific Review Officer, The Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480-6921, thomas.zeyda@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Diagnostics, Devices, and Rehabilitation.

Date: March 22, 2023.

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: Vanessa Dawn Sherk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 801C, Bethesda, MD 20892, (301) 867-5309, sherkv2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: March 22, 2023.

Time: 11:00 a.m. to 5:00 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: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4136, Bethesda, MD 20892, 301-435-0904, sara.ahlgren@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: February 27, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-04409 Filed 3-2-23; 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 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Director's New Innovator Award Program (DP2).

Date: March 28–29, 2023.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20876 (Virtual Meeting).

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435-3566, mulky@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Research Enhancement Award (R15) in Oncological Sciences.

Date: March 29, 2023.

Time: 9:00 a.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: Byung Min Chung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496-4056, justin.chung@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skin Sciences.

Date: March 29, 2023.

Time: 10:00 a.m. to 5:00 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: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, (301) 435-1850, limc4@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Innovative Immunology.

Date: March 29–30, 2023.

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: Dayadevi Jirage, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4422, Bethesda, MD 20892, (301) 867-5309, jiragedb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.

Date: March 29, 2023.

Time: 10:00 a.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: Kaushiki Mazumdar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-1427, kaushiki.mazumdar@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Gastroenterology.

Date: March 29, 2023.

Time: 10:00 a.m. to 6:00 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: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594-1245, ivinsj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Health Services and Systems.

Date: March 29, 2023.

Time: 10:00 a.m. to 5:00 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: Mary Kate Baker, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-5117, katie.baker2@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA-RM-22-020: NIH Director's Transformative Research Awards.

Date: March 30, 2023.

Time: 9:00 a.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: James J. Li, Ph.D. Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301-806-8065, lijames@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Instrumentation and Systems Development
Date: March 30, 2023.

Time: 10:00 a.m. to 9:00 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: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408-9465, moscajos@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-22-131: Imaging, Biomarkers and Digital Pathomics for the Early Detection of Premetastatic Cancer and Precancerous Lesions Associated with Lethal Phenotypes
Date: March 30, 2023.

Time: 10:00 a.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: Eleni Apostolos Liapi, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805-N, Bethesda, MD 20817, 301-402-5123, eleni.liapi@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: February 27, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-04410 Filed 3-2-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA REI: Community-Engaged Research and Coordination Center to Support Racial Equity and Substance Use Disparities.

Date: March 28, 2023.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, National Institutes of Health, Bethesda, MD 20892, (301) 827-5843, trinh.tran@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 27, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-04393 Filed 3-2-23; 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: HIV/AIDS Interventions and Population and Public Health Approaches, March 21, 2023, 02:00 p.m. to March 21, 2023, 06:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 22, 2023, 88 FR 10909 Doc 2023-03570.

This meeting is being amended to change the meeting start time from 2:00 p.m. to 12:00 p.m. The meeting is closed to the public.

Dated: February 28, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-04426 Filed 3-2-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: The Development of a CD276 Antibody-Drug Conjugate (ADC) for the Treatment of Solid Tumors

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice to BrickBio, Inc. ("BrickBio") located in Woburn, Massachusetts.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before March 20, 2023 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Rose M. Freel, Ph.D., Senior Licensing and Patenting Manager, Telephone: (301) 624-8775; Email: rose.freel@nih.gov.

SUPPLEMENTARY INFORMATION:

Intellectual Property

United States Provisional Patent Application No. 62/051,650, filed September 17, 2014 and entitled "Anti-CD276 Polypeptides and Proteins" [HHS Reference No. E-250-2014-0-US-01]; PCT Patent Application PCT/US2015/050365, filed September 16, 2015 and entitled "Anti-CD276 Polypeptides and Proteins" [HHS Reference No. E-250-2014-0-PCT-02]; Canadian Patent Application No. 2961609, filed September 16, 2015 and entitled "Anti-CD276 Polypeptides and Proteins" [HHS Reference No. E-250-2014-0-CA-03]; United States Patent No. 10,604,582, filed March 16, 2017 and entitled "Anti-CD276 Polypeptides and Proteins" [HHS Reference No. E-250-2014-0-US-04]; Japanese Patent

No. 6613304, filed September 16, 2015 and entitled “Anti-CD276 Polypeptides and Proteins” [HHS Reference No. E-250-2014-0-JP-05]; Japanese Patent No. 6734227, filed May 25, 2017 and entitled “Anti-CD276 Polypeptides and Proteins” [HHS Reference No. E-250-2014-JP-07]; European Patent No. 3193933, filed September 16, 2015 and entitled “Anti-CD276 Polypeptides and Proteins” [HHS Reference No. E-250-2014-0-EP-06] and as validated in Germany, Spain, France, UK, and Italy; and US Patent Application No. 16/812,980, filed March 9, 2020 [HHS Reference No. E-250-2014-0-US-08]; and

United States Provisional Patent Application 62/947,135, filed December 12, 2019, and entitled “ANTIBODY-DRUG CONJUGATES SPECIFIC FOR CD276 AND USES THEREOF” [HHS Reference No. E-145-2019-0-US-01]; PCT Application No. PCT/US2020/063732, filed December 8, 2020, and entitled “ANTIBODY-DRUG CONJUGATES SPECIFIC FOR CD276 AND USES THEREOF” [HHS Reference No. E-145-2019-0-PCT-02]; Australian Application No. 2020402752, filed December 8, 2020, and entitled “ANTIBODY-DRUG CONJUGATES SPECIFIC FOR CD276 AND USES THEREOF” [HHS Reference No. E-145-2019-0-AU-03]; Canadian Application No. 3161573, filed December 8, 2020, and entitled “ANTIBODY-DRUG CONJUGATES SPECIFIC FOR CD276 AND USES THEREOF” [HHS Reference No. E-145-2019-0-CA-04]; European Application No. 20834060.4, filed December 8, 2020, and entitled “ANTIBODY-DRUG CONJUGATES SPECIFIC FOR CD276 AND USES THEREOF” [HHS Reference No. E-145-2019-0-EP-05]; Japanese Application No. 2022-535127, filed December 8, 2020 [HHS Reference No. E-145-2019-0-JP-06]; US Patent Application No. 17/783,171, filed June 7, 2022 [HHS Reference No. E-145-2019-0-US-07]; and all U.S. and foreign patent applications claiming priority to the aforementioned applications for each technology.

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America. The prospective exclusive license territory may be worldwide and the field of use may be limited to: “The use, development, manufacturing and commercialization of an antibody-drug conjugate (ADC) with single antigen specificity comprising:

(1) The CDR sequences of the m8524/m276 monoclonal antibody;

(2) a cleavable or non-cleavable linker; and

(3) a payload selected from the following categories: pyrrolobenzodiazepine (PBD), maytansinoid, auristatin, camptothecin, TLR agonist, STING agonist, cytokine or cytokine mimetic, targeted protein degrader, or oligonucleotide; for the treatment of CD276-expressing solid tumors.

The licensed field of use specifically excludes any (a) non-specified immunoconjugates, including, but not limited to, chimeric antigen receptors (CARs) and variants thereof, (b) unconjugated antibodies, (c) bispecific antibodies, and (d) antibody-radioligand conjugates.”

CD276, also known as B7-H3, is a cell surface tumor endothelial marker that is highly expressed in the tumor vessels of human lung, breast, colon, endometrial, renal, and ovarian cancer, but not in the angiogenic vessels of healthy tissue. This differential expression makes CD276 an attractive target for cancer treatment due to the ability to selectively target pathological angiogenesis without impacting physiological angiogenesis. The E-250-2014 technology discloses antibodies that bind selectively to CD276 and other antibody-based therapeutic formats such as antibody drug conjugates (ADCs). The E-145-2019 technology discloses an ADC based on a modified version of the m276/m8524 antibody that is disclosed under E-250-2014 that incorporates mutations for site-directed conjugation and disruption of Fc receptor binding.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 27, 2023.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2023-04411 Filed 3-2-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; HEAL Initiative: Pragmatic and Implementation Studies for the Management of Sickle Cell Disease Pain and Sickle Cell Disease Pain Management Trials Utilizing the Pain Management Effectiveness Research Network Cooperative Agreement.

Date: March 21, 2023.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sushmita Purkayastha, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892-5475, sushmita.purkayastha@nih.gov.

Sonia Elena Nanesco, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, Sonia.nanesco@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: February 28, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-04408 Filed 3-2-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze Product Definition.

Date: April 5, 2023.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Dr, Bethesda, MD 20841 (Virtual Meeting).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209-B, Bethesda, MD 20892, (301) 435-0297, goltrykl@mail.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: April 6, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207-Q, Bethesda, MD 20892-7924, (301) 827-7913, creazzotl@mail.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze Enabling Technologies.

Date: April 7, 2023.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Dr, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209-B, Bethesda, MD 20892, (301) 435-0297, goltrykl@mail.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Red Cell Alloimmunization.

Date: April 17, 2023.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Dr, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208-Z, Bethesda, MD 20892, (301) 827-7975, reillymp@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 27, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-04362 Filed 3-2-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel, March 29, 2023, 9:30 a.m. to March 29, 2023, 6 p.m., Eunice Kennedy Shriver National Institute of Child Health and Human Development, Scientific Review Branch, 6710 B Rockledge Drive, Bethesda, MD, 20817 which was published in the **Federal Register** on February 13, 2023, FR Doc 2023-02980, 88 FR 9299.

This notice is being amended to replace the listed contact person. Dr. Luis Dettin will replace Dr. Cathy Wedeen. The meeting is closed to the public.

Dated: February 27, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-04361 Filed 3-2-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0009]

Customs Declaration (CBP Form 6059B)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 2, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0009 in the subject line and the agency name. Please use the following method to submit comments:

Email: Submit comments to: CBP_PRA@cbp.dhs.gov.

Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339,

or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Customs Declaration (CBP Form 6059B).

OMB Number: 1651–0009.

Form Number: 6059B.

Current Actions: CBP is submitting a revision package to terminate the APOC Program and add the CBP One Mobile Application to the collection.

Type of Review: Revision.

Affected Public: Individuals.

Abstract: CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to U.S. Customs and Border Protection (CBP) in accordance with 19 CFR 122.27, 148.12, 148.13, 148.110, 148.111; 31 U.S.C. 5316 and Section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498).

Section 148.13 of the CBP regulations prescribes the use of the CBP Form 6059B when a written declaration is required of a traveler entering the United States. Generally, written declarations are required from travelers arriving by air or sea. Section 148.12

requires verbal declarations from travelers entering the United States. Generally, verbal declarations are required from travelers arriving by land.

CBP continues to find ways to improve the entry process through the use of mobile technology to ensure it is safe and efficient. To that end, CBP has deployed a process which allows travelers to use a mobile app to submit information to CBP prior to arrival in domestic locations and prior to departure at preclearance locations. This process, called Mobile Passport Control (MPC) allows travelers to self-segment upon arrival into the United States or departing a preclearance location. The MPC process also helps determine under what circumstances CBP should require a written customs declaration (CBP Form 6059B) and when it is beneficial to admit travelers who make an oral customs declaration during the primary inspection. MPC eliminates the administrative tasks performed by the officer during a traditional inspection and in most cases will eliminate the need for respondents/travelers to fill out a paper declaration. MPC provides a more efficient and secure in person inspection between the CBP Officer and the traveler.

Another electronic process that CBP is testing in lieu of the paper 6059B is the Automated Passport Control (APC). This is a CBP program that facilitates the entry process for travelers by providing self-service kiosks in CBP's Primary Inspection area that travelers can use to make their declaration.

Both APC and MPC allow an electronic method for travelers to answer the questions that appear on form 6059B without filling out a paper form. APC program will continue to collect this information until the program is terminated on September 30, 2023.

A sample of CBP Form 6059B can be found at: <https://www.cbp.gov/newsroom/publications/forms?title=6059>. This collection is available in the following languages: English, French, Vietnamese, German, Italian, Japanese, Korean, Polish, Portuguese, Russian, Chinese, Hebrew, Spanish, Dutch, Arabic, Farsi, and Punjabi.

New Change

1. APC Program Termination

The Automated Passport Control (APC) program will continue to collect this information until the program is terminated on September 30, 2023.

2. CBP One™ Mobile Application

A new mobile application testing the operational effectiveness of a process

which allows travelers to use a mobile application to submit information to CBP, in advance, prior to arrival. This second mobile capability is under the current CBP One™ application which is a platform application that serves as a single portal for travelers and stakeholders to virtually interact with CBP. The CBP One™ application will also allow travelers to self-segment upon arrival at land borders in the United States.

Similar to the MPC application, the CBP One™ application eliminates the administrative tasks performed by the officer during a traditional inspection and in most cases will eliminate the need for respondents/travelers to fill out a paper declaration. In addition, the CBP One™ application will also provide a more efficient and secure in person inspection between the CBP Officer and the traveler at the land border.

Unique to the CBP One™ application is that while the MPC submission is completed upon arrival, the CBP One™ application must be submitted in advance and will require the additional data elements:

1. Traveler Identify the Port of Entry (POE).

2. Time and/or date of arrival.

In addition, like the MPC application, travelers will provide their answers to CBP's questions, take a self-picture/selfie and submit the information via the CBP One™ application, after the plane lands. This will allow for advance vetting and proper resource management at the POE. In addition, this capability through the CBP One™ application is available to all travelers arriving with authorized travel documents, including foreign nationals.

Type of Information Collection: Customs Declarations (Form 6059B).

Estimated Number of Respondents: 34,006,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 34,006,000.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 2,278,402.

Type of Information Collection: Verbal Declarations.

Estimated Number of Respondents: 233,000,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 233,000,000.

Estimated Time per Response: 10 seconds.

Estimated Total Annual Burden Hours: 699,000.

Type of Information Collection: APC Terminals.

Estimated Number of Respondents: 70,000,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 70,000,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 2,310,000.

Type of Information Collection: MPC APP.

Estimated Number of Respondents: 500,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 500,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 30,060.

Type of Information Collection: CBP One APP.

Estimated Number of Respondents: 500,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 500,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 16,500.

Dated: February 28, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023-04416 Filed 3-2-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0106]

Application To Pay Off or Discharge Alien Crewman (Form I-408)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension with change of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) 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 (PRA). The information collection is published in

the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 2, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0106 in the subject line and the agency name. Please use the following method to submit comments: Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be

summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application to Pay Off or Discharge Alien Crewman.

OMB Number: 1651-0106.

Form Number: Form I-408.

Current Actions: CBP is proposing to extend this information collection with a decrease in burden due to a decrease in the number of respondents and responses received.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: CBP Form I-408, Application to Pay Off or Discharge Alien Crewman, is used as an application to request authorization from the Secretary of Homeland Security to pay off or discharge an alien crewman by the owner, agent, consignee, charterer, master, or commanding officer of the vessel or aircraft on which the alien crewman arrived in the United States. This form is submitted to the CBP officer having jurisdiction over the area in which the vessel or aircraft is located at the time of application. CBP Form I-408 is authorized by section 256 of the Immigration and Nationality Act (8 U.S.C. 1286) and provided for by 8 CFR 252.1(h). This form is accessible at: https://www.cbp.gov/newsroom/publications/forms?title_1=408.

Type of Information Collection: Form I-408.

Estimated Number of Respondents: 112,500.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 112,500.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 46,875.

Dated: February 28, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023-04417 Filed 3-2-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection**

[1651–0002]

General Declaration (CBP Form 7507)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 2, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0002 in the subject line and the agency name. Please use the following method to submit comments: Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written

comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: General Declaration.

OMB Number: 1651–0002.

Form Number: CBP Form 7507.

Current Actions: CBP proposes to reduce the burden for this information collection by streamlining the Form 7507 and removing certain data elements.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: CBP Form 7507, *General Declaration*, must be filed for all aircraft required to enter or depart under the provisions of 19 CFR 122.41 or 122.61. This form is used to document entrance and clearance for arriving and departing aircraft at the required inspection facilities and inspections by appropriate regulatory agency staffs. Flight identifying information, including the aircraft registration number, which is not collected elsewhere by CBP, and a declaration attesting to the accuracy, completeness and truthfulness of all other documents that make up the manifest shall be submitted on the CBP Form 7507 for aircraft entering or departing the United States, with certain exceptions.

Proposed Change

To reduce paperwork and reduce duplication of information, the CBP Form 7507 is being streamlined, and will no longer require respondents to provide passenger and crew information, a declaration of health for the persons on board, and details about

disinfecting and sanitizing treatments during the flight. The *General Declaration* (CBP Form 7507) will now only contain:

1. Flight identifying information.
2. The aircraft registration number (if not otherwise collected or received by CBP).

3. A declaration attesting to the accuracy, completeness, and truthfulness of all other documents that make up the manifest.

CBP Form 7507 is authorized by 19 U.S.C. 1431, 1433, and 1644a; and provided for by 19 CFR 122.43, 122.52, 122.54, 122.73, and 122.144. This form is accessible at <https://www.cbp.gov/newsroom/publications/forms>.

Type of Information Collection: CBP Form 7507.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 2,644.

Estimated Number of Total Annual Responses: 1,322,000.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 44,023.

Dated: February 28, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.
[FR Doc. 2023–04419 Filed 3–2–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection**

[1651–0031]

Foreign Assembler's Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension without change of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 2, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s)

contained in this notice must include the OMB Control Number 1651–0031 in the subject line and the agency name. Please use the following method to submit comments: Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP

invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Foreign Assembler's Declaration.

OMB Number: 1651–0031.

Form Number: N/A.

Current Actions: Extension without change.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: In accordance with 19 CFR 10.24, a Foreign Assembler's Declaration must be made in connection with the entry of assembled articles under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS, 19 U.S.C. 1202). This declaration includes information such as the quantity, value and description of the imported merchandise. The declaration is made by the person who performed the assembly operations abroad and it includes an endorsement by the importer. The Foreign Assembler's Declaration is used by CBP to determine whether the operations performed are within the purview of subheading 9802.00.80, HTSUS and therefore eligible for preferential tariff treatment. 19 CFR 10.24(c) and (d) require that the importer/ assembler maintain records for 5 years from the date of the related entry and that they make these records readily available to CBP for audit, inspection, copying, and reproduction.

Instructions for complying with this regulation are posted on the CBP.gov website at: <http://www.cbp.gov/trade/trade-community/outreach-programs/trade-agreements/nafta/repairs-alterations/subchpt-9802>.

This collection of information applies to the importing and trade community who are familiar with import procedures and with the CBP regulations.

Type of Information Collection: Foreign Assembler's Declaration (Reporting).

Estimated Number of Respondents: 2,730.

Estimated Number of Annual Responses per Respondent: 128.

Estimated Number of Total Annual Responses: 349,440.

Estimated Time per Response: 50 minutes.

Estimated Total Annual Burden Hours: 291,083.

Type of Information Collection: Foreign Assembler's Declaration (Record Keeping).

Estimated Number of Respondents: 2,730.

Estimated Number of Annual Responses per Respondent: 128.

Estimated Number of Total Annual Responses: 349,440.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 29,004.

Dated: February 28, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–04418 Filed 3–2–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0056; OMB No. 1660–0017]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Public Assistance Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning information collected for the Public Assistance (PA) program eligibility determinations, grants management, and compliance with Federal laws and regulations.

DATES: Comments must be submitted on or before April 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: FEMA-Information-Collections-Management@fema.dhs.gov or Rachel Hildebrand, Acting Chief, Public Assistance Program Delivery Branch, at

(202) 714-9731 or Rachel.Hildebrand@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (Stafford Act), authorizes grants to assist State, local, and Tribal governments and certain private non-profit entities with the response to and recovery from disasters, following Presidentially-declared major disasters and emergencies. 44 CFR part 206 specifies the information collections necessary to facilitate the provision of assistance under the Public Assistance (PA) Program. 44 CFR 206.202 describes the general application procedures for the PA Program.

This proposed information collection previously published in the **Federal Register** on December 14, 2022, at 87 FR 76499 with a 60-day public comment period. FEMA received twelve public comments and two instrument requests. Four comments (FEMA-2022-0056-0003, -0004, -0007, and -0010) were not germane to the collection. Six comments (FEMA-2022-0056-0002, -0005, -0008, -0009, -0011 and -0012) suggest several edits/ask questions about the instruments in the collection. FEMA-2022-0056-0006 wanted assistance in understanding the new concept of the revised information collection flowchart. FEMA-2022-0056-0013 is inquiring about how the new instruments will be integrated or potentially replace the current functions in the Grants Portal. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Public Assistance Program.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660-0017.

FEMA Forms: FEMA Form FF-104-FY-21-131 (formerly 009-0-49), Request for Public Assistance; FEMA Form FF-104-FY-21-132 (formerly 009-0-111), Quarterly Progress Reports; FEMA Form FF-104-FY-21-137 (formerly 009-0-123), Force Account Labor Summary Record; FEMA Form FF-104-FY-21-138 (formerly 009-0-124), Materials Summary Record; FEMA Form FF-104-FY-21-139 (formerly 009-0-125), Rented Equipment Summary; FEMA Form FF-104-FY-21-140 (formerly 009-0-126), Contract Work Summary; FEMA Form FF-104-FY-21-141 (formerly 009-0-127), Project Application for COVID-19;

FEMA Form FF-104-FY-21-135 (formerly 009-0-128), Applicant's Benefits Calculation Worksheet; FEMA Form FF-104-FY-21-145 (formerly FF 009-0-141), FAC-TRAX System; FEMA Template FT-104-FY-21-100, Equitable COVID-19 Response and Recovery: Vaccine Administration Information; FEMA Form FF-104-FY-22-233, Organization Profile; FEMA Form FF-104-FY-22-234, Recipient Incident Information; FEMA Form FF-104-FY-22-235, Applicant Impact Survey; FEMA Form FF-104-FY-22-238, Pre-Approval Request; FEMA Form FF-104-FY-22-236, Impact List; FEMA Form FF-104-FY-22-239, Project Application for Debris Removal; FEMA Form FF-104-FY-22-240, Project Application for Emergency Protective Measures; FEMA Form FF-104-FY-22-242, Project Application for Infrastructure Restoration; FEMA Form FF-104-FY-22-243, Project Application for Building Code and Floodplain Administration and Enforcement; FEMA Form FF-104-FY-22-244, Project Application for Management Costs; FEMA Form FF-104-FY-22-245, Damage Information; FEMA Form FF-104-FY-22-246, Environmental and Historic Preservation Addendum; FEMA Form FF-104-FY-22-247, Hazard Mitigation Addendum; FEMA Form FF-104-FY-22-241, Project Application for COVID-19; FEMA Form FF-104-FY-22-237, Donated Labor Sign-in; FEMA Form FF-104-FY-21-250, Tribal Administrative Plan; FEMA Form FF-104-FY-22-248, Time Extension; and FEMA Form FF-104-FY-22-249, State Administrative.

Abstract: The information collected is required for the Public Assistance (PA) Program eligibility determinations, grants management, and compliance with other Federal laws and regulations. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act), authorizes grants to assist State, Tribal, and local governments and certain private non-profit entities with the response to and recovery from disasters following Presidentially declared major disasters and emergencies.

Affected Public: State, local or Tribal Government; Private Non-Profit entities.

Estimated Number of Respondents: 1,505.

Estimated Number of Responses: 635,269.

Estimated Total Annual Burden Hours: 341,635.

Estimated Total Annual Respondent Cost: \$19,801,167.

Estimated Respondents' Operation and Maintenance Costs: \$0.

Estimated Respondents' Capital and Start-Up Costs: \$0.

Estimated Total Annual Cost to the Federal Government: \$2,001,955.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023-04432 Filed 3-2-23; 8:45 am]

BILLING CODE 9111-24-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA-2022-0016]

Notice of Cybersecurity and Infrastructure Security Agency Cybersecurity Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the CISA Cybersecurity Advisory Committee (CSAC) Quarterly Meeting will meet virtually on Tuesday, March 21, 2023. This meeting will be partially closed to the public. Members of the public may join the public portion of the meeting by teleconference.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m.

Eastern Daylight Time (EDT) on March 19, 2023.

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. EDT on March 19, 2023.

Written Comments: Written comments must be received no later than 5:00 p.m. EDT on March 19, 2023.

Meeting Date: The CSAC will meet virtually on March 21, 2023, from 1:00 p.m. to 4:00 p.m. EDT. The meeting may close early if the committee has completed its business.

ADDRESSES: The CSAC's meeting will be open to the public, per 41 CFR 102-3.150 and will be held virtually. Members of the public may participate via teleconference only. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov by 5:00 p.m. EDT March 19, 2023. The CSAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Ms. Megan Tsuyi at (202) 594-7374 as soon as possible.

Comments: Members of the public are invited to provide comment on issues that will be considered by the committee as listed in the

SUPPLEMENTARY INFORMATION section below. Associated materials that may be discussed during the meeting will be made available for review at <https://www.cisa.gov/cisa-cybersecurity-advisory-committee-meeting-resources> by March 14, 2023. Comments should be submitted by 5:00 p.m. EDT on March 19, 2023 and must be identified by Docket Number CISA-2022-0016. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Please follow the instructions for submitting written comments.
- **Email:** CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov. Include the Docket Number CISA-2022-0016 in the subject line of the email.

Instructions: All submissions received must include the words "Cybersecurity and Infrastructure Security Agency" and the Docket Number for this action. Comments received will be posted without alteration to www.regulations.gov, including any personal information provided. You may wish to review the Privacy &

Security notice available via a link on the homepage of www.regulations.gov.

Docket: For access to the docket and comments received by the CSAC, please go to www.regulations.gov and enter docket number CISA-2022-0016.

A public comment period is scheduled to be held during the meeting from 3:50 p.m. to 4:00 p.m. EDT. Speakers who wish to participate in the public comment period must email CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov to register. Speakers should limit their comments to 3 minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, depending on the number of speakers who register to participate.

FOR FURTHER INFORMATION CONTACT:

Megan Tsuyi, 202-594-7374, CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.

SUPPLEMENTARY INFORMATION: The CSAC was established under the National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283. Notice of this meeting is given under FACA, 5 U.S.C. appendix (Pub. L. 92-463). The CSAC advises the CISA Director on matters related to the development, refinement, and implementation of policies, programs, planning, and training pertaining to the cybersecurity mission of the Agency.

Agenda: The CSAC will hold a virtual meeting on Tuesday, March 21, 2023, from 1:00 p.m. to 4:00 p.m. EDT to discuss current CSAC activities. The open session will last from 3:15 p.m. to 4:00 p.m. EDT and will include: (1) a discussion of CSAC recommendations, (2) an update on subcommittee progress and (3) a period for public comment.

The committee will also meet in a closed session from 1:00 p.m. to 3:00 p.m. EDT to participate in an operational discussion that will address areas of critical cybersecurity vulnerabilities and priorities for CISA. Government officials will share sensitive information with CSAC members on initiatives and future security requirements for assessing cyber risks to critical infrastructure.

Basis for Closure: In accordance with section 10(d) of FACA and 5 U.S.C. 552b(c)(9)(B), *The Government in the Sunshine Act*, it has been determined that certain agenda items require closure, as the premature disclosure of the information that will be discussed would be likely to significantly frustrate implementation of proposed agency actions.

This agenda item addresses areas of CISA's operations that include critical

cybersecurity vulnerabilities and priorities for CISA. Government officials will share sensitive information with CSAC members on initiatives and future security requirements for assessing cyber risks to critical infrastructure.

As the premature disclosure of the information that will be discussed would be likely to significantly frustrate implementation of proposed agency action, this portion of the meeting is required to be closed pursuant to section 10(d) of FACA and 5 U.S.C. 552b(c)(9)(B).

Megan M. Tsuyi,

Designated Federal Officer, CISA Cybersecurity Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023-04390 Filed 3-2-23; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF THE INTERIOR

Geological Survey

GX23LR000F60100; OMB Control Number 1028-0062/Renewal Agency Information Collection Activities; Industrial Minerals Surveys

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), (44 U.S.C. 3501 *et seq.*) the U.S. Geological Survey (USGS) is proposing to renew an Information Collection with a revision to add a new 'Rare Gases' canvass.

DATES: Interested persons are invited to submit comments on or before May 2, 2023.

ADDRESSES: Send your comments on this Information Collection Request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to gs-info_collections@usgs.gov. Please reference OMB Control Number 1028-0062 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at escottsangine@usgs.gov, or by telephone at 703-648-7720. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered

within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of the USGS minerals information mission; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how the USGS might enhance the quality, utility, and clarity of the information to be collected; and (5) how the USGS might minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Respondents to these forms supply the USGS with domestic production- and consumption data for industrial mineral commodities, some of which are considered strategic and critical, to assist in determining National Defense Stockpile goals. These data and derived information will be published as chapters in Mineral Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public.

The USGS Mineral Resources Program is submitting this **Federal Register**

Notice as a revision to add a new 'Rare Gases Sold or Used' annual canvass to this ICR and estimates an additional 20 respondents with an average estimated burden time per form of 30 minutes. Based on technology advances, rare gases have become an important component of the U.S. supply chain with few suppliers or functional substitutes, a high risk of supply-chain disruption, and fluctuation-sensitive markets.

Title of Collection: Industrial Minerals Surveys.

OMB Control Number: 1028–0062.

Form Number: Various (39 USGS forms).

Type of Review: Renewal with a revision of a currently approved collection.

Respondents/Affected Public: Businesses or Other For-Profit Institutions: U.S. nonfuel mineral producers and consumers of industrial minerals. Public sector: State- and local governments.

Total Estimated Number of Annual Respondents: 14,630.

Total Estimated Number of Annual Responses: 17,073.

Estimated Completion Time per Response: For each form, we will include an average burden time ranging from 10 minutes to 5 hours.

Total Estimated Number of Annual Burden Hours: 11,736.

Respondent's Obligation: Voluntary.

Frequency of Collection: Monthly, Quarterly, Semiannually, or Annually.

Total Estimated Annual Non-Hour Burden Cost: There are no "non-hour cost" burdens associated with this ICR.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA, the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*), and the Defense Production Act (50 U.S.C. 2061 *et seq.*).

Steven Fortier,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2023–04406 Filed 3–2–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0151; Docket ID: BOEM–2023–0004]

Agency Information Collection Activities; Plans and Information

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) proposes this information collection request (ICR) to renew with revisions the Office of Management and Budget (OMB) Control Number 1010–0151.

DATES: Comments must be received by BOEM no later than May 2, 2023.

ADDRESSES: Send your comments on this ICR by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to anna.atkinson@boem.gov. Please reference OMB Control Number 1010–0151 in the subject line of your comments. You may also view the ICR and its related documents by searching the docket number BOEM–2023–0004 at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Anna Atkinson by email at anna.atkinson@boem.gov, or by telephone at 703–787–1025. 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 of 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: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

BOEM is soliciting comments on this proposed ICR. BOEM is especially

interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. BOEM will include or summarize each comment in its ICR to OMB for approval of this information collection, and comments will be posted on www.reginfo.gov. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available at any time.

Even if BOEM withholds your personally identifiable information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552). If your comment is requested under FOIA, your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department of the Interior's (DOI) FOIA regulations (43 CFR part 2) and applicable law.

For BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

BOEM will make available for public inspection all comments in their entirety (except proprietary information) submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses. BOEM protects proprietary information in accordance with FOIA, DOI's implementing regulations, and 30 CFR parts 550 and 552 promulgated pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1352(c)).

Title of Collection: "30 CFR 550, Subpart B, Plans and Information."

Abstract: This ICR concerns the paperwork requirements in the

regulations under 30 CFR part 550, subpart B, "Plans and Information."

The OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*, as amended), authorizes the Secretary of the Interior to prescribe regulations to administer leasing of mineral resources on the OCS. Such regulations apply to all operations conducted under a lease. The OCS Lands Act requires lessees to submit exploration plans (EPs), development and production plans (DPPs), and development operations coordination documents (DOCDs) to the Secretary for approval prior to commencing these activities. See 43 U.S.C. 1340 and 1351. On the Arctic OCS, lessees and operators are required to develop an integrated operations plan (IOP) for each exploratory program and to submit additional planning information with their EPs.

The Secretary delegated that regulatory authority to BOEM. The BOEM regulations at 30 CFR part 550, subpart B, require lessees to submit plans and information before conducting OCS activities under a lease. Those information collections are the subject of this ICR. This ICR also covers the related notices to lessees and operators (NTLs) that BOEM issues to provide additional guidance on its regulations.

BOEM geologists, geophysicists, and environmental scientists and other Federal agencies (e.g., USFWS, NMFS) analyze and evaluate the information collected under subpart B. Their analyses ensure that planned operations are safe, conserve OCS resources, and avoid undue effects on the marine, coastal, or human environment. BOEM uses the information to make an informed decision on whether to approve the proposed EP, DDP, or DOCD as submitted or require modifications. Also, the affected States may review the information collected to ensure consistency with their coastal zone management plans.

BOEM also provides reports (typically annually) to NMFS and USFWS to document compliance with the Endangered Species Act (ESA) and any issued biological opinions. These reports may include information on mitigation effectiveness, adverse impacts of activities, and any incidental takes, in accordance with 50 CFR 402.14(i)(3). For example, NMFS' recent biological opinion "Biological Opinion on the Federally Regulated Oil and Gas Program Activities in the Gulf of Mexico," (Consultation Number FPR-2017-92341) dated March 13, 2020, and amended in 2021 (GOM BiOp), covers all activities associated with the OCS oil and gas program in the Gulf of Mexico

through approximately March 2030. The GOM BiOp addresses the impacts to and incidental take of ESA-listed species as a result of BOEM-authorized activities. Compliance with the GOM BiOp's relevant terms, conditions, mitigation measures, and protocols necessitates updates to the information that lessees and operators must submit in the appendices to their plan. Certain post-lease approvals (e.g., for activities involving new and unusual technologies, equipment involving entanglement risks, and all ancillary geological and geophysical (G&G) surveys) require step-down review with NMFS and may require additional information to fully assess the potential for impacts to protected species. BOEM uses the information submitted by the lessees and operators (e.g., BOEM-0137, OCS Plan Information Form) to determine which mitigations are necessary. The GOM BiOp modified reporting requirements compared to the prior BiOp issued by NMFS; therefore, BOEM is revising the estimated burdens identified in this ICR.

OMB Control Number: 1010-0151.

Form Number:

- BOEM-0137—OCS Plan Information Form
- BOEM-0138—Exploration Plan (EP) Air Quality Screening Checklist
- BOEM-0139—Development Operations Coordination Document (DOCD) Air Quality Screening Checklist
- BOEM-0141—ROV Survey Report
- BOEM-0142—Environmental Impact Analysis Worksheet

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Potential respondents compromise Federal OCS oil, gas, and sulfur lessees and operators.

Total Estimated Number of Annual Responses: 1,291 responses.

Total Estimated Number of Annual Burden Hours: 286,144 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion, semi-monthly, and varies by section.

Total Estimated Annual Non-Hour Burden Cost: \$3,688,524.

BOEM identified three non-hour costs associated with this information collection. Those costs are fees that BOEM charges lessees to review their planning documents, such as EPs (\$4,348 fee for 95 EPs; total \$413,600 annually), DPPs or DOCDs (\$5,017 fee for 180 DPPs and DOCDs; total \$903,060 annually), and conservation information documents (CIDs) (\$32,372 fee for 17 CIDs; total \$550,324 annually).

Also, lessees incur a non-hour cost associated with the Protected Species Observer Program. This cost totals \$1,822,080 and covers observation activities that are usually subcontracted to companies with expertise in these areas.

The current OMB Control Number 1010-0151 accounts for 436,438 annual burden hours, 4,266 responses, and \$3,939,435 non-hour cost burdens. Based on several revisions, BOEM estimates the burden for the renewal will be 286,144 annual burden hours with 1,291 responses, and \$3,688,524 non-hour cost burdens.

In calculating the information collection burdens, BOEM accounted for decreases in the number of plans

submitted annually and for the changes resulting from the GOM BiOp. Per the GOM BiOp, BOEM currently requires monthly marine mammal observation and monitoring reports and a final report within 90 days of the completion of an OCS survey. Because the GOM BiOp replaced BOEM's NTL 2016-G02, which had required two reports each month, BOEM estimates an overall decrease in the burden related to these monitoring reports.

The GOM BiOp requires additional reporting if one or more individuals from a protected species are observed within an enclosed moon pool, which is an opening in the bottom of a marine platform, drill ship or vessel, through

which deepwater drilling is done. The operator must report the observation within 24 hours and daily thereafter as long as any individuals from a protected species remain within the moon pool. With this new requirement, BOEM estimates a slight increase in annual reporting.

While the GOM BiOp increased certain reporting burdens for lessees and operators in the Gulf of Mexico, the overall non-hour costs are estimated to decrease slightly due to the anticipated reduction in the number of plans submitted to BOEM.

The following table estimates the information collection burden contained in 30 CFR 550, subpart B.

BURDEN TABLE

Citation 30 CFR 550 Subpart B and NTLs	Reporting & recordkeeping requirement	Non-Hour costs		
		Hour burden	Average number of annual responses	Burden hours
200 thru 206	General requirements for plans and information; fees/re-funds, etc.	Burden included with specific requirements below.		0
201 thru 206; 211 thru 228; 241 thru 262.	BOEM posts EPs/DPPs/DOCs on FDMS, and receives public comments in preparation of EAs.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
204	For Arctic OCS Exploration activities: submit IOP, including all required information.	2,880	1 response	2,880
Subtotal .....	.....	.....	1 response	2,880
Ancillary Activities				
208; NTL 2009-G34 *	Notify BOEM in writing, and if required by the Regional Supervisor notify other users of the OCS before conducting ancillary activities.	11	40 notices	440
208; 210(a)	Submit report summarizing & analyzing data/information obtained or derived from ancillary activities.	2	40 reports	80
208; 210(b)	Retain ancillary activities data/information; upon request, submit to BOEM.	2	40 records	80
Subtotal .....	.....	.....	120 responses	600
Contents of Exploration Plans (EP)				
209; 231(b); 232(d); 234; 235; 281; 283; 284; 285; NTL 2015-N01 *.	Submit new, amended, modified, revised, or supplemental EP, or resubmit disapproved EP, including required information; withdraw an EP.	150	205 changed plans.	30,750
209; 211 thru 228; NTL 2015-N01 *.	Submit EP and all required information (including, but not limited to, submissions required by BOEM Forms 0137, 0138, 0142; lease stipulations; reports, including shallow hazards surveys, H2S, G&G, archaeological surveys & reports (550.194)**), in specified formats. Provide notifications.	600	95	57,000
		\$4,348 × 95 EP surface locations = \$413,060		
220 **	For Arctic OCS exploration activities: submit required Arctic-specific information with EP.	350	1	350
220 **	For existing Arctic OCS exploration activities: revise and re-submit Arctic-specific information, as required.	700	1	700
Subtotal .....	.....	.....	302 responses	88,800
		\$413,060 non-hour costs.		

BURDEN TABLE—Continued

Citation 30 CFR 550 Subpart B and NTLs	Reporting & recordkeeping requirement	Non-Hour costs		
		Hour burden	Average number of annual responses	Burden hours
Review and Decision Process for the EP				
235(b); 272(b); 281(d)(3)(ii)	Appeal State’s objection	Burden exempt as defined in 5 CFR 1320.4(a)(2), (c).		0
Contents of Development and Production Plans (DPP) and Development Operations Coordination Documents (DOCD)				
209; 266(b); 267(d); 272(a); 273; 281; 283; 284; 285; NTL 2015–N01 *. 241 thru 262; 209; NTL 2015–N01 *. Subtotal	Submit amended, modified, revised, or supplemental DPP or DOCD, including required information, or resubmit disapproved DPP or DOCD. Submit DPP/DOCD and required/supporting information (including, but not limited to, submissions required by BOEM Forms 0137, 0139, 0142; lease stipulations; reports, including shallow hazards surveys, archaeological surveys & reports (CFR 550.194)), in specified formats. Provide notification. 	235	275 changed plans.	64,625
		700	180	126,000
		\$5,017 × 180 DPP/DOCD wells = \$903,060.		
		.....	455 responses	190,625
			\$903,060 non-hour costs.	
Review and Decision Process for the DPP or DOCD				
267(a)	Once BOEM deemed DPP/DOCD submitted; Governor of each affected State, local government official; etc., submit comments/recommendations.	Not considered IC as defined in 5 CFR 1320.3(h)(4)		0
267(b)	General public comments/recommendations submitted to BOEM regarding DPPs or DOCDs.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
269(b)	For leases or units in vicinity of proposed development and production activities RD may require those lessees and operators to submit information on preliminary plans for their leases and units.	3	1 response	3
Subtotal .....	.....	.....	1 response	3
Post-Approval Requirements for the EP, DPP, and DOCD				
280(b)	In an emergency, request departure from your approved EP, DPP, or DOCD.	Burden included under 1010–0114.		0
281(a)	Submit various BSEE applications for approval and submit permits.	Burdens included under appropriate subpart or form (1014–0003; 1014–0011; 1014–0016; 1014–0018).		0
282	Retain monitoring data/information; upon request, make available to BOEM.	4	150 records	600
282(b)	Prepare and submit monitoring plan for approval	2	6 plans	12
	Prepare and submit monitoring reports and data (including BOEM Form 0141 used in GOMR).	3	12 reports	36
284(a)	Submit updated info on activities conducted under approved EP/DPP/DOCD.	4	56 updates	224
Subtotal .....	.....	.....	224 responses	872
Submit CIDs				
296(a); 297	Submit CID and required/supporting information; submit CID for supplemental DOCD or DPP.	100	17 documents	1,700
			\$32,372 × 17 = \$550,324	
296(b); 297	Submit a revised CID for approval	50	8 revisions	400

BURDEN TABLE—Continued

Citation 30 CFR 550 Subpart B and NTLs	Reporting & recordkeeping requirement	Non-Hour costs		
		Hour burden	Average number of annual responses	Burden hours
Subtotal .....	.....	.....	25 responses	2,100
			\$550,324 non-hour costs	
Seismic Survey Mitigation Measures and Protected Species Observer Requirements				
211 thru 228; 241 thru 262	Submit to BOEM observer training requirement materials and information.	1.5	2 sets of material.	3
	Training certification and recordkeeping	1	1 new trainee	1
	During seismic acquisition operations, submit monthly observer reports.	1.5	100 reports	150
	Submit final PSO report upon completion of seismic survey effort.	2	25 reports	50
	Observation Duty (3 observers fulfilling an 8-hour shift each for 365 calendar days × 4 vessels = 35,040 man-hours). This requirement is contracted out; hence the non-hour cost burden.	3 observers × 8 hours × 365 days = 8,760 hours × 4 vessels observing = 35,040 man-hours × \$52/hr = \$1,822,080.		
Subtotal .....	.....	.....	128 responses	204
			\$1,822,080 non-hour costs	
Vessel Strike Avoidance and Injured/Protected Species Reporting				
211 thru 228; 241 thru 262	Notify BOEM within 24 hours (and daily thereafter) if a protected species is observed within an enclosed moon pool for as long as the individual remains within the moon pool.	1	5 notices	5
211 thru 228; 241 thru 262	Immediately report: • Sightings of any injured or dead protected species. • Unapproved transits through the Rice’s whale area. • If vessel speeds exceeded 10 knots, minimum separation distances were not maintained, or transits were made during periods of low visibility in the Rice’s whale area. • Entanglement or entrapment of a protected species. • Interaction, or contact with equipment by a protected species. • Any observation of a leatherback sea turtle within a moon pool.	1	5 notices	5
Subtotal .....	.....	.....	10 responses	10
General Departure				
200 thru 299	General departure and alternative compliance requests not specifically covered elsewhere in Subpart B regulations.	2	25 requests	50
Subtotal .....	.....	.....	25 responses	50
Total Burden .....	.....	.....	1,291 responses.	286,144
			\$3,688,524 non-hour costs	

* The identification number of NTLs may change when NTLs are reissued periodically to update information.

** Archaeological surveys and reports required under 30 CFR 550, subpart A in 550.194(a) are generally part of the geohazard survey report required under 30 CFR 550, subpart B. On average it takes an archaeologist 35 hours to prepare the archaeological survey and report. This hour burden is included in the overall hour burden estimate for submission of EPs and all required information.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2023-04402 Filed 3-2-23; 8:45 am]

BILLING CODE 4340-98-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010-0081; Docket ID: BOEM-2023-0004]

Agency Information Collection Activities; Operations in the Outer Continental Shelf for Minerals Other Than Oil, Gas, and Sulfur

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) proposes this information collection request (ICR) to renew Office of Management and Budget (OMB) Control Number 1010-0081.

DATES: Comments must be received by BOEM no later than May 2, 2023.

ADDRESSES: Send your comments on this ICR by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to anna.atkinson@boem.gov. Please reference OMB Control Number 1010-0081 in the subject line of your comments. You may also view the ICR and its related documents by searching the docket number BOEM-2023-0004 at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Anna Atkinson by email at anna.atkinson@boem.gov, or by telephone at 703-787-1025. 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 of 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: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

BOEM is soliciting comments on the proposed ICR described below. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. BOEM will include or summarize each comment in its ICR to OMB for approval of this information collection. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available at any time.

Even if BOEM withholds your personally identifiable information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552). If your comment is requested under FOIA, your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations (43 CFR part 2) and applicable law.

For BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

BOEM will make available for public inspection all comments in their entirety (except propriety information)

submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses. BOEM protects proprietary information in accordance with FOIA and the Department's implementing regulations, 30 CFR 582.5 and 582.6, and applicable sections of 30 CFR parts 580 and 581. Items of a sensitive nature are not intended to be collected.

Title of Collection: "Operations in the Outer Continental Shelf for Minerals Other than Oil, Gas, and Sulfur."

Abstract: The Outer Continental Shelf Lands Act (43 U.S.C. 1334 and 1337(k)(1)) authorizes the Secretary of the Interior to issue leases on available areas of the U.S. Outer Continental Shelf (OCS) to the highest qualified bidder to develop any mineral resources other than oil, gas, and sulfur. The Secretary may prescribe the royalty, rental, and other terms and conditions at the time the lease is offered. The act also authorizes the Secretary to issue regulations governing such leasing.

The Secretary delegated rulemaking authority to BOEM. BOEM's regulations at 30 CFR part 582 carry out the statutory requirements by governing such OCS leasing and mining.

Competitive leasing has not occurred for OCS minerals other than oil, gas, and sulfur in many years. Accordingly, BOEM has not generally collected information under this part of its regulations. However, given the regulatory requirements, the potential exists that BOEM may require information under this part. Therefore, BOEM seeks OMB renewal of this information collection.

BOEM will use the information required by 30 CFR part 582 to determine if lessees are complying with the regulations for mining minerals other than oil, gas, and sulfur. BOEM will also use the information to ensure orderly resource development; to protect the human, marine, and coastal environments; and to conduct the requisite technical and environmental evaluations that inform BOEM's decision to approve, disapprove, or require modification of the proposed activities.

OMB Control Number: 1010-0081.

Form Number: None.

Type of Review: Extension of a currently approved information collection.

Respondents/Affected Public:

Potential respondents are OCS lessees.

Total Estimated Number of Annual Responses: 20 responses.

Total Estimated Number of Annual Burden Hours: 212 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Monthly, quarterly, or on occasion.

Total Estimated Annual Non-Hour Burden Cost: None.

BOEM estimates this ICR's the annual hour burden at 212 hours. The following

table details the regulatory sections containing information collections and their respective hour burden estimates. In calculating the burdens, we assumed that respondents perform certain

requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN TABLE

Citation 30 CFR 582	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart A—General				
4; 21(b)	Governors, other Federal/State agencies, lessees, interested parties, and others review and provide comments/recommendations on all plans and environmental information.	10	1	10
4(b); 12(b)(2); 21; 22; 25; 26; 28.	Submit delineation plan, including environmental information, contingency plan, monitoring program, and various requests for approval referred to throughout; submit modifications and required information.	40	1	40
4(c); 12(c)(2); 21; 23; 25; 26; 28.	Submit testing plan, including environmental information, contingency plan, monitoring program, and various requests for approval referred to throughout; submit modifications and required information.	40	1	40
4(d); 12(d)(2); 21; 24; 25; 26; 28.	Submit mining plan, including environmental information, contingency plan, monitoring program, and various requests for approval referred to throughout; submit modifications and required information.	40	1	40
5	Request non-disclosure of G&G info; provide consent; demonstrate loss of competitive position.	10	1	10
6	Governors of adjacent States request proprietary data, samples, etc., and disclosure agreement with BOEM.	10	1	10
7	Governor of affected State initiates negotiations on jurisdictional controversy, etc., and enters agreement with BOEM.	10	1	10
Subtotal .....	.....	.....	7	160
Subpart B—Jurisdiction and Responsibilities of Director				
11(c); 20(h); 30	Apply for right-of-use and easement; submit confirmations, demonstrations, and notifications.	30	1	30
11(d);	Request consolidation/splitting of two or more OCS mineral leases or portions.	1	1	1
20(h)	Request approval of operations or departure from operating requirements.	Burden included with applicable plans		0
14	Submit response copy of form BOEM-1832 indicating date violations (INCs) corrected.	2	1	2
Subtotal .....	.....	.....	3	33
Subpart C—Obligations and Responsibilities of Lessees				
20(a), (g); 29(i)	Make available all mineral resource or environmental data and information; submit reports and maintain records, as specified.	Burden included with individual reporting requirements below		0
20(b) thru (e)	Submit designation of payor, operator, or local representative; submit changes, terminations, notifications.	1	1	1
21(d)	Notify BOEM of preliminary activities	1	1	1
29(a)	Submit monthly report of minerals produced; request extension.	1	1	1
29(b), (c)	Submit quarterly status and final report on exploration and/or testing activities.	5	1	5
29(d)	Submit results of environmental monitoring activities	5	1	5
29(e)	Submit marked and certified maps annually or as required	1	1	1
29(f)	Maintain rock, minerals, and core samples for 5 years and make available upon request.	1	1	1
29(g)	Maintain original data and information and navigation tapes as long as lease is in effect and make available upon request.	1	1	1

BURDEN TABLE—Continued

Citation 30 CFR 582	Reporting or recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
29(h)	Maintain hard mineral records and make available upon request.	1	1	1
Subtotal .....	.....	.....	9	17
Subpart D—Payments				
40	Submit surety, personal bond, or approved alternative	2	1	2
Subpart E—Appeals				
50; 15	File an appeal	Burden exempt under 5 CFR 1320.4(a)(2), (c)		0
Total Burden .....	.....	.....	20	212

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2023-04400 Filed 3-2-23; 8:45 am]

BILLING CODE 4340-98-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1271]

Certain Silicon Photovoltaic Cells and Modules With Nanostructures, and Products Containing the Same; Notice of Commission Determination To Review in Part and, on Review, To Affirm a Final Initial Determination Finding No Violation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on September 1, 2022, the presiding chief administrative law judge (“CALJ”) issued a combined final initial determination (“ID”) on violation and recommended determination (“RD”) on remedy and bonding. The final ID finds no violation of section 337 in the above-captioned investigation. The Commission has determined to review the final ID in part and, on review, affirm the final ID’s finding of no violation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT:

Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 20, 2021, based on a complaint filed by Advanced Silicon Group Technologies, LLC (“ASGT”) of Lowell, Massachusetts. 86 FR 38356 (July 20, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain silicon photovoltaic cells and modules with nanostructures, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 10,269,995 (“the ‘995 patent”); 8,450,599 (“the ‘599 patent”); 8,852,981 (“the ‘981 patent”); 9,601,640 (“the ‘640 patent”); 9,768,331 (“the ‘331 patent”); and 10,692,971 (“the ‘971 patent”). *Id.* at 38357. The complaint further alleges that a domestic industry exists or is in the process of being established. *Id.* The notice of investigation named 28 respondents,

including: Canadian Solar International Limited of Hong Kong, China; Canadian Solar Manufacturing (Thailand) Co. Ltd. of Chon Buri, Thailand; Canadian Solar Manufacturing Vietnam Co. Ltd. of Hai Phong City, Vietnam; Canadian Solar (USA) Inc. of Walnut Creek, California; and Recurrent Energy SH Proco LLC of Walnut Creek, California (“Canadian Solar Respondents”); Hanwha Solutions Corporation of Seoul, Republic of Korea; Hanwha Q Cell EPC USA LLC of Irvine, California; Hanwha Q Cells America Inc. of Irvine, California; Hanwha Q Cells USA Inc. of Dalton, Georgia; and Hanwha Q Cells Malaysia Sdn. Bhd of Selangor, Malaysia (“Hanwha Respondents”); Ningbo Boway Alloy Material Co., Ltd. of Zhejiang Province, China; Boviet Solar Technology Co., Ltd. of Bac Giang Province, Vietnam; Boviet Renewable Power, LLC of San Jose, California; and Boviet Solar USA Ltd. of San Jose, California (“Boviet Respondents”); and Canadian Solar Inc. of Ontario, Canada; Canadian Solar Manufacturing (Changshu) Co. Inc. of Jiangsu, China; Canadian Solar Manufacturing (Luoyang) Inc. of Henan, China; Canadian Solar Solutions, Inc. of Ontario, Canada; Canadian Solar Construction (USA) LLC of Walnut Creek, California; Recurrent Energy Group Inc. of San Francisco, California; Recurrent Energy, LLC of Walnut Creek, California; Hanwha Q Cells GmbH of Bitterfeld-Wolfen, Germany; Hanwha Q Cells (Qidong) Co., Ltd. of Jiangsu, China; Hanwha Energy USA Holdings Corp. (d/b/a 174 Power Global Corporation) of Irvine, California; Hanwha Q Cells USA Corp. of Irvine, California; HQC Rock River Solar Holdings LLC of Irvine, California; HQC Rock River Solar Power Generation Station, LLC of Beloit, Wisconsin; and Hanwha Q CELLS & Advanced

Materials Corp. of Seoul, Republic of Korea (“Terminated Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.*

On February 22, 2022, the Commission determined to terminate the investigation as to the ’971 patent (Order No. 7) and the Terminated Respondents (Order No. 8) based on ASGT’s withdrawal of the allegations in the complaint as to that patent and those respondents. Order Nos. 7 and 8 (Feb. 1, 2022), *unreviewed by Comm’n Notice* (Feb. 22, 2022). On June 21, 2022, the Commission determined to terminate the investigation as to the ’995 patent, asserted claims 17 and 25 of the ’599 patent, asserted claims 1, 2, and 26 of the ’981 patent, asserted claims 14 and 16–18 of the ’640 patent, and asserted claims 2 and 10 of the ’331 patent based on ASGT’s withdrawal of the allegations in the complaint as to that patent and those claims. Order No. 12 (May 31, 2022), *unreviewed by Comm’n Notice* (June 21, 2022).

On September 1, 2022, the CALJ issued the subject final ID on violation and RD on remedy and bond. The ID finds that no violation of section 337 has occurred as to the Canadian Solar Respondents, Hanwha Respondents, and Boviet Respondents with respect to the claims of the four remaining asserted patents—*i.e.*, the ’599, ’981, ’640, and ’331 patents. Specifically, the ID finds: (1) no infringement as to any of the remaining asserted patents; (2) that claim 27 of the ’981 patent is invalid as anticipated by U.S. Patent Application Publication No. US2011/0140085 (“Homyk 2011”); (3) that claim 1 of the ’331 patent is invalid as obvious over (i) the combination of the printed publications titled “Silicon Nanowire-Array-Textured Solar Cells for Photovoltaic Application” (“Chen 2010”) and “Crystalline Silicon Solar Cells and Modules” (“Tobias 2003”), as well as (ii) the combination of U.S. Patent Application Publication No. US2013/0340824 (“Oh 2013”) and Tobias 2003; (4) that ASGT has not satisfied the technical prong of the domestic industry requirement as to any of the remaining asserted patents; (5) that ASGT has satisfied the economic prong of the domestic industry requirement as to the remaining asserted patents; and (6) that ASGT’s assertion of violation as to the ’331 patent is not barred by inequitable conduct.

The RD recommends that, should the Commission determine that violations of section 337 occurred, the Commission should: (i) issue a limited exclusion order against the remaining respondents’ infringing products; (ii)

issue a cease and desist order against the Canadian Solar Respondents, but not against the Hanwha Respondents or Boviet Respondents; and (iii) enter no bond for any importations of infringing products during the period of Presidential review.

On September 19, 2022, ASGT filed a petition for review of certain findings in the final ID concerning infringement by only the Canadian Solar Respondents as to the ’981 and ’640 patents, the finding that claim 27 of the ’981 patent is invalid as anticipated by Homyk 2011, satisfaction of the technical prong of the domestic industry requirement as to the ’981 and ’640 patents; and contingently, whether ASGT has satisfied the economic prong of the domestic industry requirement based on an industry in the process of being established. On September 27, 2022, the Canadian Solar Respondents and OUII each filed a response to ASGT’s petition.

On October 5, 2022, ASGT filed a submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission did not receive any public interest submissions from the remaining respondents. The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission’s **Federal Register** notice. 87 FR 55852–53 (Sept. 12, 2022).

Having reviewed the record in this investigation, including the final ID, ASGT’s petition, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ID’s finding that ASGT has satisfied the economic prong of the domestic industry requirement as to the remaining asserted patents. On review, the Commission has determined to take no position on that issue.

Further, the Commission has determined to review, and on review, to correct the following typographical/clerical errors in the final ID: (1) in the twenty-first line of page 123, “does not remove (or break)” is replaced with “removes (or breaks)”; (2) in the fifth line of page 161 and the twelfth line of page 174, “Tobias 2013” is replaced with “Tobias 2003”; (3) the last sentence of the first full paragraph on page 174 is replaced with “In addition, Dr. Lebby testified that Oh 2013 disclosed screen printing on nanowires and, moreover, that it would not have been difficult for a person of ordinary skill in the art to screen print a comb-like pattern onto silicon nanostructures. See RX–0001C (Lebby) at Q/A 318–25.”;

(4) in the eighth line of page 175, “Chen 2010 and Tobias” is replaced with “Oh 2013 and Tobias 2003”; and (5) the following paragraph is added between the first and second full paragraphs on page 8: “Boviet Renewable Power, LLC (“Boviet Renewable”) is a corporation existing under the laws of the State of Delaware and a subsidiary of Ningbo Boway having a principal place of business in San Jose, California. See Complaint, ¶ 34; Boviet Response to Complaint, ¶ 34.”

In addition, the Commission has determined to review, and on review, to strike the discussion and finding at Section II.A on page 15 of the final ID that the Commission has “subject matter jurisdiction” over this investigation. The concept of “subject matter jurisdiction” does not apply to administrative agencies. *City of Arlington, Tex. v. FCC*, 569 U.S. 290, 297–98 (2013).

Lastly, the Commission has determined to review, and on review, to affirm with supplemental reasoning the final ID’s finding that Homyk 2011 anticipates claim 27 of the ’981 patent. Specifically, ASGT’s argument in its post-hearing brief (and petition for review) that Homyk 2011 does not teach the “a portion of the surface” limitation of claim 27 is waived because ASGT failed to raise the argument in its pre-hearing brief. See Order No. 2 at 11–12 (July 16, 2021) (Ground Rule 7c (deeming a contention abandoned or withdrawn if it is not set forth in detail in a party’s pre-hearing brief)); Complainant’s Post-Hearing Brief (Apr. 26, 2022) at 154–55; Complainant’s Petition for Commission Review of Initial Determination (Sept. 19, 2022) at 35–36.

The Commission has determined not to review the remaining findings in the final ID. Accordingly, the Commission has determined to affirm the final ID’s finding of no violation of section 337. The investigation is terminated.

The Commission vote for this determination took place on February 27, 2023.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 27, 2023.

Katherine Hiner,
Supervisory Attorney.

[FR Doc. 2023–04369 Filed 3–2–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1348]

Certain Cabinet X-Ray and Optical Camera Systems and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Consent Order Stipulations; Issuance of Consent Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 4) of the presiding Chief Administrative Law Judge (“CALJ”) terminating the investigation based on consent order stipulations. The Commission has entered consent orders against respondents CompAI Healthcare (Shenzhen) Co., Ltd., CompAI Healthcare (Suzhou) Co., Ltd., Kangpai Medical Technology (Changchun) Co., Ltd., Kangpai (Beijing) Medical Equipment Co., Ltd., and Dilon Technologies, Inc. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On January 3, 2023, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by KUB Technologies, Inc. of Stratford, Connecticut. 88 FR 113–14 (Jan. 3, 2023). The complaint alleged a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cabinet x-ray and optical camera

systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 10,670,545. *Id.* at 113. The complaint also alleged the existence of a domestic industry.

The notice of investigation named as respondents the following entities: CompAI Healthcare (Shenzhen) Co., Ltd. of Shenzhen, Guangdong, China (“CompAI Shenzhen”), CompAI Healthcare (Suzhou) Co., Ltd. of Suzhou, Jiangsu, China (“CompAI Suzhou”), Kangpai Medical Technology (Changchun) Co., Ltd. of Suzhou, Jiangsu, China (“Kangpai Changchun”), Kangpai (Beijing) Medical Equipment Co., Ltd. of Suzhou, Jiangsu, China (“Kangpai Beijing”), and Dilon Technologies, Inc. of Newport News, Virginia (“Dilon”) (collectively, “Respondents”). *Id.* at 114. The Commission’s Office of Unfair Import Investigations is not a party to this investigation. *Id.*

On January 11, 2023, all of the Respondents in this investigation—CompAI Shenzhen, CompAI Suzhou, Kangpai Changchun, Kangpai Beijing, and Dilon—filed a motion to terminate this investigation based on consent orders and a memorandum in support thereof. (“Mot.”). The motion indicates that it is unopposed. *See id.* at 1.

On January 31, 2023, the CALJ issued the subject ID (Order No. 4) granting the motion. The ID found that the Respondents represent that “there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” ID at 1 (citing Mot. at 2; 19 CFR 210.21(c)).

The ID found that, consistent with Commission Rule 210.21(c)(1)(ii), each of the Respondents provided a consent order stipulation and proposed consent order with the pending motion. *Id.* at 2–4. With respect to each of the Respondents, the ID found that their respective consent order stipulations and respective proposed consent orders conform with Commission Rules 210.21(c)(3) and 210.21(c)(4), respectively. *Id.*

Based on the motion papers and the record as a whole, the ID found that any effect the proposed consent orders may have on the statutory public interest factors does not counsel against entry of the order. *Id.* at 5. In addition, the ID found that termination of the investigation as to the Respondents by consent order will preserve Commission resources and avoid unnecessary litigation. *Id.*

The Commission has determined not to review the subject ID and to issue consent orders against respondents CompAI Healthcare (Shenzhen) Co.,

Ltd., CompAI Healthcare (Suzhou) Co., Ltd., Kangpai Medical Technology (Changchun) Co., Ltd., Kangpai (Beijing) Medical Equipment Co., Ltd., and Dilon Technologies, Inc. Accordingly, the investigation is terminated in its entirety.

The Commission vote for this determination took place on February 27, 2023.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission’s Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: February 27, 2023.

Katherine Hiner,
Supervisory Attorney.

[FR Doc. 2023–04356 Filed 3–2–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1332]

Certain Semiconductors and Devices and Products Containing the Same, Including Printed Circuit Boards, Automotive Parts, and Automobiles; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based on Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge’s (“ALJ”) initial determination (“ID”) (Order No. 16), granting complainant’s motion to terminate the investigation based on withdrawal of the complaint as to all respondents. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its

internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 14, 2022, based on a complaint filed on behalf of Daedalus Prime LLC of Bronxville, NY ("Complainant"). 87 FR 62454 (Oct. 14, 2022).¹ The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductors and devices and products containing the same, including printed circuit boards, automotive parts, and automobiles by reason of infringement of one or more of claims 1-18 of U.S. Patent No. 8,775,833 ("the '833 patent"); claims 1-18 of U.S. Patent No. 8,898,494 ("the '494 patent"); claims 1-17 of the '895 patent; claims 1-24 of U.S. Patent No. 10,049,080 ("the '080 patent"); claims 1-19 of U.S. Patent No. 10,394,300 ("the '300 patent"); and claims 1-20 of U.S. Patent No. 10,705,588 ("the '588 patent"). *Id.* at 62454-55. The complaint further alleged that an industry in the United States exists. *Id.* The notice of investigation named as respondents: Avnet, Inc. of Phoenix, AZ; Digi-Key Electronics of Thief River Falls, MN; Mercedes-Benz Group AG and Mercedes-Benz AG, both of Germany; Mercedes-Benz USA, LLC of Sandy Springs, GA; Mouser Electronics, Inc. of Mansfield, TX; Newark of Chicago, IL; NXP Semiconductors N.V. of Netherlands; and NXP USA, Inc. of Austin, TX (collectively, "Respondents"). *Id.* at 62455. The Office of Unfair Import Investigations ("OUII") is also participating in this investigation. *Id.*

Claims 6, 8, 10, 16, and 17 of the '300 patent, claims 6, 11, and 12 of the '833 patent, claims 8-12 and 16 of the '494 patent, claims 2, 4-5, 12-13, and 20 of the '588 patent, claims 9-16, 21, and 22 of the '080 patent, and all asserted claims of the '895 patent have been terminated from the investigation. *See* Order No. 11 (Dec. 13, 2022), *unreviewed by* Comm'n Notice (Jan. 11, 2023); Order No. 13 (Jan. 3, 2023),

unreviewed by Comm'n Notice (Jan. 30, 2023).

On January 20, 2023, Complainant filed a motion to withdraw the complaint as to all Respondents. Respondents did not oppose the motion and OUII filed a response supporting the motion.

On January 30, 2023, the ALJ issued the subject ID (Order No. 16), granting Complainant's motion to terminate the investigation in its entirety based on withdrawal of the complaint. The ID found that the motion complies with Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1), and there are no extraordinary circumstances preventing termination of the investigation. *See* ID at 2. No petition for review of the ID was filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The Commission vote for this determination took place on February 24, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: February 27, 2023.

Katherine M. Hiner,

Supervisory Attorney.

[FR Doc. 2023-04355 Filed 3-2-23; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1117-0014]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Revision of a Currently Approved Collection; Application for Registration and Application for Registration Renewal; DEA Forms 224, 224A

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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 2, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments 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 Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 776-3882.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Application for Registration and Application for Registration Renewal.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Forms: 224, 224A. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public (Primary): Business or other for-profit. Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: The Controlled Substances Act (CSA) (21 U.S.C. 801-971) requires

¹ A Corrected Notice of Institution was published on November 2, 2022. 87 FR 66208 (Nov. 2, 2022). The Corrected Notice of Institution omits the determination on whether an industry "is in the process of being established" from the investigation. *Id.* at 66209.

all persons that manufacture, distribute, dispense, conduct research with, import, or export any controlled substance to obtain a registration issued by the Attorney General. DEA would be revising the proposed information

collection instruments as statutorily mandated by the Consolidated Appropriations Act, 2023, as Public Law 117–328. DEA would be adding questions to ensure that the applicable registrants have completed the new

training requirements set forth in the Consolidated Appropriations Act, 2023.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

	Number of annual respondents	Average time per response	Total annual hours
DEA–224	146,285	0.33 hours (20 minutes)	48,762
DEA–224a	524,196	0.17 hours (10 minutes)	87,366
Total	670,481	.....	136,128

* Based on three-year average, 2020–2022. Practitioners are registered for a three-year cycle and the number of registrants is not equally distributed between years. The growth rate in the number of practitioners is low enough where the actual numbers for this period would not be materially different from the number expected for the next several years.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* DEA estimates that this collection takes 136,128 annual burden hours.

If additional information is required please contact: John Carlson Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: February 28, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–04429 Filed 3–2–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0014]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Office of the Pardon Attorney, Department of Justice.

ACTION: Notice.

SUMMARY: The Office of the Pardon Attorney, Department of Justice, is 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: The Department of Justice encourages public comment and will accept input until April 3, 2023.

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: Kira Gillespie, Deputy Pardon Attorney, Office of the Pardon Attorney, 950 Pennsylvania Avenue NW, Main Justice—RFK Building, Washington, DC 20530; kira.gillespie@usdoj.gov; (202) 616–6073.

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 Office of the Pardon Attorney, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of the Information Collection

1. *Type of Information Collection:* New Collection.

2. *The Title of the Form/Collection:* Application for Certificate of Pardon for Simple Marijuana Offense.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this

collection. The applicable component within the Department of Justice is the Office of the Pardon Attorney.

Affected public who will be asked or required to respond, as well as a brief abstract:

The President issued a Proclamation on Granting Pardon for the Offense of Simple Possession Marijuana (Proclamation) on October 6, 2022. In that proclamation, he directed the Attorney General, acting through the Pardon Attorney, to develop procedures to “administer and effectuate the issuance of certificates of pardon to eligible applicants . . . as soon as reasonably practicable.” The Proclamation specifically commands the Pardon Attorney to “develop and announce application procedures.”

Accordingly, the Pardon Attorney has developed the subject form to collect information from potential pardon recipients. The application asks applicants to confirm that the petitioner is U.S. citizen or lawful permanent resident who was lawfully in the country at the time the marijuana offense occurred; the alien registration or citizenship number of a lawful permanent resident or naturalized citizen applicant; information regarding the specific court in which the applicant was charged or convicted and the date of said conviction, if any; information regarding the applicant's race, gender, and ethnicity; identifying information regarding the applicant's date and place of birth; and documentation of the applicant's charge or convictions.

Abstract: The information collected from the Certificate Application will primarily be used to determine whether the applicant qualifies for pardon under the terms of the Proclamation. The information may also be used to provide statistical analysis of the demographics of pardon recipients and applicants.

4. *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: Although the number of persons who may qualify for pardon under the terms of this Proclamation is currently unknowable, the Office of the Pardon Attorney estimate that a potential pool of at least 20,000 applicants may apply. The application for the certificate is simple, and will not take long to complete, between 10 and 30 minutes. The applicants must also provide proof of their prior convictions or charges, which we estimate would take anywhere between 10 minutes to two hours of effort, including research, phone calls, and conversations with necessary personnel to attain the appropriate documentation. Therefore, the Pardon Attorney estimates that it would take approximately 20 minutes, but likely no longer than 2.5 hours per individual to provide the information necessary for the collection.

5. *An estimate of the total public burden (in hours) associated with the collection:* Considering the above projected figures, the low-end estimate would be $20,000 \times 20$ minutes = 400,000 minutes, or approximately 6,667 hours of total burden on the public. The high-end estimate is $20,000 \times 2.5$ hours = 50,000 hours of total burden on the public.

If additional information is required contact: John R. Carlson, 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 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-03639 Filed 3-2-23; 8:45 am]

BILLING CODE 4410-29-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Ventilation Plan and Main Fan Maintenance Record

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995

(PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT:

Nora Hernandez by telephone at 202-693-8633, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Accordingly, 30 CFR 57.8520 (Ventilation plan) requires the mine operator to prepare a written plan of the mine ventilation system. The plan is required to be updated at least annually. Upon written request of the District Manager, the plan or revisions must be submitted to MSHA for review and comment. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 30, 2022 (87 FR 59462).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a

collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-MSHA.

Title of Collection: Ventilation Plan and Main Fan Maintenance Record.

OMB Control Number: 1219-0016.

Affected Public: Businesses or other for-profits institutions.

Total Estimated Number of Respondents: 232.

Total Estimated Number of Responses: 243.

Total Estimated Annual Time Burden: 5,608 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2023-04367 Filed 3-2-23; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "National Longitudinal Survey of Youth 1997." A copy of the proposed information collection request can be obtained by contacting the individual

listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before May 2, 2023.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at 202-691-7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1997 (NLSY97) is a nationally representative sample of persons who were born in the years 1980 to 1984. These respondents were ages 12–17 when the first round of annual interviews began in 1997; starting with round sixteen, the NLSY97 is conducted on a biennial basis. Round twenty-one interviews will occur from September 2023 to June 2024. The Bureau of Labor Statistics (BLS) contracts with a vendor to conduct the NLSY97. The primary objective of the survey is to study the transition from schooling to the establishment of careers and families. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices.

Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, work experience, fertility, income, and program participation. In addition to the reports that the BLS produces based on data from the NLSY97, members of the academic community publish articles and reports based on NLSY97 data for the DOL and other funding agencies. To date, approximately 976 articles examining NLSY97 data have been published in scholarly journals.

The survey design provides data gathered from the same respondents over time to form the only dataset that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal dataset could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Current Action

The BLS seeks approval to conduct round 21 of biennial interviews of the NLSY97. Respondents of the NLSY97 will undergo an interview of approximately 74 minutes during which they will answer questions about schooling and labor market experiences, family relationships, and community background.

During the fielding period for the main round 21 interviews, no more than 2 percent of respondents will be asked to participate in a brief validation interview a few weeks after the initial interview. The purpose of the validation interview is to verify that the initial interview took place as the interviewer reported and to assess the data quality of selected questionnaire items.

Round 21 will be a predominantly telephone survey. Approximately 90 percent of interviews will be completed by telephone, with the remaining interviews being conducted in person.

The round 21 questionnaire will resemble the round 20 questionnaire with few modifications. New questions

for the round 21 questionnaire include questions on the location of work and job search, whether an employer requires the signing of a non-disclosure agreement, chronic health conditions relating to heart conditions, blood sugar, and high blood pressure, coronavirus vaccine reciprocity, the use of pain medications, and adverse childhood experiences. In addition, attempts to streamline the questionnaire have been made so that it will be shorter and less burdensome for respondents. To this end, fewer questions will be asked about impact of the coronavirus pandemic, and questions about the value of a job, sexual activity and birth control, criminal background checks, and internet access were removed.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title of Collection: National Longitudinal Survey of Youth 1997.

OMB Number: 1220-0157.

Type of Review: Revision.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden (hours)
Main NLSY97: September 2023–June 2024	6570	One-time	6570	74 minutes	8103
Validation interview: October 2023–June 2024	100	One-time	100	6 minutes	10
Totals *	6570	.....	6670	.....	8113

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on this 27th day of February 2023.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2023-04368 Filed 3-2-23; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at ACVETEO@dol.gov. Additional information regarding the Committee, including its charter, current membership list, annual reports, meeting minutes, and meeting updates may be found at <https://www.dol.gov/agencies/vets/about/advisorycommittee>. This notice also describes the functions of the ACVETEO. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES: Wednesday, March 22, 2023 beginning at 9 a.m. and ending at approximately 12 p.m. (EDT).

ADDRESSES: This ACVETEO meeting will be held via TEAMS and teleconference. Meeting information will be posted at the link below under the Meeting Updates tab. <https://www.dol.gov/agencies/vets/about/advisorycommittee>.

Notice of Intent to Attend the Meeting: All meeting participants should submit a notice of intent to attend by Friday, March 10, 2023, via email to Mr. Gregory Green at ACVETEO@dol.gov,

subject line "March 2023 ACVETEO Meeting." Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, March 10, 2023, by contacting Mr. Gregory Green at ACVETEO@dol.gov.

Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Designated Federal Official for the ACVETEO, ACVETEO@dol.gov, (202) 693-4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. 10. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans' Employment and Training Service, with respect to outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

- 9 a.m. Welcome and remarks, James D. Rodriguez, Assistant Secretary, Veterans' Employment and Training Service
- 9:10 a.m. Administrative Business, Gregory Green, Designated Federal Official
- 9:15 a.m. Briefing on DOD SkillBridge
- 10:15 a.m. Break
- 10:30 a.m. Briefing on Registered Apprenticeship
- 11:30 p.m. Public Forum, Gregory Green, Designated Federal Official
- 12 p.m. Adjourn

Signed in Washington, DC, this 27th day of February 2023.

James D. Rodriguez,

Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2023-04407 Filed 3-2-23; 8:45 am]

BILLING CODE 4510-79-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 23-012]

Name of Information Collection: NASA Astronaut Candidate Selection (ASCAN) Qualifications Inquiry

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—renewal of existing 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 2, 2023.

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 60-day 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 Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757-864-3292, or b.edwards-bodmer@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports the National Aeronautics and Space Act of 1958, as amended, to create opportunities to improve processes associated with the evaluation and selection of individuals to participate in the NASA Astronaut Candidate Selection Program. The NASA Astronaut Selection Office (ASO) located at the Lyndon B. Johnson Space Center (JSC) in Houston, Texas is responsible for selecting astronauts for the various United States Space Exploration programs. In evaluating an applicant for the Astronaut Candidate Program, it is important that the ASO have the benefit of qualitative and quantitative information and recommendations from persons who have been directly associated with the applicant over the course of their career.

This information will be used by the NASA ASO and Human Resources (HR) personnel, during the candidate selection process (approx. 2-year duration), to gain insight into the candidates' work ethic and professionalism as demonstrated in previous related employment activities. Respondents may include the astronaut candidate's previous employer(s)/direct-reporting manager, as well as co-workers and other references provided by the candidate.

II. Methods of Collection

Electronic and optionally by paper.

III. Data

Title: NASA Astronaut Candidate Selection (ASCAN) Qualifications Inquiry.

OMB Number: 2700-0156.

Type of Review: Renewal of Existing Information Collection.

Affected Public: Individuals.

Estimated Annual Number of Activities: 2,000.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 2,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 669.

Estimated Total Annual Cost: \$50,905.00.

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. 2023-04399 Filed 3-2-23; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-263; NRC-2023-0031]

Northern States Power Company—Minnesota; Xcel Energy; Monticello Nuclear Generating Plant, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Subsequent license renewal application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the subsequent license renewal of Renewed Facility Operating License No. DPR-22, which authorizes Northern States Power Company, a Minnesota corporation (NSPM or the applicant), doing business as Xcel Energy, to operate Monticello Nuclear Generating Plant (MNGP), Unit 1. The subsequent renewed license would authorize the applicant to operate MNGP for an additional 20 years beyond the period specified in the current license. The current operating license for MNGP expires September 8, 2030.

DATES: A request for a hearing or petition for leave to intervene must be filed by May 2, 2023.

ADDRESSES: Please refer to Docket ID NRC-2021-0031 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0031. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-287-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **Public Library:** A copy of the subsequent license renewal application for MNGP can be accessed at the following public library: Monticello Great River Regional Library, 200 West 6th St., Monticello, MN 55362.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Jessica Hammock, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0740; email: Jessica.Hammock@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received a subsequent license renewal application (SLRA) from NSPM, dated January 9, 2023 (ADAMS Accession No. ML23009A354), filed pursuant to section 103 of the Atomic Energy Act of 1954, as amended (the Act), and part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), to renew the operating license for MNGP at 2,004 megawatts thermal. The MNGP unit is a boiling-water reactor designed by General Electric and is located in Monticello, Minnesota. A notice of receipt of the SLRA was published in the **Federal Register** on January 31, 2023 (88 FR 6327).

The NRC staff has determined that NSPM has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and that the application is, therefore, acceptable for docketing. The current docket no. 50-263 for Renewed Facility Operating License No. DPR-22, will be retained. The determination to accept the SLRA for docketing does not constitute a determination that a subsequent renewed license should be issued and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested subsequent renewed licenses, the NRC will have made the findings required by the Act and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a subsequent renewed license on the basis of its review if it finds that actions have been

identified and have been or will be taken with respect to: (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review; and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis and that any changes made to the plant's current licensing basis will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC staff will prepare an environmental impact statement as a supplement to the Commission's NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," dated June 2013 (ADAMS Accession No. ML13106A241). In considering the SLRA, the Commission must find that the applicable requirements of subpart A of 10 CFR part 51 have been satisfied, and that any matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold public scoping meetings. Detailed information regarding the environmental scoping meetings will be the subject of a separate **Federal Register** notice.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended

contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see the information provided at ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056) and on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access

the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at <https://www.nrc.gov/reactors/operating/licensing/renewal.html> on the NRC's public website. Copies of the application to renew the operating license for MNGP are available for public inspection at the NRC's PDR, and on the NRC's public website at <https://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. The application may be accessed in ADAMS through the NRC Library on the internet at <https://www.nrc.gov/reading-rm/adams.html> under ADAMS Accession No. ML23009A354. As previously stated, persons who do not have access to ADAMS or who encounter problems in accessing the

documents located in ADAMS may contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to PDR.Resource@nrc.gov.

Dated: February 28, 2023.

For the Nuclear Regulatory Commission.

Lauren K. Gibson,

*Chief, License Renewal Project Branch,
Division of New and Renewed Licenses, Office
of Nuclear Reactor Regulation.*

[FR Doc. 2023–04443 Filed 3–2–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–116 and CP2023–119]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 7, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance

date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2023–116 and CP2023–119; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 7 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 27, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* March 7, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–04420 Filed 3–2–23; 8:45 am]

BILLING CODE 7710–FW–P

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-180, OMB Control No. 3235-0247]

Submission for OMB Review; Comment Request; Extension: Form N-8B-4

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.*) (“PRA”), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) requests for extension of the previously approved collection of information discussed below.

Form N-8B-4 (17 CFR 274.14) is the form used by face-amount certificate companies to comply with the filing and disclosure requirements imposed by section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-8(b)). Among other items, Form N-8B-4 requires disclosure of the following information about the face-amount certificate company: date and form of organization; controlling persons; current business and contemplated changes to the company’s business; investment, borrowing, and lending policies, as well as other fundamental policies; securities issued by the company; investment adviser; depositaries; management personnel; compensation paid to directors, officers, and certain employees; and financial statements. The Commission uses the information provided in the collection of information to determine compliance with section 8(b) of the Investment Company Act of 1940.

Form N-8B-4 and the burden of compliance have not changed since the last approval. Each registrant files Form N-8B-4 for its initial filing and does not file post-effective amendments to Form N-8B-4.¹ Commission staff estimates that no respondents will file Form N-8B-4 each year. There is currently only one existing face-amount certificate company, and no face-amount certificate companies have filed a Form N-8B-4 in many years. No new face-

amount certificate companies have been established since the last OMB information collection approval for this form, which occurred in 2020. Accordingly, the staff estimates that, each year, no face-amount certificate companies will file Form N-8B-4, and that the total burden for the information collection is zero hours. Although Commission staff estimates that there is no hour burden associated with Form N-8B-4, the staff is requesting a burden of one hour for administrative purposes. Estimates of the burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N-8B-4 is mandatory. The information provided on Form N-8B-4 will not be kept confidential. 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 3, 2023 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: February 28, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-04446 Filed 3-2-23; 8:45 am]
BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96990; File No. SR-Phlx-2023-06]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Options 7, Section 4, Multiply Listed Options Fees

February 27, 2023.

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 22, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx’s Pricing Schedule at Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).”³

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**1. Purpose**

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, “Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY).” Specifically, Phlx proposes to: (1) to remove its current Qualified Contingent Cross (“QCC”) Rebate Schedule and propose a new QCC Rebate and QCC Growth Tier Rebate; (2) amend the Monthly Firm Fee

¹ Pursuant to section 30(b)(1) of the Act (15 U.S.C. 80a-29), each respondent keeps its registration statement current through the filing of periodic reports as required by section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) and the rules thereunder. Post-effective amendments are filed with the Commission on the face-amount certificate company’s Form S-1. Hence, respondents only file Form N-8B-4 for their initial registration statement and not for post-effective amendments.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On February 10, 2023, the Exchange withdrew SR-Phlx-2023-03 and replaced it with SR-Phlx-2023-05. On February 22, 2023, SR-Phlx-2023-05 was withdrawn and replaced with the instant filing.

Cap; and (3) propose a new Floor Transaction (Open Outcry) Floor Broker Incentive Program. Each change is described below.

QCC Rebates

Today, the Exchange assesses a \$.20 per contract QCC Transaction Fee for a Lead Market Maker,⁴ Market Maker,⁵ Firm⁶ and Broker-Dealer.⁷ Customers⁸ and Professionals⁹ are not assessed a QCC Transaction Fee. QCC Transaction Fees apply to electronic QCC Orders¹⁰ and Floor QCC Orders.¹¹ Rebates are paid on all qualifying executed electronic QCC Orders and Floor QCC Orders based on the below QCC Rebate Schedule:¹²

QCC REBATE SCHEDULE

Tier	Threshold	Rebate per contract
Tier 1	0 to 999,999 contracts in a month.	\$0.09
Tier 2	1,000,000 contracts or more in a month.	0.20

The Exchange does not pay a QCC Rebate where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; (iii) Professional-to-Professional; or (iv) a dividend, merger, short stock interest or reversal or conversion strategy execution (as defined in Options 7, Section 4).

The Exchange proposes to remove the existing QCC Rebate Schedule and replace those rebates with new QCC Rebates in new Section A as well as a QCC Growth Tier Rebate in new Section B. The Exchange proposes to insert a new title “QCC Transaction Fee” before the paragraph which describes QCC fees.

The Exchange proposes to add a new title “A. QCC Rebate” to describe its proposed QCC Rebates. The Exchange proposes to pay a QCC Rebate of \$0.12 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange proposes to increase this rebate to \$0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month. The Exchange also proposes to pay a new QCC Rebate of \$0.14 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. The Exchange proposes to increase this rebate to \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month.

As is the case today, the two new proposed QCC rebates would be paid on all qualifying executed electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in

Options 8, Section 30(e), except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; and (iii) Professional-to-Professional. Today, the Exchange excludes dividend, merger, short stock interest or reversal or conversion strategy executions, as defined in Options 7, Section 4, as qualifying transactions. At this time, the Exchange proposes to exclude all strategy executions within Options 7, Section 4, (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions) as qualifying transactions.

Further, as is the case today, volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest or reversal or conversion strategy executions, is aggregated in determining the applicable volume tier. With this proposed change, the Exchange would aggregate the applicable member or member organization qualifying QCC contract volume in a given month which includes volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions, as is the case today, and would exclude all strategy executions within Options 7, Section 4, (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions) as qualifying transactions.

The Exchange notes that Customers and Professionals are not assessed a QCC Transaction Fee while all other market participants pay a QCC Transaction Fee of \$0.20 per contract. The Exchange proposes to pay greater rebates where the two contra-parties to a QCC Order are not Customers and Professionals as greater QCC transaction fees are being assessed to Lead Market Maker, Market Maker, Broker-Dealer or Firm orders. These QCC Rebates are intended to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx.

Additionally, the Exchange proposes to establish a new QCC Growth Tier Rebate and title that new section as “B. QCC Growth Tier Rebate”. This QCC Growth Tier Rebate is intended to encourage Phlx members and member organizations to transact a greater number of QCC Orders on Phlx. In order to qualify for the QCC Growth Tier Rebate, a member’s or member

⁴ The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1(c). The term “Floor Lead Market Maker” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s trading floor. See Options 8, Section 2(a)(3).

⁵ The term “Market Maker” is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. See Options 7, Section 1(c). The term “Floor Market Maker” is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(4).

⁶ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).

⁷ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(c).

⁸ The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(b)(45)). See Options 7, Section 1(c).

⁹ The term “Professional” applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 7, Section 1(c).

¹⁰ Electronic QCC Orders are described in Options 3, Section 12.

¹¹ Floor QCC Orders are described in Options 8, Section 30(e).

¹² Volume resulting from all executed electronic QCC Orders and Floor QCC Orders, including Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional transactions and excluding dividend, merger, short stock interest or reversal or conversion strategy executions, is

aggregated in determining the applicable volume tier.

organization's total floor transaction,¹³ and electronic QCC Orders and Floor QCC Orders volume ("QCC transaction volume") must exceed 12,500,000 contracts in a given month. In addition to the aforementioned criteria, the member's or member organization's respective Phlx House Account¹⁴ must execute QCC transaction volume of 250,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month.

The Exchange also proposes to offer an alternative qualification to achieve the QCC Growth Tier Rebate. A member's or member organization's Open Outcry Floor Transaction volume in a given month must exceed 500,000 contracts. In addition to the aforementioned criteria, a member's or member organization's respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month.

As proposed for the QCC Growth Tier Rebate, the term "Open Outcry Floor Transaction" includes all transactions executed in open outcry on Phlx's trading floor except: (1) dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions as defined in this Options 7, Section 4; (2) Cabinet Transactions as defined in Options 8, Section 33; and (3) Customer-to-Customer transactions.

The Exchange proposes to pay the QCC Growth Tier Rebates per Phlx House Account. The Exchange will pay

a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Further, the Exchange will pay a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. Finally, members and member organizations will be entitled to one QCC Rebate in a given month, either the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both.

The Exchange believes that the proposed QCC Rebates in proposed Section A and the proposed QCC Growth Tier Rebate in Section B will encourage market participants to send QCC orders to Phlx for execution in an effort to earn higher QCC Rebates.

The Exchange proposes to add a new title before the Monthly Market Maker Cap rule text which states, "Monthly Market Maker Cap".

Monthly Firm Fee Cap

The Exchange proposes to add a new title prior to the paragraph which describes Phlx's Monthly Firm Fee Cap which states, "Monthly Firm Fee Cap and Facilitation".

Today, Firms are subject to a maximum fee of \$150,000 ("Monthly Firm Fee Cap"). Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month do not exceed the Monthly Firm Fee Cap per member or member organization provided such members or member organizations are trading in their own proprietary account. Today, the Monthly Firm Fee Cap and all dividend, merger, and short stock interest strategy executions; transactions in broad-based index options symbols listed within Options 7, Section 5.A are excluded from the Monthly Firm Fee Cap. Today, reversal and conversion, jelly roll and box spread strategy executions and QCC Transaction Fees are included in the Monthly Firm Fee Cap.¹⁵

At this time, the Exchange proposes two changes to the Monthly Firm Fee Cap. First, the Exchange proposes to

increase the Monthly Firm Fee Cap from \$150,000 to \$200,000. Second, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded, the Exchange proposes to instead assess a nominal transaction fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap unless no fee¹⁶ is charged or the fee is waived.¹⁷ The Exchange proposes to amend the text within Options 7, Section 4 to state,

Firms are subject to a \$200,000 "Monthly Firm Fee Cap". Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month that exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary account, will be subject to a reduced transaction fee of \$0.02 per capped contract unless there is no fee or the fee is waived.

While the Exchange would be increasing the cap as well as fees for Firms with this proposal, the Exchange believes that the Monthly Firm Fee Cap still serves to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these Firms the ability to lower costs.

Additionally, the Exchange proposes to amend the types of strategy executions that will be included in the Monthly Firm Fee Cap. Today, dividend, merger, and short stock interest strategies are excluded from the Monthly Firm Fee Cap and reversal and conversion, jelly roll and box spread strategy executions are included in the Monthly Firm Fee Cap. At this time, the Exchange proposes to exclude all strategy executions from the Monthly Firm Fee Cap (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions).

¹⁶ Today, Firms pay an electronic Options Transaction Charge of \$0.48 per contract in Penny Symbols for simple orders and \$0.40 per contract in Penny Symbols for complex orders. Also, Firms pay a Floor Options Transaction Charge of \$0.25 per contract in Penny Symbols. Today, Firms pay an electronic Options Transaction Charge of \$0.75 per contract in Non-Penny Symbols and a Floor Options Transactions Charge of \$0.25 per contract in Non-Penny Symbols. See Options 7, Section 4.

¹⁷ Today, the Firm Floor Options Transaction Charges is waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. See Options 7, Section 4.

¹³ The term "floor transaction" is a transaction that is effected in open outcry on the Exchange's trading floor. See Phlx Options 7, Section 1(c). Of note, the term "floor transaction" is more broadly defined than the term "Open Outcry Floor Transaction" which is discussed herein and is a subset of the term "floor transaction".

¹⁴ Each Phlx member or member organization is required to establish one Phlx House Account with the Exchange's Membership Department. Only one Phlx House Account is required to transact business on Phlx. The Exchange assesses a \$50.00 a month account fee for this account as provided for within Options 7, Section 8A. A Phlx member or member organization has the option of acquiring multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business.

¹⁵ Members and member organizations must notify the Exchange in writing of all accounts in which the member or member organization is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Monthly Firm Fee Cap.

Floor Transaction (Open Outcry) Floor Broker Incentive Program

The Exchange proposes to create a new incentive program for Floor Brokers¹⁸ that is designed to attract order flow to Phlx's trading floor for execution in open outcry. The Exchange proposes to pay Floor Broker certain rebates for transaction they execute on Phlx's trading floor in open outcry. The Exchange proposes to title this new section, "Floor Transaction (Open Outcry) Floor Broker Incentive Program".

The following floor transactions would not be subject to the rebates offered within the Floor Transaction (Open Outcry) Floor Broker Incentive Program: (1) Floor QCC Orders, as defined in Options 8, Section 30(e);¹⁹ (2) dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; (3) Firm Floor Options Transactions Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and (4) Customer-to-Customer transactions.

The Exchange would pay Floor Transaction (Open Outcry) Floor Broker Incentive Program rebates on qualifying volume at each threshold level per the below schedule.

Qualifying contracts	Per contract rebate
0–5,000,000	\$0.03
5,000,001–10,000,000	0.06
Greater than 10,000,000	0.09

By way of example, a Floor Broker that executes floor transactions in a given month totaling 10,500,000 contracts will be paid \$0.03 for the first 5,000,000 floor transaction contracts (\$150,000), \$0.06 for the next 5,000,000 floor transaction contracts (\$300,000), and \$0.09 for the final 500,000 floor transaction contracts (\$45,000) for a total rebate of \$495,000 for that month. Further, as an additional clarifying example, if a Floor Broker executes a floor transaction in the amount of

1,000,000 contracts, represents both sides of the floor transaction, and executes the floor transaction as a crossing transaction pursuant to Options 8, Section 30(a) for 700,000 of the 1,000,000 contracts, then trades the remaining 300,000 contracts with the trading crowd, the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebate for this transaction will be paid on the qualifying floor transaction volume of 1,000,000 contracts.

Finally, the Exchange proposes to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month.

The Exchange believes that the Floor Transaction (Open Outcry) Floor Broker Incentive Program will attract greater order flow to Phlx's trading floor.

Technical Amendments

The Exchange proposes to add a title before the rule text related to strategies which states, "Floor Originated Strategy Executions". The Exchange believes the proposed new titles throughout Options 7, Section 4 will assist market participants in locating certain pricing within this rule. The Exchange also proposes to adjust rule text within Options 7, Section 4 in the Strategies pricing to make clear that all dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions, as defined in this Options 7, Section 4, will be excluded from the Monthly Firm Fee Cap as proposed herein.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that

current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²²

Likewise, in *NetCoalition v. Securities and Exchange Commission*²³ ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²⁴ As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."²⁵

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"²⁶ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

QCC Rebates

Section A QCC Rebates

The Exchange's proposal to remove the existing QCC Rebate Schedule and replace those rebates with new rebates as well as a QCC Growth Tier Rebate is reasonable because the Exchange proposes to offer its members and member organizations additional qualifications to obtain potentially greater QCC Rebates. The Exchange believes the opportunity to earn larger rebates will incentivize members and member organizations to execute a larger amount of floor transactions, QCC transaction volume, and Open Outcry Floor Transaction volume on Phlx's trading floor. The Exchange's proposal to remove the existing QCC Rebate Schedule and replace those rebates with

¹⁸ The term "Floor Broker" means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. See Phlx Options 7, Section 1(c).

¹⁹ Today, Floor QCC Orders are not transacted in open outcry. The Exchange proposes to include Floor QCC Orders in the list of exclusions to remind members and member organizations that Floor QCC Orders will not be paid the Floor Transaction (Open Outcry) Floor Broker Incentive Program rebate.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4) and (5).

²² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

²³ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

²⁴ See *NetCoalition*, at 534–535.

²⁵ *Id.* at 537.

²⁶ *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

new rebates as well as a QCC Growth Tier Rebate is equitable and not unfairly discriminatory because all members and member organizations may execute QCC trades, electronically or on the Exchange's trading floor.

Today, the Exchange pays a \$0.09 QCC rebate for executing up to 999,999 QCC contracts in a month and a \$0.20 per contract QCC Rebate for executing 1,000,000 or more QCC contracts in a month. With the two new proposed QCC Rebates within Section A the Exchange offers to pay a QCC Rebate of \$0.12 per contract on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This proposed QCC Rebate is greater than the lowest tier QCC Rebate offered today (\$0.09 (old) vs. \$0.12 (new)). Additionally, the Exchange proposes to pay an increased QCC Rebate of \$0.17 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month which is less than the current QCC rebate for 1,000,000 or more contracts today (\$0.20 (old) vs. \$0.17 (new)). Additionally, depending on the contra-parties to the QCC Order, the Exchange would pay a \$0.14 per contract QCC Rebate on electronic QCC Orders, as defined in Options 3, Section 12, and Floor QCC Orders, as defined in Options 8, Section 30(e), when a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side. This rebate is also greater than the lowest tier QCC Rebate offered today (\$0.09 (old) vs. \$0.14 (new)). Additionally, the Exchange proposes to pay an increased QCC Rebate of \$0.19 per contract in the event that a member or member organization executes greater than 1,000,000 qualifying QCC contracts in a given month which is less than the current QCC rebate for 1,000,000 or more contracts today (\$0.20 (old) vs. \$0.19 (new)). The Exchange believes that while some QCC Rebates are higher and some QCC Rebates are lower, the range of QCC Rebates offered by Phlx remains competitive and the Exchange believes these QCC Rebates will continue to attract QCC Orders to Phlx. The Exchange believes its proposal to offer these two new QCC Rebates is equitable and not unfairly discriminatory because any market

participant may qualify for a QCC Rebate provided they qualified for the QCC Rebate. Further, the Exchange's proposal which pays greater rebates where the two contra-parties to a QCC Order are not Customers and Professionals is equitable and not unfairly discriminatory because, today, the Exchange assesses greater fees to Lead Market Maker, Market Maker, Broker-Dealer and Firms for QCC Orders. Customers and Professionals are not assessed a QCC Transaction Fee, while all other market participants pay a QCC Transaction Fee of \$0.20 per contract.

The Exchange's proposal to amend the QCC Rebate qualifications such that all strategy executions (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread) will be excluded and, as proposed, will aggregate the applicable member or member organization qualifying QCC contract volume in a given month, excluding all strategy executions, is reasonable. Today, the Exchange offers strategy caps²⁷ for these strategy executions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange's proposal to amend the QCC Rebate qualification such that all strategy executions (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread) will be excluded and, as proposed, will aggregate the applicable member or member organization qualifying QCC contract volume in a given month, excluding all strategy executions is equitable and not unfairly discriminatory because the Exchange would uniformly apply the QCC Rebate qualifications as well as calculate the QCC Rebates.

Section B QCC Growth Tier Rebate

The Exchange's proposal to establish a new QCC Growth Tier Rebate is reasonable because this rebate should provide additional incentives for members and member organizations to engage in substantial amounts of trading activity which would serve to bring additional open outcry liquidity to the trading floor and additional QCC Order Flow to Phlx. This incentive may also encourage members and member organizations to commence sending

such order flow to Phlx for the opportunity to earn this rebate. Additionally, the Exchange's proposal to establish a new QCC Growth Tier Rebate is equitable and not unfairly discriminatory because any member or member organization may qualify for this rebate.

The Exchange's proposal offers member and member organizations two paths to qualify for a QCC Growth Tier Rebate. In the first instance, a member's or member organization's total floor transaction, and electronic QCC Orders and Floor QCC Orders volume ("QCC transaction volume") must exceed 12,500,000 contracts in a given month and the member's or member organization's respective Phlx House Account must execute QCC transaction volume of 250,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 250,000 or more contracts in a given month. In the second instance, a member's or member organization's Open Outcry Floor Transaction volume in a given month must exceed 500,000 contracts and a member's or member organization's respective Phlx House Account must execute QCC transaction volume of 2,500,000 or more contracts in excess of the member's or member organization's QCC transaction volume in January 2023. For members or member organizations with no QCC transaction volume in January 2023, the QCC transaction volume, in their respective Phlx House Account, must be 2,500,000 or more contracts in a given month. The Exchange believes that these qualifications are reasonable because they offer members and member organizations optional qualifications to achieve a QCC Growth Tier Rebate. Additionally, the Exchange believes that these qualifications are equitable and not unfairly discriminatory as all members and member organizations may qualify for the QCC Growth Tier Rebate.²⁸ All members and member organizations may enter order flow to obtain a QCC Growth Tier Rebate.

The Exchange's exclusion of strategy executions, cabinet transactions and

²⁷ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

²⁸ The Exchange notes that while all Phlx member organizations may transact an options business electronically or on the Exchange's trading floor, each member located on Phlx's trading floor must have an individual permit. Alternatively, Phlx members or member organizations may transact business on the trading floor through a Floor Broker.

Customer-to-Customer transactions is reasonable. Cabinet transactions and Customer-to-Customer transactions are excluded today from QCC Rebates. This proposal would exclude all strategy executions, which is a change from the current QCC Rebate exclusions which only excludes dividend, merger, short stock interest, and reversal or conversion strategies. Today, the Exchange offers strategy caps²⁹ for these types of open outcry transactions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange's exclusion of strategy executions, cabinet transactions and Customer-to-Customer transactions are equitable and not unfairly discriminatory as the qualifications for the QCC Growth Tier Rebate will be uniformly applied.

The Exchange's proposal to utilize January 2023 as a baseline to add 250,000 or more contracts for the QCC Growth Tier Rebate and permit members or member organizations with no QCC transaction volume in January 2023, to add 250,000 or more contracts in a given month is reasonable as it will create an incentive for members and member organizations to bring liquidity to Phlx's trading floor relative to a benchmark. The Exchange believes that if the proposed incentive is effective, then any ensuing increase in trading activity on the Exchange will improve the quality of the market overall, to the benefit of all market participants. Further, it is reasonable to consider any new liquidity volume for members or member organizations who have no volume for the month of January 2023 for those members or member organizations to qualify to receive the proposed QCC Growth Tier Rebate because this program is designed to attract additional liquidity from new members and member organizations. To the extent this proposal attracts new members and member organization volume to the Exchange, all market participants should benefit through more trading opportunities. The Exchange's proposal to utilize January 2023 as a baseline to add 250,000 or more contracts for the QCC Growth Tier Rebate and permit members or member organizations with no QCC transaction volume in January 2023, to add 250,000 or more contracts in a given month is

equitable and not unfairly discriminatory for the reasons which follow. The Exchange's proposal is designed to increase participation in Phlx's trading floor and reward those members and member organizations for the unique role they play in ensuring a robust market. As discussed above, the proposal is designed to encourage members and member organizations to substantially execute additional volume on the trading floor. To the extent the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in market quality, which stands to benefit all floor members. The Exchange believes that it is equitable and not unfairly discriminatory to consider any new volume for members and member organizations with no such volume for the month of January 2023 for those members and member organizations to qualify to receive the proposed QCC Growth Tier Rebate because the program is designed to attract additional liquidity from new members and member organizations to the Exchange. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction.

The Exchange's proposal to pay the QCC Growth Tier Rebates per Phlx House Account is reasonable, equitable and not unfairly discriminatory. Today, each Phlx member or member organization is required to establish one Phlx House Account with the Exchange's Membership Department. Only one Phlx House Account is required to transact business on Phlx.³⁰ A Phlx member or member organization has the option of acquiring multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business.

The Exchange's proposal to pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side and a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side is reasonable because these rebates are both higher than the rebates offered today for QCC Rebates. Today, the QCC Rebate for Tier 1 is \$0.09 per contract

and the QCC Rebate for Tier 2 is \$0.20 per contract. Further, the Exchange's proposal to pay greater rebates where both sides are not a Customer or a Professional is reasonable because, today, Customers and Professionals are not assessed a QCC Transaction Fee. Lead Market Makers, Market Makers, Broker-Dealers, and Firms pay a QCC Transaction Fee of \$0.20 per contract. The Exchange's proposal to pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side and a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side is equitable and not unfairly discriminatory because the Exchange will uniformly apply the qualifications and to pay the QCC Growth Tier Rebate.

The Exchange's proposal to pay members and member organizations the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both QCC Rebates, is reasonable, equitable and not unfairly discriminatory because each of the Exchange's QCC rebates remain competitive with today's QCC Rebate and the Exchange would uniformly only pay the greater of the two QCC Rebates.

Monthly Firm Fee Cap

The Exchange's proposal to amend the Monthly Firm Fee Cap from \$150,000 to \$200,000 and assess a nominal fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded is reasonable. While the Exchange would be increasing the cap as well as fees for Firms with this proposal, the Exchange believes that the Monthly Firm Fee Cap still serves to lower fees for Firms that transact certain qualifying volume on Phlx, thus enabling these firms the ability to lower costs. The Exchange believes that the Monthly Firm Fee Cap would continue to incentivize Firms to direct order flow to the Exchange to achieve the benefits of reducing their fees. The Exchange's proposal to not assess the \$0.02 per contract transaction fee if no fee³¹ is charged or the fee is

²⁹ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

³⁰ The Exchange assesses a \$50.00 a month account fee for this account as provided for within Options 7, Section 8A.

³¹ Today, Firms pay an electronic Options Transaction Charge of \$0.48 per contract in Penny Symbols for simple orders and \$0.40 per contract in Penny Symbols for complex orders. Also, Firms

waived³² is reasonable because the Exchange wants to ensure that members and member organizations get the most favorable incentive that they qualify for under its Pricing Schedule. The Exchange's proposal to amend the Monthly Firm Fee Cap from \$150,000 to \$200,000 and assess a nominal fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded is equitable and not unfairly discriminatory as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols.³³ Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead Market Makers and Market Makers are subject to a Monthly Market Maker Cap.³⁴ With

pay a Floor Options Transaction Charge of \$0.25 per contract in Penny Symbols. Today, Firms pay an electronic Options Transaction Charge of \$0.75 per contract in Non-Penny Symbols and a Floor Options Transactions Charge of \$0.25 per contract in Non-Penny Symbols. See Options 7, Section 4.

³² Today, the Firm Floor Options Transaction Charges is waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges will be waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. See Options 7, Section 4.

³³ See Options 7, Section 4.

³⁴ See Options 7, Section 4. Lead Market Makers and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A

respect to Broker-Dealers, today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.³⁵ Finally, today, Professional Floor Options Transaction Charges are less favorable than Customers but more favorable than Firms.³⁶ Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs³⁷ could be subject to the Monthly Firm Fee Cap,³⁸ as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the cap. The Exchange's proposal to not assess the \$0.02 per contract transaction fee if no fee is charged or the fee is waived is equitable and not unfairly discriminatory as the Exchange would uniformly not assess the transaction fee in this case.

The Exchange's proposal to amend the types of strategy executions that will be included in the Monthly Firm Fee Cap to exclude all strategy executions from the Monthly Firm Fee Cap is reasonable because the Exchange offers strategy caps³⁹ for these types of open

Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA"). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

³⁵ See Options 7, Section 4.

³⁶ See Options 7, Section 4.

³⁷ The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

³⁸ Firms are subject to a Monthly Firm Fee Cap. See Options 7, Section 4.

³⁹ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread

outcry transactions and, therefore, members and member organizations have the ability to pay no fees on strategy executions once the cap is met. The Exchange's proposal to amend the types of strategy executions that will be included in the Monthly Firm Fee Cap to exclude all strategy executions from the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because the Exchange would uniformly calculate qualifying transactions to arrive at the Monthly Firm Fee Cap.

Floor Transaction (Open Outcry) Floor Broker Incentive Program

The Exchange's proposal to create a new incentive program for Floor Brokers that is designed to attract order flow to Phlx's trading floor for execution in open outcry is reasonable, equitable and not unfairly discriminatory because the Exchange's program seeks to attract greater order flow to the Exchange's trading floor. The Exchange notes that other Phlx floor members may interact with orders exposed in open outcry on the Exchange's trading floor. Other floor members⁴⁰ may interact with the order flow that Floor Brokers attract to Phlx's trading floor.

The Exchange's proposal to exclude Floor QCC Orders, dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and Customer-to-Customer transactions from the Floor Transaction (Open Outcry) Floor Broker Incentive Program is reasonable. Within this proposal, the Exchange offers to pay significant QCC Rebates for Floor QCC Orders. As noted herein, with respect to strategy transactions, the Exchange offers strategy caps⁴¹ for these types of open outcry transactions and, therefore, members and member organizations have the ability to pay no fees on

strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

⁴⁰ Floor members include all members who have acquired a permit to trade on Phlx's trading floor.

⁴¹ Today, the Exchange offers certain strategy caps for dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread strategy executions. To qualify for a strategy cap, the buy and sell side of a transaction must originate either from the Exchange's trading floor or as a Floor Qualified Contingent Cross Order. See Options 7, Section 4.

strategy executions once the cap is met. The Exchange is excluding Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges) because, today, Firm Floor Options Transaction Charges are waived pursuant to Options 7, Section 4. Finally, the Exchange is excluding Customer-to-Customer transaction as Customers are not subject to Options Transaction Charges within Options 7, Section 4. The Exchange's proposal to exclude Floor QCC Orders, dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and Customer-to-Customer transactions from the Floor Transaction (Open Outcry) Floor Broker Incentive Program is equitable and not unfairly discriminatory because the Exchange would uniformly apply the qualification criteria to calculate rebates.

The Exchange's proposal to pay Floor Brokers rebates on qualifying open outcry volume at each of three threshold levels, with rebates ranging from \$0.03 to \$0.09 per contract, is reasonable because the Exchange believes that these rebates will serve to incentivize Floor Brokers to execute a greater number of orders in the Exchange's trading crowd. The Exchange's proposal to pay Floor Brokers rebates on qualifying open outcry volume at each of three threshold levels, with rebates ranging from \$0.03 to \$0.09 per contract, is equitable and not unfairly discriminatory as the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program.

The Exchange's proposal to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month is reasonable. The Exchange's program will pay Floor Brokers up to \$1,000,000 in rebates a month to incentivize them to bring additional order flow to the Exchange's trading crowd. The Exchange believes that the incentive, despite the cap, will attract order flow to Phlx. All other floor members may interact with that order flow. The Exchange's proposal to cap rebates for

the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month is equitable and not unfairly discriminatory as all Floor Brokers would be subject to the same cap.

Technical Amendments

The Exchange's proposal to add certain titles within Options 7, Section 4 is reasonable, equitable and not unfairly discriminatory as the titles will assist market participants in locating certain pricing within Phlx's Options 7, Section 4 rule. The addition of these titles are non-substantive amendments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed amendments do not impose an undue burden on intra-market competition. In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed QCC Rebate and QCC Rebate Growth Tier Rebates will encourage market participants to send a greater amount of electronic QCC orders and Floor QCC Orders to Phlx for execution in order to obtain greater rebates and lower their costs. Further, the proposed QCC

Growth Tier Rebate should incentivize a greater amount of floor transactions on Phlx, thereby allowing Phlx to compete more effectively with other options floor models. The proposed Floor Broker Incentive Program should encourage Floor Brokers to send additional order flow to Phlx to obtain rebates and lower their costs. Any market participant may send an order to a Phlx Floor Broker for execution on Phlx's trading floor. The Exchange believes that the additional liquidity will enhance the quality of the Exchange's market and increase certain trading opportunities on the Exchange's trading floor for floor members.

QCC Rebates

Section A QCC Rebates

The Exchange's proposal to remove the existing QCC Rebate Schedule and replace those rebates with new rebates as well as a QCC Growth Tier Rebate does not impose an undue burden on competition because all members and member organizations may execute QCC rebates, electronically or on the Exchange's trading floor. The Exchange believes its proposal to offer these two new QCC Rebates does not impose an undue burden on competition because any market participant may qualify for a QCC Rebate provided they qualified for the QCC Rebate. Further, the Exchange's proposal which pays greater rebates where the two contra-parties to a QCC Order are not Customers and Professionals does not impose an undue burden on competition because, today, the Exchange assesses greater fees to Lead Market Maker, Market Maker, Broker-Dealer and Firms for QCC Orders. Customers and Professionals are not assessed a QCC Transaction Fee, while all other market participants pay a QCC Transaction Fee of \$0.20 per contract. The Exchange's proposal to amend the QCC Rebate qualification such that all strategy executions (dividend, merger, short stock interest, reversal and conversion, jelly roll, and box spread) will be excluded and, as proposed, will aggregate the applicable member or member organization qualifying QCC contract volume in a given month, excluding all strategy executions does not impose an undue burden on competition because the Exchange would uniformly apply the QCC Rebate qualifications as well as calculate the QCC Rebates.

Section B QCC Growth Tier Rebate

The Exchange's proposal to establish a new QCC Growth Tier Rebate does not impose an undue burden on competition, rather it is pro-competitive in that would serve to increase liquidity

on Phlx, thus rendering Phlx a more attractive and vibrant venue to market participants. The QCC Growth Tier Rebate qualifications do not impose an undue burden on competition because all members and member organizations may qualify for the QCC Growth Tier Rebate.⁴² All members and member organizations may enter order flow to obtain a QCC Growth Tier Rebate. The Exchange's exclusion of strategy executions, cabinet transactions and Customer-to-Customer transactions does not impose an undue burden on competition as the qualifications for the QCC Growth Tier Rebate will be uniformly applied. The Exchange's proposal to utilize January 2023 as a baseline to add 250,000 or more contracts for the QCC Growth Tier Rebate and permit members or member organizations with no QCC transaction volume in January 2023, to add 250,000 or more contracts in a given month does not impose an undue burden on competition because the proposal is designed to increase participation in Phlx's trading floor and reward those members and member organizations for the unique role they play in ensuring a robust market. Further, the proposal is designed to encourage members and member organizations to substantially add liquidity to the trading floor. To the extent the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in market quality, which stands to benefit all floor members. The proposal considers any new volume for members and member organizations with no such volume for the month of January 2023 for those members and member organizations to qualify to receive the proposed QCC Growth Tier Rebate. This does not impose an undue burden on competition because the program is designed to attract additional liquidity from new members and member organizations to the Exchange. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction. The Exchange's proposal to pay the QCC Growth Tier Rebates per Phlx House Account does not impose an undue burden on competition. Today, each Phlx member or member organization is required to establish one Phlx House Account with the

Exchange's Membership Department. Only one Phlx House Account is required to transact business on Phlx.⁴³ A Phlx member or member organization has the option of acquiring multiple Phlx House Accounts depending on a member's or member organization's business model and how they elect to organize their business. The Exchange's proposal to pay a \$0.20 per contract QCC Growth Tier Rebate on a QCC Order comprised of a Customer or Professional order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side and a \$0.26 per contract QCC Growth Tier Rebate on a QCC Order is comprised of a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on one side and a Lead Market Maker, Market Maker, Broker-Dealer, or Firm order on the other side does not impose an undue burden on competition because the Exchange will uniformly apply the qualifications and to pay the QCC Growth Tier Rebate. The Exchange's proposal to pay members and member organizations the greater of the QCC Rebate in Section A or the QCC Growth Tier Rebate in Section B in a given month, but not both QCC Rebates, does not impose an undue burden on competition because each of the Exchange's QCC rebates remain competitive with today's QCC Rebate and the Exchange would uniformly only pay the greater of the two QCC Rebates.

Monthly Firm Fee Cap

The Exchange's proposal to amend the Monthly Firm Fee Cap from \$150,000 to \$200,000 and assess a nominal fee of \$0.02 per capped contract once a Firm exceeds the Monthly Firm Fee Cap, instead of not assessing Firms any fee once the Monthly Firm Fee Cap is exceeded does not impose an undue burden on competition as other market participants benefit from an opportunity to pay reduced fees on Phlx as do Firms. Today, Customers are not assessed an Options Transaction Charge in multiply-listed Penny or non-Penny Symbols.⁴⁴ Customer liquidity benefits all market participants by providing more trading opportunities. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Today, Lead Market Makers and Market Makers are subject

to a Monthly Market Maker Cap.⁴⁵ With respect to Broker-Dealers, today, the Exchange waives the Floor Options Transaction Charge for Broker-Dealers executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer ("BD-Customer Facilitation"), if the member's BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month.⁴⁶ Finally, today, Professional Floor Options Transaction Charges are less favorable than Customers but more favorable than Firms.⁴⁷ Additionally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because members and member organizations that are JBOs⁴⁸ could be subject to the Firm Related Equity Option Cap, as are other members, as long as the JBO trades for their own proprietary account. Additionally, the proposed change would encourage JBOs that are not

⁴⁵ See Options 7, Section 4. Lead Market Makers and Market Makers are subject to a "Monthly Market Maker Cap" of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). The trading activity of separate Lead Market Maker and Market Maker member organizations is aggregated in calculating the Monthly Market Maker Cap if there is Common Ownership between the member organizations. All dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions (as defined in this Options 7, Section 4) is excluded from the Monthly Market Maker Cap. Lead Market Makers or Market Makers that (i) are on the contra-side of an electronically-delivered and executed Customer order, excluding responses to a PIXL auction; and (ii) have reached the Monthly Market Maker Cap will be assessed fees as follows: \$0.05 per contract Fee for Adding Liquidity in Penny Symbols; \$0.18 per contract Fee for Removing Liquidity in Penny Symbols; \$0.18 per contract in Non-Penny Symbols; and \$0.18 per contract in a non-Complex electronic auction, including the Quote Exhaust auction and, for purposes of this fee, the opening process. A Complex electronic auction includes, but is not limited to, the Complex Order Live Auction ("COLA"). Transactions which execute against an order for which the Exchange broadcast an order exposure alert in an electronic auction will be subject to this fee.

⁴⁶ See Options 7, Section 4.

⁴⁷ See Options 7, Section 4.

⁴⁸ The term "Joint Back Office" or "JBO" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC and is identified with an origin code as a JBO. A JBO is priced the same as a Broker-Dealer. A JBO participant is a member, member organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System as further discussed at Options 6D, Section 1. See Options 7, Section 1(c).

⁴² The Exchange notes that while all Phlx member organizations may transact an options business electronically or on the Exchange's trading floor, each member located on Phlx's trading floor must have an individual permit. Alternatively, Phlx members or member organizations may transact business on the trading floor through a Floor Broker.

⁴³ The Exchange assesses a \$50.00 a month account fee for this account as provided for within Options 7, Section 8.A.

⁴⁴ See Options 7, Section 4.

members or member organizations to seek to become members or member organizations to further reduce their transaction fees. Finally, other market participants may interact with the order flow submitted by Firms to Phlx to reach the cap. The Exchange's proposal to not assess the \$0.02 per contract transaction fee if no fee is charged or the fee is waived does not impose an undue burden on competition as the Exchange would uniformly not assess the transaction fee in this case.

Floor Transaction (Open Outcry) Floor Broker Incentive Program

The Exchange's proposal to create a new incentive program for Floor Brokers that is designed to attract order flow to Phlx's trading floor for execution in open outcry does not impose an undue burden on competition because the Exchange's program seeks to attract greater order flow to the Exchange. Other floor members may interact with the order flow that Floor Brokers attract to Phlx's trading floor. The Exchange's proposal to exclude Floor QCC Orders, dividend, merger, short stock interest, reversal and conversion, jelly roll and box spread strategy executions as defined in this Options 7, Section 4; Firm Floor Options Transaction Charges for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges); and Customer-to-Customer transactions from the Floor Transaction (Open Outcry) Floor Broker Incentive Program does not impose an undue burden on competition because the Exchange would uniformly apply the qualification criteria to calculate rebates. The Exchange's proposal to pay Floor Brokers rebates on qualifying open outcry volume at each of three threshold levels, with rebates ranging from \$0.03 to \$0.09 per contract, does not impose an undue burden on competition as the Exchange would uniformly calculate all qualifying volume and uniformly pay rebates associated with the Floor Transaction (Open Outcry) Floor Broker Incentive Program. The Exchange's proposal to cap rebates for the Floor Transaction (Open Outcry) Floor Broker Incentive Program at \$1,000,000 per member or member organization in a given month does not impose an undue burden on competition as all Floor Brokers would be subject to the same cap.

Technical Amendments

The Exchange's proposal to add certain titles within Options 7, Section 4 does not impose an undue burden on

competition as the titles will assist market participants in locating certain pricing within Phlx's Options 7, Section 4 rule. The addition of these titles are non-substantive amendments.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁴⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2023-06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2023-06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2023-06 and should be submitted on or before March 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-04357 Filed 3-2-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-202, OMB Control No. 3235-0196]

Submission for OMB Review; Comment Request; Extension: Rule 17a-22

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 17a-22 (17 CFR 240.17a-22) under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*).

Rule 17a-22 requires all registered clearing agencies to file with the Commission three copies of all materials

⁴⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁰ 17 CFR 200.30-3(a)(12).

they issue or make generally available to their participants or other entities with which they have a significant relationship, such as pledges, transfer agents, or self-regulatory organizations. Such materials include manuals, notices, circulars, bulletins, lists, and periodicals. The filings with the Commission must be made within ten days after the materials are issued or made generally available. When the Commission is not the clearing agency's appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency.

The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a-22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under section 19(b) of the Exchange Act.

The respondents to Rule 17a-22 are registered clearing agencies. The frequency of filings made by clearing agencies pursuant to Rule 17a-22 varies but on average there are approximately 120 filings per year per active clearing agency. There are nine registered clearing agencies, but only seven active registered clearing agencies are expected to submit filings pursuant to the rule. The Commission staff estimates that each response requires approximately .25 hours (fifteen minutes), which represents the time it takes for a staff person at the clearing agency to properly identify a document subject to the rule, print and make copies, and mail that document to the Commission. Thus, the total annual burden for all active clearing agencies is approximately 210 hours (7 clearing agencies multiplied by 120 filings per clearing agency multiplied by .25).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view 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 by April 3, 2023 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: February 28, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-04447 Filed 3-2-23; 8:45 am]

BILLING CODE 8011-01-P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Federal Advisory Committee Act meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on March 27 and 28, 2023, regarding TVA's natural resources and stewardship matters in the Tennessee Valley.

DATES: The meeting will be held in Florence, Alabama at the Marriott Shoals Hotel and Spa, Monday, March 27, 2023, from 1 p.m. to 4:30 p.m. C.T. and Tuesday, March 28, 2023, from 12:30 p.m. to 4:15 p.m. C.T. RRSC council members are invited to attend the meeting in person. The public is invited to view the meeting virtually or to attend in-person. A one hour virtual or in-person public listening session will be held March 28, at 1:45 p.m. C.T. A link and instructions to view the meeting will be posted on TVA's RRSC website at www.tva.gov/rrsc at least one week prior to the scheduled meeting.

ADDRESSES: The public is invited to view the meeting virtually or attend in person. The in-person meeting will be held at the Marriott Shoals Hotel and Spa at 10 Hightower Pl, Florence, AL 35630. Anyone wishing to attend in person must preregister by 5 p.m. E.T. Thursday, March 23, 2023, by emailing bhaliti@tva.gov. Members of the public are also invited to speak either virtually or in person during a public listening session. Persons who wish to speak must preregister by 5 p.m. E.T. Thursday, March 23, 2023, by emailing bhaliti@tva.gov and specify whether they wish to speak virtually or in-person. Anyone needing special accommodations should let the contact below know at least one week in advance.

FOR FURTHER INFORMATION CONTACT: Bekim Haliti, bhaliti@tva.gov, 931-349-1894.

SUPPLEMENTARY INFORMATION: The RRSC is a discretionary advisory committee established under the authority of the Tennessee Valley Authority (TVA) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2.

The meeting agenda includes the following:

Day 1—March 27

1. Welcome and Introductions
2. RRSC and TVA Meeting Update
3. TVA's Land and Habitat Stewardship

Day 2—March 28

4. Welcome and Review of Day 1
5. Valley Vision 2035 Update
6. Public Listening Session
7. Update on TVA's River Management
8. Update on TVA's Natural Resources

The RRSC will hear views of the public by providing a 1-hour public comment session starting March 28 at 1:45 p.m. C.T. Persons wishing to speak must register at bhaliti@tva.gov or call 931-349-1894 by 5:00 p.m. E.T. Thursday, March 23, 2023, and will be called on during the public listening session for up to five minutes to share their views. Written comments are also invited and may be emailed to bhaliti@tva.gov.

Dated: February 24, 2023.

Melanie Farrell,

Vice President, External Stakeholders and Regulatory Oversight, Tennessee Valley Authority.

[FR Doc. 2023-04347 Filed 3-2-23; 8:45 am]

BILLING CODE 8120-08-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0323; FMCSA-2016-0007; FMCSA-2016-0008; FMCSA-2018-0052; FMCSA-2019-0036; FMCSA-2020-0046; FMCSA-2020-0047]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for eight individuals from the requirement in the Federal Motor Carrier Safety

Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on March 17, 2023. The exemptions expire on March 17, 2025. Comments must be received on or before April 3, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (Docket No. FMCSA–2015–0323, Docket No. FMCSA–2016–0007, Docket No. FMCSA–2016–0008, Docket No. FMCSA–2018–0052, Docket No. FMCSA–2019–0036, Docket No. FMCSA–2020–0046, or Docket No. FMCSA–2020–0047) using any of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov/, insert the docket number (FMCSA–2015–0323, FMCSA–2016–0007, FMCSA–2016–0008, FMCSA–2018–0052, FMCSA–2019–0036, FMCSA–2020–0046, or FMCSA–2020–0047) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click on the “Comment” button. Follow the online instructions for submitting comments.

- **Mail:** Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- **Hand Delivery:** West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.

- **Fax:** (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting

material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2015–0323, Docket No. FMCSA–2016–0007, Docket No. FMCSA–2016–0008, Docket No. FMCSA–2018–0052, Docket No. FMCSA–2019–0036, Docket No. FMCSA–2020–0046, or Docket No. FMCSA–2020–0047), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to www.regulations.gov/, insert the docket number (FMCSA–2015–0323, FMCSA–2016–0007, FMCSA–2016–0008, FMCSA–2018–0052, FMCSA–2019–0036, FMCSA–2020–0046, or FMCSA–2020–0047) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2015–0323, FMCSA–2016–0007, FMCSA–2016–0008, FMCSA–2018–0052, FMCSA–2019–0036, FMCSA–2020–0046, or FMCSA–2020–0047) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC

20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The eight individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the eight applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The eight drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of March 17, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Kenneth Elder (KY)
Demetris Furman (SD)
Scott Habeck (SD)
Todd Hines (OH)
Scott Ready, Sr. (WI)
Harold Seaton (KY)
Thomas Smutnik (PA)
Tara Vanhorne (PA)

The drivers were included in docket number FMCSA–2015–0323, FMCSA–

2016–0007, FMCSA–2016–0008, FMCSA–2018–0052, FMCSA–2019–0036, FMCSA–2020–0046, or FMCSA–2020–0047. Their exemptions are applicable as of March 17, 2023 and will expire on March 17, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the eight exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–04386 Filed 3–2–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0071]

Parts and Accessories Necessary for Safe Operation; Exemption Application From Waymo LLC, and Aurora Operations, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Waymo LLC, and Aurora Operations, Inc. (Waymo/Aurora) for a 5-year exemption from the required placement of warning devices around stopped commercial motor vehicles (CMVs); the requirement that lamps for warning devices be steady-burning; and the utilization of a warning device for stopped vehicles not currently allowed by Agency rules. The exemption sought would allow Waymo and Aurora to operate CMVs operated by a Level 4 automated driving system (ADS) equipped with warning beacons mounted on the truck cab in lieu of traditional warning devices placed around a stopped autonomous CMV, as required by current regulations. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before April 3, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2023–0071 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2023–0071) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov. As described in the system of records notice DOT/ALL 14—FDMS, which can be reviewed at <https://www.transportation.gov/privacy>, the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 366-0676 or mcpsv@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2023-0071), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number “FMCSA-2023-0071” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you

are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Waymo and Aurora seek an exemption from the regulations that require specific placement of warning devices around a stopped CMV. Waymo and Aurora believe it is possible to achieve the safety purpose of the warning device in an alternative way by using forward- and rearward-facing amber flashing lights mounted on the cab at a height above the upper edge of the sideview mirrors. Waymo and Aurora each separately tested variants of such devices and have concluded that the use of the cab-mounted warning devices was equally or more effective in enabling road users to recognize and react to the potential hazard presented by the stopped CMV.

Waymo and Aurora therefore request an exemption from the warning device

placement requirements of 49 CFR 392.22(b), the utilization of a warning device that does not meet the steady-burning lamp requirement of 49 CFR 393.25(e), and the utilization of a warning device for stopped vehicles that is not currently identified in 49 CFR 393.95(f). The exemption sought would allow motorcarriers to operate Waymo and Aurora autonomous CMVs which come to a stop upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, to utilize a warning device consisting of forward- and rearward-facing cab mounted flashing amber lamps mounted at a height above the upper edge of the sideview mirrors in lieu of the currently allowed warning devices placed around the CMV, as described in 49 CFR 392.22(b).

A copy of Waymo/Aurora's application for exemption and supporting documentation is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Waymo and Aurora's application for a 5-year exemption from the warning device placement requirements of 49 CFR 392.22(b), the requirement that warning devices be steady burning (49 CFR 393.25(e)), and the requirement that warning devices comply with 49 CFR 393.95(f). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023-04385 Filed 3-2-23; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****[Docket No. FMCSA–2022–0039]****Qualification of Drivers; Exemption Applications; Hearing**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 10 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on February 28, 2023. The exemptions expire on February 28, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, fmcsamedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:**I. Public Participation****A. Viewing Comments**

To view comments go to www.regulations.gov. Insert the docket number (FMCSA–2022–0039) in the keyword box and click “Search.” Next, sort the results by “Posted (Newer-Older).” choose the first notice listed, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>, the comments are searchable by the name of the submitter.

II. Background

On January 24, 2023, FMCSA published a notice announcing receipt of applications from 10 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (88 FR 4281). The public comment period ended on February 23, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31316(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the

maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, “Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.” The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting

the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 10 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Elder Berroa (PA)
Joshua Drane (CA)
Jeremy Graslie (AZ)
Geoffrey Head (OH)
Gary Hendrickson (IN)
Timothy Lewey (TX)
Gary MacDonnell (CO)
Ronald Mazzola (MA)
Kenneth Olivo (PA)
Tony Walls (DC)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023-04383 Filed 3-2-23; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0051]

Hours of Service of Drivers: John Olier; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), (DOT)

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that John Olier requests an exemption from the 11-, 14-, and 70-hour hours of service (HOS) regulations along with all “mandatory break” periods which would include the 10-hour and 30-minute break requirements. The applicant requests a permanent

exemption for himself and believes that his safe driving record and experience demonstrate an equivalent level of safety. FMCSA requests public comment on the applicant’s request for exemption.

DATES: Comments must be received on or before April 3, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number (FDMS) FMCSA-2023-0051 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- **Mail:** Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2023-0051) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL-14 FDMS, which can be reviewed at <https://www.transportation.gov/privacy>, the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Pearl Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-4225 or pearlie.robinson@dot.gov. If you have

questions on viewing or submitting material to the docket, contact Dockets Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2023-0051), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number “FMCSA-2023-0051” in the “Keyword” box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level

of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

John Olier requests a permanent exemption from 49 CFR 395.3(a)(1)—the requirement for 10 consecutive hours off duty; section 395.3(a)(2)—the 14 hour “driving window;” section 395.3(a)(3)—the 11-hour driving time limit; section 395.3(a)(3)(ii)—the 30-minute break requirement; and section 395.3(b)(2)—the 70-hours-in-8-day limit.

A copy of Mr. Olier's application for exemption is included in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on John Olier's application for an exemption from provisions in the Federal HOS regulations in 49 CFR part 395. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023-04384 Filed 3-2-23; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0170]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Training Certification for Drivers of Longer Combination Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew an ICR titled, “Training Certification for Drivers of Longer Combination Vehicles” OMB Control No. 2126–0026. This ICR relates to Agency requirements for drivers to be certified to operate longer combination vehicles (LCVs), and associated recordkeeping requirements that motor carriers must satisfy before permitting their drivers to operate LCVs. Motor carriers, upon inquiry by authorized Federal, State, or local officials, must produce an LCV Driver-Training Certificate for each of their LCV drivers.

DATES: Comments on this notice must be received on or before April 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection (IC) should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this IC by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Pearl Robinson, FMCSA Driver and Carrier Operations Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4225, pearlie.robinson@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Training Certification for Drivers of Longer Combination Vehicles (LCVs).

OMB Control Number: 2126–0026.

Type of Request: Renewal of an information collection request.

Respondents: LCV training providers who train new LCV drivers; drivers who complete LCV training each year;

current LCV drivers who submit their LCV Driver-Training Certificate to prospective employers; and employers (motor carriers) receiving and maintaining copies of the LCV Driver-Training Certificates of their drivers.

Estimated Number of Respondents:

52,082, consisting of 240 LCV training providers, 240 newly-certified LCV drivers seeking employment, 25,681 currently certified LCV drivers seeking employment, and 25,921 motor carriers employing LCV drivers.

Estimated Time per Response: 10 minutes for training providers to prepare LCV Driver-Training Certificates for drivers who successfully complete the LCV training; 5 minutes for newly-certified drivers, as well as 5 minutes for currently-certified drivers, to provide LCV Training Certification documents to motor carriers; and 5 minutes for motor carriers to retain the LCV training certifications.

Expiration Date: June 30, 2023.

Frequency of Response: On occasion.

Estimated Total Annual Burden:

4,360 hours. The total number of drivers who will be subjected to these requirements each year is 25,921, which consists of 240 newly-certified LCV drivers seeking employment and 25,681 currently-certified LCV drivers obtaining new employment. Also, there are 240 LCV training providers who will be required to prepare the training certificates for newly-certified drivers. Additionally, there are 25,921 (240 + 25,681) motor carriers who will hire the drivers. The total annual information collection burden is approximately 4,360 hours = 40 hours for preparation of LCV Driver-Training Certificates [240 training providers prepare certificates for drivers successfully completing training × 10 minutes/60 minutes/hour] + 20 hours for newly-certified LCV drivers seeking employment to provide certification documents to motor carriers [240 drivers × 5 minutes/60 minutes/hour] + 2,140 hours for currently-certified LCV drivers seeking employment to provide certification documents to motor carriers [25,681 drivers × 5 minutes/60 minutes/hour] + 2,160 hours for the 25,921 motor carriers receiving and filing certificates from the hiring of 240 newly-certified LCV drivers and the hiring of 25,681 currently-certified LCV drivers [25,921 × 5 minutes/60 minutes/hour].

Background

An LCV is any combination of a truck-tractor and two or more semi-trailers or trailers that operates on the National System of Interstate and Defense Highways (according to 23 CFR 470.107) and has a gross vehicle weight greater

than 80,000 pounds (49 CFR 380.105(b)) (see 69 FR 16733, March 30, 2004). To enhance the safety of LCV operations on our Nation's highways, section 4007(b) of the Motor Carrier Act of 1991 directed the Secretary of Transportation to establish Federal minimum training requirements for drivers of LCVs (Title IV of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102–240, 105 Stat. 1914, 2152). The Secretary of Transportation delegated responsibility for establishing these requirements to FMCSA (49 CFR 1.87), and on March 30, 2004, FMCSA established the current training requirements for operators of LCVs (69 FR 16722), codified at 49 CFR part 380. The LCV Driver Training Program in 49 CFR 380.201 described in Appendix F to part 380 lists topics of instruction required for drivers of LCVs to complete during training before they can obtain an LCV Driver-Training Certificate. Drivers receive an LCV Driver-Training Certificate that is substantially in accordance with the form in 49 CFR 380.401(a) upon successful completion of these training requirements. Section 380.401(b) requires drivers to provide a copy of the LCV Driver-Training Certificate to his/her employer to be filed in the Driver Qualification file. Section 380.113 bars motor carriers from permitting their drivers to operate an LCV if the drivers have not been properly trained in accordance with the requirements of 49 CFR 380.203 or 380.205. Motor carriers employing an LCV driver must verify the driver's qualifications to operate an LCV and must maintain a copy of the LCV Driver-Training Certificate and present it to authorized Federal, State, or local officials upon request.

Renewal of This IC

The current burden hour estimate associated with this IC, approved by OMB on June 26, 2020, is 4,244 hours. The expiration date of the current ICR is June 30, 2023. Through this ICR renewal, the Agency requests an increase in the burden hours from 4,244 hours to 4,360 hours. The increase is the result of the increase in estimated driver population as well as the increase in expected industry growth rate for drivers from 2020 to 2030.

On October 11, 2022, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on this ICR (87 FR 61428). The comment period closed on December 12, 2022. There were no comments submitted in response to that notice.

Public Comments Invited: You are asked to comment on any aspect of this IC, including: (1) whether the proposed

collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the information collected. The agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–04382 Filed 3–2–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2023–01; Evaluation of Policies and Procedures Related to the Use and Maintenance of Hot Bearing Wayside Detectors

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: Preliminary investigation of recent train derailments indicates the cause of, or contributing factor to, the incidents was a mechanical failure, specifically burnt journal bearings. Accordingly, FRA is issuing this Safety Advisory to make recommendations to enhance the mechanical reliability of rolling stock and the safety of railroad operations. This Safety Advisory recommends that railroads: evaluate the thresholds for inspections based on hot bearing detector (HBD) data; consider the use of real-time trend analyses of HBD data as a criterion for inspection; ensure the proper training and qualification of personnel responsible for the calibration, inspection, and maintenance of HBDs; ensure proper inspection of rolling stock with HBD alerts; and improve the safety culture of their organization, particularly as it pertains to operational decisions based on HBD data.

FOR FURTHER INFORMATION CONTACT: Karl Alexy, Associate Administrator for Railroad Safety and Chief Safety Officer, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202)–493–6282.

Disclaimer: This Safety Advisory is considered guidance pursuant to DOT Order 2100.6A (June 7, 2021). Except when referencing laws, regulations, policies, or orders, the information in this Safety Advisory does not have the

force and effect of law and is not meant to bind the public in any way. This document does not revise or replace any previously issued guidance.

SUPPLEMENTARY INFORMATION:

Background

Federal rail safety and hazardous materials transportation regulations (HMR) set minimum safety standards for the rail transportation of hazardous materials.¹ Among other things, those regulations include packaging, hazard communication, and operational requirements applicable to the rail transportation of all materials designated as hazardous materials. The HMR additionally include provisions specifically applicable to trains transporting large quantities of certain hazardous materials known as “high-hazard flammable trains” (HHFTs) and “high-hazard flammable unit trains” (HHFUTs).² These additional regulations applicable to HHFTs and HHFUTs include certain safety and security planning requirements, operational restrictions, and requirements related to ensuring State and local governments are notified of the types and quantities of hazardous materials transported through their jurisdictions.³

Although compliance with all applicable Federal regulations is a critical part of ensuring the safety of rail transportation of hazardous materials, the use of certain technologies (e.g., wayside detectors), as FRA has previously acknowledged, has enabled railroads to develop new methods and processes for identifying defects in rail equipment and infrastructure as compared to those methods contemplated under applicable Federal regulations. For example, railroads have installed wayside detectors to assess the health of rail equipment and infrastructure to enable the early identification of mechanical or other defects.

Recognizing the value of wayside detection systems, if they are appropriately installed, maintained, and utilized, in 2015, FRA issued Safety Advisory 2015–01 addressing the use of wheel impact load detectors (WILDs) as

¹ 49 CFR parts 200 through 299 and 49 CFR parts 171 through 185.

² An HHFT is “a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist.” An HHFUT is “a single train transporting 70 or more loaded tank cars containing Class 3 flammable liquid.” 49 CFR 171.8.

³ See 49 CFR part 172, subpart I.

applied to HHFTs.⁴ WILDs are designed to identify wheels on a railcar that may have flat spots or other defects. Specifically, FRA recommended that railroads continue to install and maintain WILDs along HHFT routes and that railroads lower the impact thresholds of the detectors that determine when corrective actions are to be taken. FRA also recommended that railroads use highly qualified individuals to conduct brake and mechanical inspections on those trains.

In Safety Advisory 2015–01, FRA referenced the July 6, 2013, catastrophic rail accident in Lac-Mégantic, Quebec, Canada, and its tragic consequences. The Lac-Mégantic accident made clear the risk of transporting large amounts of hazardous materials, including large amounts of flammable liquids. FRA also referenced the March 5, 2015, derailment of a BNSF Railway Co. train that resulted in a release of petroleum crude oil, as well as a series of other derailments involving crude oil and ethanol, both designated as Class 3 flammable liquid hazardous materials under the HMR.

Each of the accidents referenced in Safety Advisory 2015–01 demonstrates the potential consequences of train derailments involving hazardous materials, even if a train does not meet the definition of a HHFT or HHFUT.

Since 2021, at least five derailments occurred that were suspected of being caused by burnt journal bearings.⁵ Three of those five derailments, all occurring on the Norfolk Southern Railway (NS) are discussed below. Two other derailments, reported to FRA by the Kansas City Southern Railway (KCS), occurred on August 2, 2021, and December 3, 2021, and in both cases, wayside detectors, known as HBDs,⁶ flagged a suspect bearing, but the crews

were either unable to act in time to prevent a derailment or were directed to continue the train move resulting in a derailment. These investigations into each of these accidents is ongoing, but they demonstrate not only the potential catastrophic consequences of a train derailment involving hazardous materials, but also the importance of implementing appropriate standards, processes, and procedures governing the use of HBDs.

Warner Robins, GA—July 12, 2022

On July 10, 2022, at 6 a.m. EDT, Train 175, consisting of 2 locomotives and 123 cars, departed Chattanooga, Tennessee, for Macon, Georgia. During the trip, a series of warnings from HBDs of an overheated journal bearing on one car in the consist (car PPTX 3293) were logged into NS's wayside desk system. The dispatcher transmitted the third alert to the crew. The crew stopped the train and inspected the journal bearing of concern, reporting that the car behind PPTX 3293 had been sprayed with lubricating grease, which is an indication that the journal bearing in question was leaking and defective. The crew was instructed to continue the train movement and to "keep an eye [on] the axle over the next couple of detectors." The train arrived at Macon, Georgia, traveling about 75 track miles and passing additional detectors that did not record any alerts. In Macon, Train 175 was terminated and a block of cars including PPTX 3293 was added to a different train, Train 151. PPTX 3293 was not inspected by mechanical personnel or set out for repair before it was added to Train 151. In addition, during the same time, the NS system sent an email to all area dispatchers informing them of a condemnable bearing on PPTX 3293 with a conflicting message that if the journal bearing is deemed to be safe for continued movement it is required to be repaired at the next switch event. A similar message was also sent to mechanical personnel.

Subsequently, Train 151, consisting of 3 locomotives and 139 cars, departed Macon, Georgia, on July 12, 2022. At 5:11 p.m., after traveling approximately 15 track miles, Train 151 passed the first HBD in Warner Robins, GA. The HBD reported a bearing temperature on PPTX 3293 to be 263 °F above the ambient temperature. After a few minutes, the HBD emitted a warning "talker message"⁷ to the crew of Train 151. The crew acknowledged that they received

the message but claimed they did not have time to react. At 5:13 p.m., the lead locomotive of Train 151 reached a grade crossing at MP 15.98G in Warner Robins. A dash camera from a police car at the crossing captured the train as it approached the crossing, showing PPTX 3293 being dragged over the crossing with one of the trucks on the ground. Train 151 then derailed seconds after PPTX 3293 cleared the crossing.

Sandusky, OH—October 8, 2022

On October 8, 2022, at approximately 4:20 p.m. EDT, NS Train 310–08, consisting of 3 headend locomotives with 98 freight cars and 3 locomotives in tow (dead-in-tow), derailed 1 of the dead-in-tow locomotives and 20 freight cars. The train was traveling east from Elkhart, Indiana to Cleveland, Ohio when the train derailed near MP 240.

Prior to the derailment location, the train crew did not receive any HBD alarms for an overheated journal bearing, but instead the crew was contacted by the dispatcher to ensure they were aware of the suspect bearing in their train. Upon notification from the dispatcher, the crew stopped the train and noticed smoke coming from the journal bearing. The crew requested permission to set out the subject car multiple times and requested support from mechanical inspectors. After two hours, while the train remained stopped on the mainline, NS sent an electrician to investigate the crew's report. The electrician reported the smoke had stopped and the bearing had cooled. The crew was then directed to move the train. After the train travelled another 7 miles, it derailed due to a burnt journal bearing. One axle on a "dead-in-tow" locomotive failed catastrophically, causing the derailment. Initial reports state one tank car placarded UN 3257 "HOT" was punctured and leaked molten paraffin wax into the surroundings. This derailment caused power outages to approximately 1,200 residents.

East Palestine, OH—February 3, 2023

Most recently, on February 3, 2023, a NS general merchandise train (*i.e.*, a train not meeting the definition of an HHFT or HHFUT) derailed in East Palestine, Ohio. The derailment resulted in a release of hazardous materials, which subsequently fueled extensive fires, damaging additional rail cars, and resulting in an evacuation that affected up to approximately 2,000 residents. Although the National Transportation Safety Board (NTSB) is the lead agency for the investigation into this accident and has not yet reached final conclusions as to probable cause,

⁴ <https://railroads.dot.gov/elibrary/mechanical-inspections-and-wheel-impact-load-detector-standards-trains-transporting-large>.

⁵ The four derailments include two derailments reported to FRA by the Kansas City Southern Railway (KCS) in 2021 and the Warner Robins, Georgia, and Sandusky, Ohio, accidents discussed below. The 2021 KCS derailments occurred on August 2, 2021, and December 3, 2021, respectively, and in both cases, an HBD flagged a suspect bearing, but the crews were either unable to act in time to prevent a derailment or were directed to continue the train move resulting in a derailment.

⁶ HBDs are devices used to assess the health of railcar bearings by monitoring their temperatures. The system consists of the following: wheel sensors to detect an approaching train and to turn on the scanning equipment; an axle counter; thermal sensors for reading axle bearing temperatures (*i.e.*, one sensor on each side of the train); and thermal sensors for reading bearing temperatures on each side of the train. HBD systems detect and record infrared energy (heat) from each roller bearing. The heat signal from each roller bearing is stored digitally and measured against pre-established thresholds.

⁷ A prerecorded auditory alert that is meant to inform train crews of imminent hazards pertaining to equipment in their train.

preliminary information⁸ indicates that a burnt journal bearing⁹ may have played a role in the derailment. Preliminary information also indicates that the train that derailed in East Palestine (Train 32N) passed at least three wayside detectors before derailling. That information indicates that, over the course of approximately 30 miles, the HBDs recorded an increase of over 200 degrees in the temperature of a car's journal bearing.¹⁰

On February 3, 2023, at about 8:54 p.m. EST, eastbound NS Train 32N (comprised of 2 headend locomotives, 149 freight cars, and 1 distributed power locomotive between the 109th and 110th freight cars in the consist) derailed 38 railcars in East Palestine, Ohio. The derailed equipment included 11 tank cars carrying hazardous materials that subsequently ignited, fueling fires that damaged additional railcars and resulted in the evacuation of up to 2,000 residents. There were no reported fatalities or injuries. Preliminary information indicates that the cause of the derailment may have been a burnt journal bearing, as noted above.

As further noted above, prior to derailling, Train 32N passed HBDs. First, at milepost (MP) 79.9 in Sebring, Ohio, an HBD recorded a temperature of 38 °F above ambient temperature for one bearing on the 23rd car in the consist. Approximately ten miles later, Train 32N passed a second HBD (at MP 69.01 in Salem, Ohio), which recorded a temperature of 103 °F above ambient for the same bearing on the 23rd car. Finally, approximately twenty miles later (at MP 49.81 in East Palestine), the train passed a third HBD, which recorded the suspect bearing's temperature at 253 °F above ambient.

NS has established the following HBD temperature thresholds (above ambient) and procedures:

- Between 170 °F and 200 °F, warm bearing (non-critical); stop and inspect.
- A difference between bearings on the same axle greater than or equal to 115 °F (non-critical); stop and inspect.

⁸ <https://www.nts.gov/investigations/Pages/RRD23MR005.aspx>.

⁹ A journal bearing is the mechanical subassembly on each end of the axles of a wheel set of railroad rolling stock. The journal bearing transfers the weight of freight car, coach or locomotive to the wheels and rails while allowing the axle to spin; the bearing design is typically roller bearings on newer rolling stock.

¹⁰ NTSB Preliminary Report, Norfolk Southern Railway Train Derailment with Subsequent Hazardous Material Release and Fires, East Palestine, Ohio, February 3, 2023 (issued Feb. 23, 2023, and available at <https://www.nts.gov/investigations/Documents/RRD23MR005%20East%20Palestine%20OH%20Prelim.pdf>).

- Greater than 200 °F (critical); set out railcar.

At milepost 49.81, as Train 32N passed the third HBD, which measured the suspect bearing's temperature as 253 °F above ambient, the HBD transmitted a critical audible alarm message instructing the crew to slow and stop the train to inspect a hot axle. The train engineer attempted to slow and stop the train. During this deceleration, an automatic emergency brake application initiated, and Train 32N came to a stop. After the train stopped, the crew observed fire and smoke and notified authorities.

Journal Bearings and Detecting Journal Bearing Defects

Journal bearings are critical components of freight cars that serve to transfer the weight of the car and its cargo to the axle while allowing the axle, and its wheels to rotate. If a journal bearing is defective (or becomes defective while in use), the temperature of the bearing may increase and become overheated, to the point where the bearing ceases to effectively perform its function. In some cases, journal bearings with relatively large defects can run at normal operating temperatures for tens of thousands of miles before any abnormality in their operating temperature is observed. In other cases, a bearing's raceway (*i.e.*, the path or groove that the bearing moves along) may deteriorate rapidly and cause excessive roller misalignment. The misaligned rollers generate frictional heating, which can weaken an axle in just a few minutes and may lead to a catastrophic derailment depending on the traveling speed of the train and the weight of the load the car with the defective bearing is carrying.¹¹

Detecting overheated journal bearings before they fail is critical to accident prevention. Journal bearings are sealed components, and, as such, often do not display "tell-tale signs" of overheating (*e.g.*, leaking lubrication), making defects in journal bearings difficult to identify through visual inspections. HBDs can serve an important role in early detection of bearing defects, but the effectiveness of any HBD system depends on numerous factors, including: (1) the establishment and adherence to adequate maintenance standards and procedures; (2) the establishment of safe thresholds at which to act on HBD alerts; and (3) strict adherence to procedures that prescribe actions to be taken.

¹¹ Defect detection in freight railcar tapered-roller bearings using vibration techniques | SpringerLink.

Although there are no Federal regulations requiring the use of HBDs for freight trains, or any regulations related to the inspection, calibration, and maintenance of this equipment, there are existing industry standards and manufacturer recommendations that railroads should incorporate into existing inspection and maintenance practices. Because defects in journal bearings are difficult to identify visually, personnel charged with inspecting equipment subject to an HBD alert should be properly trained and qualified. FRA encourages using personnel trained and experienced in identifying critically hot bearings, and with the demonstrated ability to properly evaluate the condition of a suspect bearing. Further, FRA encourages railroads to ensure these individuals are available at all hours of operations across a railroad's network.

Data is critical to identifying effective HBD temperature thresholds for action (*e.g.*, appropriate thresholds for a stop-and-inspect requirement, or a mandatory remove-from-service requirement). Additionally, as the East Palestine accident demonstrates, thresholds for temperatures measured by HBDs requiring action should be established for both single measurement and multiple measurements in a temperature trend analysis.

The procedures governing the use of HBD systems should be sufficient to ensure all employees understand the meaning of any HBD alert and are empowered to take appropriate action in response to those alerts. The response procedures governing any HBD system should be commensurate with the risk (specifically consequences) of a derailment. For trains containing hazardous materials, the potential consequence of a derailment is catastrophic, and allowing a train transporting a hazardous material to continue to operate, without restriction, after an HBD alert is likely not appropriate.

FRA recommends that railroads consider expanding application of Association of American Railroads (AAR) Circular OT-55 (Recommended Railroad Operating Practices for the Transportation of Hazardous Materials).¹² According to Circular OT-55, if a defect in a "Key Train"¹³

¹² AAR Circular No. OT-55 (CPC-1348) (available at <https://public.railinc.com/documents/ot-55pdf>).

¹³ AAR Circular OT-55 defines a "Key Train" as a train with:

- (1) one tank car load of a Poison Inhalation Hazard, anhydrous ammonia, or ammonia solutions; or
- (2) 20 car loads or intermodal portable tank loads of any combination of hazardous material; or

bearing is reported by a wayside detector, but a visual inspection fails to confirm evidence of the defect, OT-55 prohibits the train from exceeding 30 MPH until it has passed over the next wayside detector or it is delivered to a terminal for a mechanical inspection. If the same car again sets off the next detector or is found to be defective, it must be set out from the train. This also provides the railroads the opportunity to define a defect based on new/lower thresholds for HBD alerts.

Accordingly, FRA encourages the industry to continue to utilize wayside detection technologies such as HBDs, but notes that to realize the benefits of these technologies, railroads should identify appropriate HBD impact thresholds for action, and implement and adhere to appropriate procedures for action in the event of an HBD alert, particularly on trains transporting hazardous materials.

Recommended Railroad Actions

In light of the above discussion, FRA recommends that railroads take the following actions:

1. Review existing HBD system inspection and maintenance policies and procedures for compliance with existing industry standards and manufacturer recommendations for HBDs.
2. Review existing procedures to train and qualify personnel responsible for installing, inspecting, and maintaining HBDs to ensure they have the appropriate knowledge and skills. Railroads should also develop and implement appropriate training on the inspection and maintenance requirements for HBDs and provide that training at appropriate intervals to ensure the required knowledge and skill of inspection and maintenance personnel. Further, railroads should evaluate their training content and training frequency to ensure any employee who may be called upon to evaluate a suspect bearing has the necessary training, experience, and qualifications. FRA also encourages railroads to ensure these individuals are available at all hours of operations across a railroad's network.

3. Review current HBD detector thresholds in light of recent derailments, and all other relevant available data (including data from any close calls or near misses), to determine the adequacy of the railroad's current thresholds. Thresholds should be established for single measurement as well as multiple measurements of

individual bearings to enable temperature trend analysis.

4. Review current procedures governing actions responding to HBD alerts to ensure required actions are commensurate with the risk of the operation involved. With regard to trains transporting any quantity of hazardous materials, FRA recommends railroads adopt the procedures outlined in AAR's OT-55 for key trains as an initial measure.

Conclusion

In general, the issues identified in this Safety Advisory are indicators of a railroad's safety culture. Implementing procedures that ensure safety, and training personnel so those procedures become second nature, is vital. Equally important is the commitment, throughout the organization, to safety and empowerment of personnel to live up to that commitment. Specifically, personnel should be encouraged and empowered to develop procedures that may temporarily impact operations, but maximize safety, just as those executing the procedures should be empowered to strictly adhere to those procedures, even if it delays a train. The railroads should evaluate their safety culture not only as it relates to the issues indicated in this Safety Advisory, but to all aspects of their operations.

FRA encourages railroads to take actions consistent with the preceding recommendations, and any other complementary actions, to ensure the safety of rail transportation. FRA may modify this Safety Advisory, issue additional safety advisories, or take other actions necessary to ensure the highest level of safety on the Nation's railroads, including pursuing other corrective measures under its authority.

Issued in Washington, DC.

Amitabha Bose,
Administrator.

[FR Doc. 2023-04415 Filed 3-2-23; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2022-0018]

National Transit Database: Reporting Changes and Clarifications

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

ACTION: Final Notice; response to comments.

SUMMARY: This Notice finalizes and responds to comments on proposed changes to the National Transit Database

(NTD) reporting requirements published in the **Federal Register** on July 7, 2022.

DATES: Some of the changes will take effect beginning in NTD Report Year (RY) 2023 or 2024, which corresponds to an agency's fiscal year, while others will take effect in calendar year (CY) 2023.

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A. Background

The National Transit Database (NTD) is the nation's primary database for statistics on the transit industry. Pursuant to 49 U.S.C. 5334(k), FTA published a notice in the **Federal Register** on July 7, 2022 (87 FR 40582), seeking public comment on five changes to NTD reporting requirements. The comment period closed on September 6, 2022. FTA received one hundred and ninety-five (195) comments from forty (40) unique commenters.

The updates to NTD reporting requirements implement changes to Federal transportation law made by the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58), and are informed by input from the transit industry. These changes are not related to safety and security (S&S) reporting, as FTA proposed S&S changes in a separate **Federal Register** notice (87 FR 42539).

B. General Comments

FTA received four general comments on the proposed NTD reporting requirements.

General: Additional Resources

Two comments indicated that States and rural and Tribal transit agencies would need additional resources to comply with the proposed requirements. One commenter noted that new, targeted funding would likely be required and requested that State Departments of Transportation be allowed to assist local agencies with reporting requirements.

(3) One or more car loads of Spent Nuclear Fuel or High Level Radioactive Waste.

FTA Response: In the sections below, FTA has identified resources and trainings that are already available, or will be made available in the next year, to help agencies comply with the new reporting requirements. FTA also believes that agencies can leverage existing funding and existing FTA programs to meet the requirements finalized in this Notice.

General: Uses of Data

One comment asked for additional detail on the current and future purposes of the proposed requirements.

FTA Response: Since each reporting requirement finalized by this Notice has a different use case, the purposes and uses of the data collected are described more fully for each requirement below. Generally, data collected through these requirements will provide FTA and other stakeholders with more complete information on national ridership trends, geographic service area coverage, and fuel usage.

General: Public Health Crisis

One comment indicated that making the proposed reporting changes in the wake of the COVID-19 pandemic could be an overcorrection, as the conditions that led to prior reporting challenges are unlikely to occur again.

FTA Response: The COVID-19 pandemic was one of several factors influencing the proposed reporting changes. The proposals also fulfill statutory obligations and meet other identified reporting needs. For example, FTA proposed the geographic service area coverage reporting requirements, as described in sections D and E of this Notice, in response to a statutory requirement under the BIL emergency contact collection, described in section F, is relevant for all categories of emergencies. Vehicle fuel type reporting is part of a longer-term effort to improve fuel tracking and promote sustainability.

FTA proposed the WE-20 weekly reference reporting requirement in part due to the need to have timely data during the COVID-19 pandemic; however, its necessity is not diminished in the absence of a pandemic. Timely data will always be necessary to inform decision-makers at the Federal, State, and local levels about ridership trends, seasonal patterns of demand, and ridership recovery. More detail on the WE-20 and its use cases is described in the following section.

C. New Sample-Based Monthly Data (WE-20)

Eighty-one (81) comments responded to FTA's proposal to collect weekly reference data from a sample set of

modal reporters for key transit service metrics—unlinked passenger trips (UPT) and vehicle revenue miles (VRM). Four comments supported the new reporting requirement. One comment explicitly opposed the new reporting requirement with no reason given. An additional comment opposed the requirement for small transit providers but noted the potential benefits of this data collection, including for longitudinal analysis.

WE-20: Administrative Burden

Eighteen comments indicated that this requirement would constitute an administrative burden, particularly for smaller and rural reporters, with some stating that the benefit does not outweigh the burden. Many of these agencies (12 comments) cited staffing concerns as a potential obstacle for WE-20 reporting, particularly for small and rural agencies. One agency cited the burden created by validation of new data. Another expressed concern about the burden on staff who may lack technical expertise to meet the proposed requirements. Two comments expressed concerns about resource constraints (*i.e.*, non-staff resources), with one commenter noting that such constraints have been exacerbated by the COVID-19 pandemic. One comment expressed concern about the unequal burden between sampled and non-sampled agencies.

FTA Response: FTA recognizes that the proposed requirements may increase burden on transit agencies, and that smaller or rural reporters may face additional challenges in meeting this new reporting requirement. FTA is mitigating the administrative burden by pursuing a sample-based approach for collecting these data. The goal of this sample is to provide a representative nationwide snapshot of transit ridership and transit service levels. Given the stratified random sampling methodology, it is possible that only a small number of small and rural reporters will be selected for the sample for any given sampling period. If selected for the sample, a small reporter will be required to report the data for a limited period of time, after which a different set of small reporters will be selected for the sample.

Furthermore, as described in the initial proposal, FTA will make “sampling adjustments as needed based on unavailable modes, reporters without weekly data access, or other factors.” If, for example, a reporter is selected for sampling and is unable to meet the submission requirements, the reporter may work with their NTD analyst to document these challenges. The NTD

may sample from other reporters that do not face such challenges. FTA will work alongside these agencies to make sure that the process of weekly reference reporting is as simple and frictionless as possible, particularly where challenges exist due to resource or system constraints.

In addition, FTA is committed to making sure that all agencies at all levels have the support they need to comply with all NTD requirements. For example, FTA provides technical assistance to rural reporters through the National Rural Transit Assistance Program (NRTAP). NRTAP provides webinars, resource guides, and technology tools to assist rural and Tribal reporters with meeting NTD requirements. When the WE-20 requirements take effect, rural and Tribal reporters can take advantage of these resources to train staff and implement procedures to meet reporting deadlines. FTA will work with rural agencies, particularly those selected for the sample, to prioritize resources that will aid in the completion of the WE-20 form. For larger agencies, FTA regularly offers trainings on NTD reporting and will work with sampled urban agencies on targeted training as well.

FTA understands the impact that the COVID-19 pandemic has had on agency resources. In responses below, FTA details additional resources available to agencies, and highlights that WE-20 reporting is on a “best available data” standard. Together with the change in the reporting window (see below), FTA believes that WE-20 reporting will be achievable for all sampled agencies. In addition, FTA will aim to provide technical assistance to all sampled agencies.

WE-20: Reporting Window

Thirteen comments indicated that the proposed three business-day window for sampled agencies to report weekly reference WE-20 data was insufficient time to prepare accurate data, given transit agency resource constraints and internal data processing timelines. The most common suggested alternative was seven business days (six comments), with three other comments requesting 10 business days, and one comment proposing five business days. Three more comments expressed a desire for a longer reporting window but did not specify an alternative.

FTA Response: The purpose of the new WE-20 weekly reference reporting form is to provide timely, relevant data to understand changes in the transit industry. To meet this objective, it is necessary to prioritize the rapid delivery

of transit ridership and transit service data that is sufficiently accurate to indicate trends. The WE-20 is meant to provide insights on the current state of transit without the delays associated with the more comprehensive monthly data collection, which in turn is reconciled against the annual data that will ultimately be used for the apportionment of formula grants.

FTA appreciates the commenters who noted that a three business-day window may be insufficient for some transit agencies. FTA understands that this may be particularly true for reporting weekly service data, given resource constraints. In consideration of the comments received, and in particular those regarding resource constraints, FTA will adopt a reporting deadline of seven business days for WE-20 data. For example, if the reference week ended on Sunday, July 16, 2023, the WE-20 would be due on Tuesday, July 25, 2023.

Allowing seven business days to submit data gives transit agencies additional time to meet the reporting deadline and should alleviate some of the concerns raised by the commenters. Moreover, this requirement should be easier to meet over time as agencies improve or automate their data collection practices. In addition, FTA will give agencies three months advance notice if they are selected as part of the sample, allowing agencies time to train staff in the new requirements before submissions are due.

WE-20: Relationship to Monthly Reporting

Eleven comments referenced the existing monthly reporting requirement for full reporters. Six of these comments suggested that the WE-20 would be duplicative because full reporters would still be required to report monthly data on the MR-20 form. One commenter noted that it would need to redesign existing systems that have been designed for monthly reporting. Four comments questioned how FTA will reconcile the monthly and/or annual submissions with the weekly reference WE-20 data, with one comment emphasizing that FTA should not seek to reconcile the data, and another expressing hope that the WE-20 data will improve FTA's validation processes. Finally, one comment suggested that instead of creating the WE-20 sample process, FTA should move the due date for monthly reporting from the 30th to the 15th of each month.

FTA Response: The WE-20 contains a week's worth of data and is intended as a "snapshot" of current trends in service and ridership. It is not intended to

replace the monthly MR-20 reporting by urban transit providers. The MR-20 is an authoritative record that is reconciled against the annual report, while the WE-20 will be used to develop estimates for service data primarily to indicate trends relative to previous reports.

There is no requirement that agencies reconcile their WE-20 and MR-20 data. The WE-20 is intended as a "best available data" standard, reported consistently from month-to-month, in contrast to the more robust MR-20 standards. FTA emphasizes that the WE-20 data is expected to result in an estimate of ridership rather than a complete record. This data could be preliminary or minimally validated. In some cases, FTA may use WE-20 data as a validation check for future submissions but with the expectation of some variance. For instance, once FTA has multiple WE-20 submissions, FTA could look for anomalous values (e.g., zero, or a WE-20 indicating a -5% decrease in ridership in the same month that the MR-20 indicates a 4% increase in ridership) that are most likely due to human error rather than actual change in service levels. This validation process is consistent with prior NTD data validation procedures, as described in the NTD Policy Manual at page 14: "[v]alidation includes, but is not limited to . . . [l]ogic checks between data items on different forms[.]"

Because the metrics used for the WE-20 are the same as used in monthly and annual reporting—that is, unlinked passenger trips (UPT) and vehicle revenue miles (VRM)—agencies will be able to leverage existing systems to collect and report this data. Reporters can use the same collection and estimation procedures they would otherwise use (see below for more information on estimation). Furthermore, FTA understands that the same level of completeness and validation may not be possible, and hence the WE-20 data will be reported as the agency's "best available" estimate. Agencies therefore should not need to overhaul existing systems, but rather should modify them to collect enough data to estimate ridership for the reference week.

FTA believes that changing the due date on the monthly data from the 30th to the 15th would not be sufficient to provide the information that the WE-20 will provide. First and foremost, monthly reporting only applies to full reporters, and therefore by design excludes ridership information on rural and Tribal reporters. Furthermore, moving the deadline to the 15th would still create a 15-day lag in ridership

information, which does not sufficiently increase the timeliness of national ridership estimates. For these reasons, FTA believes that this additional reporting requirement is not duplicative of existing NTD requirements. FTA therefore will not adopt the suggestion to change the monthly reporting deadlines as an alternative to the WE-20 form.

WE-20: Accuracy, Estimation, and Validation

Eight comments expressed concern about the accuracy or validation of the weekly sample data, with several comments noting the compressed reporting time frame and one noting varying ridership patterns. Other comments supported FTA's proposal to adopt a "best available data" standard for the WE-20. Some comments expressed concern that because the data may be minimally validated, it could result in incorrect or misleading ridership estimates. Another commenter noted that the data will not be as accurate as monthly data due to limited sampling size at the agency. One additional comment sought clarification that weekly reporting methods would rely on the same estimation methods as existing requirements (i.e., monthly MR-20 ridership).

FTA Response: FTA recognizes that weekly sample data likely will be less complete or less thoroughly validated than monthly and annual reporting. The WE-20 is intended to provide a timely snapshot of service and ridership data to assess trends at the national level. As discussed above, FTA will check monthly reporting against weekly WE-20 reports as a form of validation, but anomalies can and will happen. FTA believes that these inaccuracies will be minimal, and the benefit of assessing timely ridership trends outweighs the risk of slightly inaccurate sample data. Unlike the monthly ridership reporting, which is meant to be authoritative, FTA understands that the weekly sample data could be preliminary or minimally validated.

For estimation, FTA confirms that the same estimation methods will be used for weekly reference WE-20 reporting, with the caveat that the reporting standard for this form will be "best available data," as described in FTA's proposal. Estimation methods are described in the NTD Reporting Manual, which can be downloaded here: <https://www.transit.dot.gov/ntd/2022-ntd-reporting-policy-manual>.

WE-20: Automatic Passenger Counters (APCs)

Four comments addressed the use of Automatic Passenger Counter (APC) devices in data collection for the WE-20. Some of the comments expressed that accurate data would be difficult to report because transit agencies, or certain modes or vehicles, do not use APC systems. One comment expressed support for the requirement and noted that rigorous NTD reporting could result in improvements in APC system quality. Another comment noted that raw APC data is imperfect, and often needs to be extrapolated to generate ridership estimates. One comment suggested that FTA introduce a longer adjustment period to allow agencies to upgrade their APC devices and software. The final comment on this subject stated that FTA should provide funding for agencies to purchase APCs in order to comply with this new reporting requirement.

FTA Response: FTA appreciates the comments regarding APC systems. The use of APC devices can greatly aid reporting agencies in collecting and then transmitting route and ridership data. It should be noted that the use of an APC, however, is not required for an agency to comply with new WE-20 reporting requirements. As long as agencies maintain accurate records of their service in accordance with NTD sampling standards, they will be able to supply consistent service data for the WE-20.

With regards to the accuracy of APC systems: the NTD Reporting Manual (available at https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-09/2022-NTD-Full-Reporting-Policy-Manual-1-0_0.pdf) has detailed instructions for the use of APCs, including guidance on appropriate sampling methods and certification procedures. If an agency adheres to these guidelines, FTA can be reasonably certain of the accuracy of APC reporting, even with the understanding that estimation methods may be required. Further, FTA acknowledges that the timeframe for WE-20 reporting is shorter than that of the monthly MR-20, and FTA therefore will accept the “best available data” on the WE-20, a lower reporting standard than the more thorough validation used for monthly reporting.

WE-20: Training and Resources

Three comments expressed the need for FTA to provide training and/or identify available resources for transit agency staff to meet reporting requirements. One comment asked for

FTA staff to gain additional technical capacity in order to publish timely data. The other two comments asked FTA to identify tools and/or resources that can be used to collect ridership data, particularly for small and rural reporters.

FTA Response: FTA provides, and will continue to provide, ongoing training for all NTD reporters based on their reporting module. Beginning in 2023, FTA will expand those offerings to include the WE-20, which will include targeted training for agencies selected for the WE-20. Full virtual courses are offered through the National Transit Institute, as well as webinars that are available live and with recordings viewable at any time. A full list of existing training programs is available at <https://www.transit.dot.gov/ntd/trainings-and-conferences>. FTA staff will continue to build its expertise and technical skills to process and publish data in a timely fashion.

FTA’s reporting manuals and trainings contain information on best practices for ridership data collection. One option, discussed above in this document, is the use of an automatic passenger counter (APC). This is useful but by no means required. No novel technologies are required to meet this new requirement. The four reported metrics for the WE-20 are identical to metrics reported on other forms—that is, vehicle revenue miles (VRM) and unlinked passenger trips (UPT). Agencies can use existing sampling methods to calculate these ridership metrics. As such, the methods of collecting this data and the metrics themselves are not new.

FTA emphasizes that given the stratified random sampling method, it is possible that only a small number of rural reporters will be selected for the WE-20 sample for any given sampling period. Further, if selected for the sample, these reporters will be required to report the data for the limited sample period of three years. FTA will work closely with the selected small and rural agencies to ensure they are capable of meeting this requirement.

WE-20: Unlinked Passenger Trips vs. Linked Passenger Trips

Two comments expressed a desire for FTA to change the reported metric from Unlinked Passenger Trips (UPT) to Linked Passenger Trips (LPT). In particular, these agencies highlighted the difficulty of reporting UPT in the allotted timeframe, as some agencies may need to perform complicated analyses to calculate UPT from raw ridership data.

FTA Response: FTA appreciates that the reporting timeframe for the WE-20 is abbreviated. However, given that UPT are used in FTA’s other NTD reporting and data products, FTA believes that ridership reporting should remain at the UPT level for the WE-20 for the sake of consistency. As explained above, the WE-20 is meant to lead to an estimate of service and ridership trends and need not be as precise or audited in the same way as monthly data. Rather than change the reporting metric to LPT, FTA encourages each agency to put forth the “best available data” for reporting UPT on the WE-20. This will ensure consistency in dimensions with the NTD’s existing data products with the understanding that some variation will occur.

WE-20: Sample Selection and Size

Two comments expressed concern about the sample selection process or the sample size. One comment stated that a sample of 400 is large given that there are only approximately 500 full NTD reporters. The other comment suggested that FTA limit the sample selection period to less than three years, or alternatively, exclude smaller agencies (e.g., agencies with 100 or fewer fixed-route vehicles) from the sample selection.

FTA Response: With regards to the sample size, FTA is selecting 400 reporters out of all NTD reporters, not just the full NTD reporters. There are over 2,000 NTD reporters from which the sample will be selected, which includes but extends beyond the roughly 500 full reporters. While many of the selected agencies may be full reporters, the sample will not be entirely drawn from this subset. With that in mind, FTA still believes that 400 is an appropriate sample size.

As discussed above, the sample is intended to provide a representative nationwide snapshot of transit ridership and service levels. As such, FTA will not exclude small agencies from the sample. However, due to the stratified random sampling methodology, it is likely that only a few small agencies (such as those with less than 100 VRM) will be selected for any given sampling period. The three-year period was chosen because it gives agencies time to adapt and standardize reporting, which can happen only on a sufficient time horizon; any shorter sample period would create excess turnover and a loss of institutional knowledge.

WE-20: Frequency of Reporting

Two comments voiced opinions on the frequency of reporting. One comment stated that their agency’s

service was “not dynamic enough” to necessitate weekly reference reporting. In contrast, another comment expressed support for the increased frequency of reporting under the proposed WE-20.

FTA Response: FTA does not expect that ridership will vary that much at many agencies. However, as demonstrated by the COVID-19 pandemic, large shocks can and do affect ridership patterns, and those shocks can last long after the initial event. For large urban transit providers, the effects might be immediate but can take a very long time to return to baseline. For smaller transit providers, the effects may be less dramatic but persistent. Only by collecting timely and ongoing data can FTA assess the impact of changes and the overall trends in transit nationwide. Even for agencies where week-to-week variation is minimal, the larger patterns still tell an important story about the state of our nation’s transit. For this reason, FTA agrees with the commenter that supported more frequent ridership reporting through the WE-20.

WE-20: Data Publication and Use

Two comments requested more information on how FTA plans to use the sample data and when it will be released.

FTA Response: The primary use of the WE-20 sample data is to project service and ridership trends on the national level. After collecting the reference week’s data, FTA will aggregate the measures and construct a time series that will show increases (or decreases) in service and ridership over time. The function of this time series will be to provide stakeholders with a timely and well-supported ongoing estimate of the state of transit, which may then be used to inform FTA policy.

FTA will confirm its sampling methodology and notify the first cohort of WE-20 sampled agencies. Notified agencies will be given three months to prepare for their first WE-20 submission. FTA anticipates that, with this window in place, the first WE-20 reporting will begin in summer of 2023.

WE-20: Vanpool Mode Exemption

One comment suggested that vanpool providers be exempt from the WE-20 reporting requirement, or to require vanpools to report vehicles operating at maximum service (VOMS) only. The commenter noted that vanpools face unique challenges in reporting because they rely on vanpool members to report data.

FTA Response: With recognition that certain modes face unique challenges, FTA will work alongside all reporters,

including vanpool operators, to accommodate agency or modal constraints as described above. Given the unique nature of the vanpool mode, and the challenges associated with reporting ridership, FTA will allow vanpool operators to report vehicles operating at maximum service (VOMS) as an alternative to reporting UPT and VRM. In cases where reporting the WE-20 is entirely impossible for a sampled reporter, FTA encourages the agency to work with their NTD analyst to document these challenges. FTA may make sampling adjustments to find applicable replacement reporters or modes as needed.

WE-20: Small and Rural Reporters

One comment sought clarification on whether the WE-20 reporting requirement would apply to rural reporters that receive assistance under 49 U.S.C. 5311. Another comment requested that FTA consider the capacity of small transit agencies when implementing this proposal. Several commenters expressed that small reporters may face technological challenges in reporting the data, noting that many of these providers still rely on paper or manual data entry formats. One comment suggested that FTA exclude the smallest agencies in sample selection.

FTA Response: FTA confirms that the WE-20 will apply to rural and Tribal reporters as well as urban reporters. The intent of the WE-20 form is to create a representative nationwide sample of the annual NTD reporting population—that is, of all users who report to the NTD—to create accurate, ongoing records of transit trends. Due to the stratified random sampling methodology, not every small or rural transit agency will be a part of the sample. Nevertheless, all small and rural agencies are eligible to be selected as sample WE-20 reporters. This extends to Tribal reporters who receive funding under 49 U.S.C. 5311. While FTA will not explicitly exclude the smallest agencies, our sampling methodology will be designed to create the most representative sample while also including sampling adjustments as necessary to ensure agencies have capacity to meet this requirement.

With regards to technological challenges, FTA believes that compliance with WE-20 reporting is achievable for all agencies. The metrics collected—UPT and VRM—are already those reported to the NTD on an annual basis, so agencies can use existing reporting methodologies to produce these ridership estimates, including manual data entry. FTA will work closely with sampled agencies,

particularly those in rural areas, to ensure staff are able to report these metrics. For sampled agencies, this is a change in frequency of reporting and not type of reporting; therefore, technological challenges should be minimal.

WE-20: Pilot Programs

One comment suggested that FTA attempt a pilot implementation of this program for States and Tribes before rolling it out nationwide.

FTA Response: The first sample of the WE-20 will, in many ways, serve as the pilot of the program. FTA expects there may be challenges and anomalies in reporting for the first few cycles, as with any new NTD reporting requirement. However, by introducing a select but sizable cohort of agencies, FTA and transit agencies will be able to build institutional knowledge and provide the timely trend data that is necessary. While FTA is not creating a pilot program per se, FTA acknowledges that this reporting requirement will be an ongoing process of refinement on the part of transit agencies and FTA.

WE-20: Optional Reporting

One comment indicated that the WE-20 form should be made optional for agencies to complete.

FTA Response: Because the WE-20 form is intended to create a representative nationwide sample of transit ridership and transit service, this form cannot be made optional. Doing so would introduce bias, given that agencies providing WE-20 data voluntarily may differ systematically from agencies that would not do so voluntarily. In rare cases where reporting the WE-20 is impossible, transit agencies should contact their NTD analyst to document these challenges. FTA may make sampling adjustments to find applicable replacement reporters or modes as needed. FTA, therefore, is not adopting this suggestion.

WE-20: Real Time Data and Alternate Reporting Methods

One comment suggested that FTA should transition to using GTFS-ride, an extension of the General Transit Feed Specification (discussed in detail below), to track ridership. A related comment expressed that FTA should use real time data streams, instead of relying on calculated (derived) data points like UPT and VRM, while also noting that FTA should require implementation of historical data standards.

FTA Response: Extensions to GTFS are discussed in more detail in Part C

below. FTA notes that many GTFS extensions, including GTFS-ride, require technical expertise beyond what is available to many agencies. While agencies may use GTFS-ride or other real-time tracking software for their own internal ridership tracking, FTA will not adopt this as an alternative to conventional ridership reporting. It is necessary to standardize reporting with methods that can be used by all transit agencies, many of whom lack the capacity to create advanced tracking mechanisms like GTFS-ride or other real-time reporting mechanisms.

At present, FTA is not proposing to reform historical data reporting to conform to emerging standards. FTA will continue to monitor these developments and evaluate them for future Report Years. The NTD itself serves as FTA's historical record of service information for agencies. The implementation of WE-20 reporting should not materially impact historical data standards.

WE-20: Social Vulnerability Index

One comment suggested that FTA incorporate the types of detail included in the Centers for Disease Control and Prevention (CDC) Social Vulnerability Index (SVI) into the WE-20 and other NTD reporting.

FTA Response: FTA appreciates the work of all Federal agencies in presenting comprehensive data on risks and vulnerabilities on a variety of dimensions. The CDC is no exception, and the available data on the SVI is a valuable resource for many stakeholders. However, in presenting its data, FTA focuses first and foremost on transit providers and the NTD. While FTA does not intend to create analyses that explicitly merge with the SVI dataset, there is nothing preventing end-users and stakeholders from accessing FTA's data and merging this for analytical purposes. In fact, FTA encourages data users to do so. To maximize available resources for FTA's strategic goals, FTA will not adopt this suggestion at this time.

After consideration of the comments received, FTA will require the weekly reference reporting WE-20 form as proposed with two changes: (a) the reporting window will be extended to seven business days after the close of the reference week, and (b) vanpool operators will be allowed to report vehicles operated in maximum service (VOMS) as an alternative to reporting VRM and UPT data. FTA will implement this requirement for sampled agencies beginning in the second quarter of calendar year 2023.

D. General Transit Feed Specification (GTFS)

FTA received 67 comments on the proposal to require reporting of static General Transit Feed Specification (GTFS) data for reporters. Thirteen comments expressed support for the new reporting requirements. One of these comments expressed support for adopting a single standard to compare and contrast across agencies and expressed its belief that the GTFS standard would be easier to create and maintain over time. A separate comment expressed opposition to the new requirement but did not specify a reason.

GTFS: Burden

Eight comments indicated that the GTFS requirement would impose a burden on smaller agencies, including rural and Tribal reporters. Many of these agencies reported concerns about insufficient staffing to create the GTFS feed, with one commenter noting that resource constraints have been exacerbated by the COVID-19 pandemic. Several of these comments highlighted the fact that staff may lack the technical expertise to create a GTFS feed, with one commenter noting that NRTAP's GTFS Builder assumes familiarity with Excel, Google Maps, and Google Earth. One comment indicated that creating a GTFS feed could be cost-prohibitive.

One additional comment expressed concern that Rural Transit Assistance Program (NRTAP) support is insufficient, as NRTAP is limited to providing support to agencies that receive funding under 49 U.S.C. 5311.

FTA Response: FTA understands that this requirement may be burdensome on transit agencies, especially small, rural, and Tribal operators. However, reporting geographic service area coverage is statutorily required under the BIL. As described in FTA's proposal, FTA believes that GTFS is the best way to collect this data for fixed-route service providers because it meets specific, practical needs in communicating service information in a standardized and widely used format. FTA further believes that the value of understanding the scope and scale of the Nation's fixed-route transit network, even in small urban, rural, or Tribal areas, outweighs the reporting burden. FTA will mitigate this burden through resources and training, including through the National Rural Transit Assistance Program (NRTAP).

NRTAP already has several resources available to help rural agencies generate GTFS data. For instance, a resource

guide for creating a GTFS dataset is available at <https://www.nationalrtap.org/Technology-Tools/GTFS-Builder>. This also includes Excel templates that will allow users to build GTFS data from existing transit schedules and stop information with little to no additional technical expertise. FTA has confirmed that NRTAP will make these resources available to all reporters, not just rural reporters. This alleviates the concern that NRTAP assistance is too limited.

The GTFS Builder provided by NRTAP does not require advanced technological skills to create—it only requires the use of Microsoft Excel, Google Maps and Google Earth. Microsoft Excel is a widely used spreadsheet software which agencies will likely be familiar with, and Google Maps and Google Earth are widely used as well. NRTAP's GTFS Builder includes instructions on working with these latter two tools. With the available training and guides from FTA and NRTAP, FTA expects that the creation of a GTFS data set will be feasible for all applicable agencies.

GTFS: Alternate File Specifications

Eight comments proposed that FTA begin to incorporate newer or expanded GTFS versions. Two comments called for the adoption of GTFS-Realtime, a standard which tracks service in real time. One comment asked for the adoption of GTFS-ride, a GTFS extension used to track ridership. Three comments called for the NTD to add the Cal-ITP standard, a GTFS extension which incorporates GTFS-Realtime as well as requiring contactless payments and other provisions. Two comments recommended that FTA take an active role in developing and improving GTFS and related standards, including "staffing all GTFS standards meetings."

FTA Response: The impetus for the creation of new mandatory GTFS reporting is the BIL's requirement that FTA must collect "geographic service area coverage" data through the NTD. FTA believes that a standard, static GTFS feed is the best way to meet this requirement. Furthermore, FTA aims to limit the burden on smaller agencies, who may be creating a GTFS feed for the first time. Adopting the basic, static GTFS feed sets a reasonable standard that all agencies can meet. While agencies are more than welcome to create additional GTFS extensions, including GTFS-Realtime and GTFS-ride, FTA will not impose those as requirements at this time. In particular, the creation of a GTFS-Realtime feed requires software knowledge beyond the basics needed for a static GTFS, and

many agencies have already noted that even the creation of a static GTFS feed may pose an initial challenge.

Regarding the suggestion that FTA take an active role in the development and updating of the GTFS standard: FTA will monitor and review updates to the standard, but it will not at this time contribute to ongoing standard development. GTFS is an open source developed standard, and as such FTA will continue to allow the community to discover and address needs and will only adopt modifications that are germane to FTA's purposes.

GTFS: Training and Resources

Six comments expressed a desire for additional support in meeting the GTFS reporting requirements, particularly for small and rural reporters. Three of these comments expressed a desire for additional training for transit agency staff, administered nationally by FTA and/or through the National Rural Transit Assistance Program (NRTAP) or State Departments of Transportation (DOTs).

Two further comments stated that FTA should provide technical assistance and provide funding to agencies to develop GTFS feeds, purchase related software and systems, and create in-house technical assistance resources within State DOTs. One of these comments indicated that FTA should provide guidance supporting GTFS and open data standards in transit agency procurement.

The final comment expressed a desire for FTA to create a partnership among NRTAP, State DOTs, State Transit Associations, and Regional Planning Associations to share technical assistance resources and promote training.

FTA Response: FTA already has many ongoing training opportunities that reporters can utilize, which beginning in calendar year 2023 will cover new reporting requirements including GTFS. Reporters can use these trainings to gain the necessary background for NTD reporting requirements. Full virtual courses are offered through the National Transit Institute, as well as webinars that are available live and with recordings viewable at any time. A full list of existing training programs is available at <https://www.transit.dot.gov/ntd/trainings-and-conferences>.

For GTFS specifically, a variety of training resources are already available through NRTAP on their "GTFS Builder" site. This includes a written guidebook, links to FAQs, and video tutorials. The full list of resources is available at <https://>

www.nationalrtap.org/Technology-Tools/GTFS-Builder/Support.

While FTA will not directly issue NTD guidance to agencies on their procurement related to GTFS, FTA encourages all agencies who contract services to ensure a high standard of quality in collection and delivery of GTFS data.

FTA notes that the only programs required to generate a GTFS feed are Microsoft Excel and Google Earth, so the creation of a GTFS, generally speaking, should not require any additional purchased software. At this time, no additional sources of funding for software purchases related to GTFS have been created.

While FTA does not have immediate plans to form formal partnerships with agencies to pool technical assistance resources, FTA will continue to direct agencies to existing resources, will continue to encourage and foster agency training, and will serve as a repository of knowledge and best practices. FTA will continue to consider how best to support reporters, whether on GTFS specifically or in general, on an ongoing basis.

GTFS: Validation

Six comments sought clarification on how NTD analysts would conduct GTFS data validation. One comment inquired whether FTA would inspect individual .txt files or simply confirm that all the necessary files are present. Another comment stated that FTA should clarify its expectations for the validity of GTFS data, such as recommending that agencies use an available validator like the Mobility Data validator.

FTA Response: FTA and its contractors conduct extensive data validation processes at all stages of the NTD. The submission of GTFS data is no exception.

For the file specifications themselves, there are many online GTFS validators, as detailed in the NRTAP guide to GTFS. One such service, provided at no cost, can be found at <https://reflect.foursquareitp.com/validator/>. As noted by the commenter, the Mobility Data validator is another open source, no cost option for validation, and can be found at <https://github.com/MobilityData/gtfs-validator>. Note that this validation does not necessarily check the content of the dataset but does ensure that submissions meet the formatting and fields specified in the GTFS guidelines. These steps can be completed by agencies pre-submission. While FTA will not make this validation step mandatory, agencies are encouraged to validate their GTFS feeds before submission with the same rigor

they would validate, for example, financial data reported to the NTD.

In addition, FTA and its contractors will conduct validation of GTFS data once it has been submitted to the NTD. The primary validation check will be that all links to public GTFS are viable and current. The Uniform Resource Locators (URLs) provided by agencies will be checked periodically and agencies may be notified if a link they have provided is broken. Further, as part of FTA's existing NTD validation procedures, FTA can query the existing database of route information and service to ensure that data reported is consistent across the GTFS files and other elements of the NTD. This validation process is consistent with prior NTD data validation procedures, as described in the NTD Policy Manual at page 14: "[v]alidation includes, but is not limited to . . . [l]ogic checks between data items on different forms." Validation analysts will also manually inspect files and routes, particularly the shapes.txt file (if provided), as an additional check on accuracy. Thus, FTA confirms that there will be some auditing of individual .txt files, though not necessarily for every submission.

GTFS: Reflecting Service Changes

Three comments sought clarification on how GTFS requirements would be implemented if service provision or service areas change throughout the year. Two of these comments suggested that planned service changes be reflected in GTFS feeds, with one commenter recommending that service changes be reflected no later than a week prior to the implementation of such service changes. An additional comment noted that there are challenges to maintaining an up-to-date inventory of bus stops, noting that the agency has made frequent service changes due to factors such as the pandemic, street closures, and detours. The commenter asked if FTA requires agencies to archive previous GTFS feeds when service changes.

FTA Response: FTA proposed that agencies establish and submit "static" GTFS data beginning in Report Year 2023. At minimum, then, agencies would need to certify annually as part of their D-10 submission to the NTD that their previously submitted web links are up to date. All fixed route service changes must be reflected in the web link. Accordingly, agencies are expected to update their GTFS whenever service changes. As noted in its proposal, FTA will monitor compliance by periodically checking GTFS data to ensure that the web links are viable and current, reflecting fixed

route stops, routes, and schedules. FTA therefore expects agencies to maintain accurate, up to date GTFS data throughout the year. Agencies that experience changes in service will need to update their data accordingly. Given that this requirement extends to less-resourced agencies, including Tribal and rural agencies, FTA is not requiring agencies to update their feeds prior to service changes, nor will it adopt a strict seven-day timeline for incorporating service changes into the GTFS feeds. But through periodic validation and clear communication, FTA will ensure agencies are reflecting service changes in a timely fashion.

With regards to service changes, FTA notes that the requirement that “all fixed route service changes must be reflected” should be interpreted to include significant and long-term changes in routes or services but not temporary disruptions. Street closures and detours would not require changes in the feed so long as routes are not adjusted on a long-term basis. Changes in service due to the pandemic, however, would need to be reflected. Reporters should work with their validation analysts to determine what service changes merit an update to the GTFS feed.

FTA does not presently require the hosting of archival/historical service information. The priority is to maintain accessible, up to date GTFS feeds reflecting current service. Agencies are welcome to host and maintain archival copies of GTFS feeds, but FTA will neither require this nor conduct validation of such archives.

GTFS: “Feed_info.txt”

Three comments sought clarification on whether one component of the GTFS specification is required. Specifically, FTA proposed that the “feed_info.txt” file would be mandatory, yet the GTFS standard lists this document as “optional.”

FTA Response: The “feed_info.txt” is described as “optional” according to the GTFS standard, and FTA’s requirements will conform to the established GTFS standard as of May 2022. Thus, the “feed_info.txt” file will be optional. Agencies can submit a “feed_info.txt” file with their GTFS submission if they so choose, but it will not be a mandatory part of the GTFS submission.

GTFS: Additional .txt files

Two comments noted that the GTFS feeds should include both “Calendar.txt” and “Calendar_date.txt” files. (FTA proposed that agencies submit *either* of the two files.) One of the two comments also asked FTA to

provide additional text describing “shapes.txt”, which is listed as an optional part of the GTFS submission. This comment suggested that FTA describe this file as “highly recommended.”

FTA Response: As proposed, FTA is aligning its GTFS requirements with the published GTFS standards as of May 9, 2022. In accordance with those standards, FTA will only require one of the two Calendar files. For most agencies, this will be sufficient to capture service. Agencies are welcome to submit the second of the two files voluntarily, but given that this requirement applies to a broad spectrum of reporters, FTA will not require this second file.

FTA appreciates the added detail on the “shapes.txt” file. At this time, “shapes.txt” will remain an optional part of the GTFS submission, given that it requires some further technical skill to produce.

GTFS: Public Information

Two comments discussed the benefits of sharing GTFS feeds in publicly accessible formats. The first comment supported FTA’s proposal that all GTFS feeds submitted to the NTD will enter the public domain. A related comment asked that FTA publish a list of GTFS URLs that includes certain other information, preferably in comma-separated values (CSV) format, for data users to access. The commenter further suggested that FTA could post this CSV file to an open-data portal.

FTA Response: FTA recognizes the need to make this data publicly available and is grateful for the support in that regard.

The GTFS feed information, like all other data collected by the NTD, will be published in a publicly accessible format in one or more of FTA’s data products. These products are released annually at <https://www.transit.dot.gov/ntd/ntd-data>. Once FTA has collected and validated the GTFS URLs, we will release those in a public and accessible format. For ease of reference, this may not be in CSV format, as many of our data users are more familiar with Excel sheets. However, FTA is confident that end-users who wish to convert published files from Excel to CSV will be able to do so relatively easily.

GTFS: Password Protection and Other Sharing Restrictions

Two comments expressed concerns about publicly sharing GTFS data. One comment sought clarification on the requirement that the GTFS data not be password protected, based on their use of an existing password-protected

application programming interface (API). The second comment noted that some agencies have contracts that prevent them from sharing GTFS feeds publicly.

FTA Response: The GTFS reporting requirements are intended to fulfill the BILaw “geographic service area coverage” requirement and will make transit route and service information accessible to the public to the greatest degree possible. Prospective data users should be able to go onto an agency’s website and access GTFS information with as few barriers as practicable. FTA recognizes that there are potential information technology (IT) security concerns, including but not limited to deliberate denial of service (DDOS) attacks. Transit agencies must balance the need for IT security with the public provision of GTFS data. Transit agencies can employ solutions other than password protection for protecting their networks and still be in full compliance with this requirement.

If an agency password protects or otherwise continues to use credentialing as a barrier to GTFS data, they should notify their NTD validation analyst, provide an explanation why this is needed, and provide appropriate credentials to access the data. As described in FTA’s proposal, if an agency is not able to host their GTFS feed in a web link accessible by FTA, they may submit it via alternative means, including email.

As an alternative option to hosting the data directly, agencies can submit their GTFS data to the National Rural Transit Assistance Program (NRTAP), who will host their GTFS data in a public (non-password-protected) format on their behalf. All agencies are eligible to have NRTAP host this data, even if they are not rural reporters.

Agencies that are under contract for their GTFS feeds should work with their validation analyst to determine the best option for hosting their feed. If the contract allows, agencies can have their data hosted on NRTAP, as described above. If not, FTA will work with the reporter to determine an appropriate solution.

GTFS: Replacing Existing Requirements

Two comments sought clarification on whether the GTFS data would replace any existing NTD requirements. One of these comments also asked FTA to consider whether GTFS data could be used to cross-validate other NTD data, such as directional route miles, and to consider developing related tools for transit agencies.

FTA Response: The GTFS data is intended to supplement existing NTD

reporting. This reporting will fulfil the Bipartisan Infrastructure Law “geographic service area coverage” requirement and bring about greater public access to transit route information. Because FTA has existing validation protocols in place for other NTD data, including directional route miles, FTA will not explicitly be using geospatial data to audit non-geospatial metrics. However, agencies can and should ensure that there is consistency between their reported metrics and those reported in the GTFS feed.

Once fully implemented in Report Year (RY) 2023, compliance with the GTFS requirement will be monitored via an additional certification on the existing D-10 Form. NTD reporters will be responsible for maintaining their GTFS data and certifying that the links are viable and current. This will not supersede or replace any existing NTD requirements.

GTFS: File Hosting

One comment requested that FTA allow the State to host GTFS feeds on behalf of rural reporters in the State and provide those URLs instead.

FTA Response: States are encouraged to support and assist rural sub-reporters in whatever ways they can in meeting this new requirement. If hosting agency GTFS feeds in a central location aids in this process, FTA welcomes this option. Each agency must provide a URL to their agency’s specific GTFS feed, so unique links will need to be generated, but these can all have the same host site.

GTFS: Optional Reporting

One comment stated that the GTFS submission should be optional.

FTA Response: FTA is required by the Bipartisan Infrastructure Law to collect “geospatial service area coverage” from NTD reporters. As such, this reporting cannot be made optional. After consideration of comments received, FTA continues to believe that GTFS is the best way to implement this statutory requirement for fixed-route service. Accordingly, FTA is adopting GTFS reporting as a mandatory requirement.

GTFS: Open Data Standards

Two comments called for FTA to support “open data standards”—specifically the Mobility Data Interoperability Principles (available at <https://www.interoperablemobility.org/>). The comments suggested that DOT should fund programs, organizations, and infrastructure to further open data standards. One of the commenters also suggested that FTA should support interoperability in transit agency information systems.

FTA Response: FTA recognizes the value of having open, accessible data. The NTD is a publicly viewable resource used by stakeholders and researchers across the nation. The adoption of GTFS as the NTD’s geospatial standard for fixed-route service is both an acknowledgement of the hard work that has been done to develop it as an open-source tool, and a commitment to supporting and maintaining that standard.

However, the NTD must always balance the needs of its most technologically advanced reporters with those that have more limited resources and capacity. The adoption of GTFS would not be possible without the resources identified elsewhere in this Notice, such as NRTAP’s GTFS Builder. The Mobility Data Interoperability Principles contain many useful extensions that agencies can and should use if they are capable of doing so; but the institutional support at transit agencies for these advancing technologies is not at the same level as for GTFS creation. As such, FTA will not be adopting further open data standard changes at this time.

FTA will continue to monitor new and emerging technologies for transit interoperability and assess agencies’ capacity and needs. As more interoperability standards become easier to implement, FTA may implement new extensions to GTFS for future Report Years. In the interim, all agencies that have the capacity to adopt more open data standards are welcome to do so.

GTFS: Temporality of Reporting Requirements

One comment sought clarification on the temporality of reporting requirements with regards to two elements. First, the comment asked when FTA would harvest GTFS datasets. The second question asked whether the GTFS should cover a minimum date range. A related comment suggested that the NTD should extract the URLs used to host public facing GTFS data frequently.

FTA Response: FTA will ensure compliance with GTFS requirements in two ways. The first is for the agencies to certify on the D-10 form (part of their annual NTD submission) that GTFS links are current and viable. Agencies will provide their URL through this step, which will be collected and aggregated by FTA. This is an annual requirement, as it occurs as part of the existing NTD reporting schedule.

The second verification comes from FTA’s inspection. These inspections will happen “periodically.” The timing of these inspections may vary from

agency to agency. Agencies should ensure that GTFS web links are in working condition throughout the year.

As for the time range described by the feeds, agencies will report their start and end date in the “calendar.txt” file, in accordance with GTFS standards. The file is set up to cover a week (seven days) of service, with the expectation that service patterns will repeat for subsequent weeks or week-to-week variation will be minimal. If there is a change in service patterns such that one week differs significantly from another, FTA expects that the agency will update their GTFS feed accordingly.

GTFS: NTD ID Matching

Two comments requested that FTA clearly define how to handle data irregularities around NTD ID to GTFS dataset matching, such as when multiple NTD IDs match to a single GTFS feed. Specifically, the comment highlighted that there exists a protocol when a single NTD ID corresponds to several GTFS feeds, but does not define how to handle when one GTFS feed reflects more than one agency/NTD ID.

FTA Response: FTA is working closely with the Bureau of Transportation Statistics (BTS) to develop and improve our collection of GTFS feeds. FTA and BTS are aware of the issue raised by the commenter and believe it should only affect a small number of reporters. FTA and BTS are working to resolve the issue promptly. By the implementation of this reporting requirement in Report Year 2023, FTA anticipates that the technical issue will be resolved, and will require no change to the GTFS submissions as described. If agencies encounter any issues with submission of their GTFS feeds, whether on NTD ID matching or any other problem, they can contact their NTD validation analyst.

After consideration of the comments received, FTA will require the submission of GTFS feeds as proposed, with one change: the “feed_info.txt” file will now be considered an optional part of the GTFS submission. FTA will implement this requirement in Report Year 2023.

E. Collecting Geospatial Data for Demand Response Modes

FTA received 28 comments on the proposal that beginning in Report Year 2023 certain demand response modes must report geospatial data to the NTD using a new form. Of these comments, six supported the new form as proposed. One comment expressed opposition to the new requirements but did not specify why.

Demand Response: Other Geospatial File Formats

Eight comments suggested that, either instead of or in addition to requiring reporters to answer the questions proposed on the form, FTA should require or allow agencies to submit geospatial files to identify the areas they serve. The most commonly suggested geospatial file format was GTFS-Flex, a GTFS extension. Others proposed the use of GeoJSON files. One comment requested that FTA ask agencies to submit a map of service areas; another comment suggested the use of geospatial files but did not specify any file formats.

FTA Response: While FTA acknowledges that geospatial files are helpful for generating quick views of areas served, the agency has identified two reasons why allowing reporters to submit these files in lieu of completing the proposed form would result in insufficient or inconsistent data collection.

One limitation of requiring geospatial files for demand response is that there is not a consistent specification or standard. At present, the most commonly used tool for reporting geospatial data for demand response modes is GTFS-Flex. However, while some transit agencies have adopted this specification, not all agencies have done so, nor will all agencies be able to generate these types of files for their demand response services. At present, only approximately 100 transit agencies out of hundreds that have adopted GTFS use GTFS-Flex for their demand response services. Having multiple standards would make validation of this data by FTA more difficult and would prevent uniform reporting of NTD data.

Second, the questions on the new form capture information beyond geographic areas serviced. The form, as described in FTA's proposal, includes reporting of service dates, fares charged, and more. Thus, providing just a geospatial file would not be sufficient to capture all the information required by the new form. In the interest of ensuring all reporters submit information in a compatible format, the optimal solution is for all reporters to use FTA's geospatial form as proposed.

FTA will continue to track the development of specifications and standards related to geospatial files representing non-fixed route service for possible adoption at a point in the future.

Demand Response: Administrative Burden

Three comments indicated that this requirement would be unduly

burdensome, especially for small or rural reporters. One comment also noted that, for larger agencies, the task of listing every census designated 'Place' served by demand response service would be burdensome. One additional comment suggested that this requirement be extended to Report Year 2024 to give smaller agencies more time to prepare.

FTA Response: FTA is committed to providing support and assistance to small urban, rural, and Tribal reporters. The primary method of assistance is through the resources of the Rural Transit Assistance Program (NRTAP). When this requirement takes effect, agencies will be able to consult with NRTAP and use their tools to assist with training staff and complying with the new geospatial data reporting requirements.

For larger agencies, while FTA recognizes they serve a variety of areas, this is in line with previous NTD reporting. Agencies will need to list all the 'Places' served. FTA notes that this is less cumbersome than preparing a geospatial file for each of the locations and does not require separate form submissions for each location. As such, it only affects a single field on the proposed form, and therefore agencies should be able to input all areas served in an efficient manner.

Additionally, FTA believes the Report Year 2023 time horizon is sufficient for agencies to comply with this new requirement. Because NTD submissions are due after the close of the fiscal year, the earliest that an agency would have to submit this data is September 2024, with most agencies providing this data in January or April of 2025. This gives agencies between 18 and 24 months to prepare to meet the new requirements. FTA is confident that all reporters will be able to meet the new requirements by their required submission date for Report Year 2023.

Demand Response: Multiple Service Providers

Three comments raised issues regarding the implementation of this requirement when multiple services are available in an area. One comment asked FTA to consider that agencies that operate multiple demand response services will need to be able to report on multiple services that could have varied funding sources. One comment presented an alternate version of the form that allows agencies to record different services on rows instead of separate form submissions. The third comment suggested that demand response reporters be asked to report

what other modes serve their demand response service areas.

FTA Response: FTA appreciates that demand response service operators may offer multiple and/or overlapping services. In designing the form for Report Year 2023, FTA will take the comments regarding reporting challenges for reporters of multiple services under advisement. While reporters will need to separately enter information for each demand response mode operated, the NTD will make the submission of multiple entries as simple as possible. The intent of the new form is to capture the requisite information in the most efficient and useful way possible.

FTA will not require that agencies report other demand response modes or fixed-route services serving their areas. Asking demand response reporters to submit this information would be duplicative as this information is already collected by NTD and can be aggregated and compared using published data products.

Demand Response: Census Places

One comment sought clarification on the third question proposed to be included on the new NTD geospatial data reporting form. This question asks agencies to report Census 'Places' served and whether 'Places' are partially or wholly served. An additional comment asked FTA to consider requesting county-level data from reporters.

FTA Response: The U.S. Census Bureau defines 'Places' to include a variety of formally incorporated geographical areas (*i.e.*, cities, townships) and unincorporated communities. Because demand response modes serve a variety of riders across many transit networks, FTA determined that this flexible definition of place is the most useful for determining areas served.

A guide to what constitutes a Census 'Place' can be found at this link: <https://www.census.gov/content/dam/Census/data/developers/understandingplace.pdf>. In many cases, the 'Place' served may be the same as the county served, so FTA will not need to create a separate mechanism for county-level reporting. When implemented, the NTD form for the submission of demand response geospatial data will allow users to submit the appropriate 'Places' served and to note whether the 'Places' are wholly served or partially served. For the purposes of this form, "wholly served" refers to an agency that provides demand response service for the entire area of the relevant 'Place,' whereas "partially served" refers to an

agency that only serves a select area of the relevant 'Place.'

Demand Response: Changes to Questionnaire

One comment suggested changes to question 4 on the new form. The comment also provided feedback on how answer fields should be formatted for questions 6 and 8 on the new form. Regarding question 4, the comment suggested that FTA should add a follow-up question allowing agencies to indicate demand response services they provide that are not ADA paratransit service to capture cases where agencies provide both complementary paratransit and other transit service. Regarding question 6, the comment suggested that FTA should ask agencies to provide details on their different eligibility or terms and conditions of service requirements. Regarding question 8, the comment suggested that FTA allow multiple selections and an open text field so agencies could fully describe populations served by demand response service.

FTA Response: FTA appreciates the comments on the proposed form. FTA is in the process of developing the field entries on the electronic form for this reporting requirement. Regarding the suggested addition of a follow-up question to question 4, the intent behind this question is to capture data on ADA paratransit services. At this time, FTA will not be adding a follow-up question on other demand response services. This will minimize burden on agencies completing this form. At present, FTA is not proposing to collect additional information on question 6 regarding eligibility and terms and conditions, and will be collecting only a yes/no response. FTA may revisit response options for this field in the future. Regarding question 8, FTA agrees with the comment and will work on creating a multiple-response or open text option to the extent that such a format is consistent with NTD validation use.

Demand Response: ADA Questions

One comment suggested that human service transportation (HST) rides, including vehicle service hours and miles, should be reported to the NTD as well as ADA paratransit service. A related comment made recommendations regarding NTD financial reporting requirements for ADA paratransit rides that are contracted out.

FTA Response: These comments are outside the scope of the proposals, so FTA will not address these issues in this Notice.

Demand Response: Technical Assistance

Two comments noted that small agencies may not have the technology required to meet new geospatial reporting requirements, and such providers and State DOTs would require assistance and new sources of funding to meet technology and staffing needs.

FTA Response: FTA has attempted to design the geospatial data collection form so that it is easy to complete. For example, completing the form requires no additional technology. Agencies will be able to input Census 'Places' in the same manner as on existing NTD forms and the data will be collected as text. Agencies will be able to consult the Census Place website (linked above) to identify areas served. Because the form does not require additional software or technical expertise to complete, staffing impacts should also be minimal. FTA will provide training on how to complete the form to all agencies. A list of all available NRTAP resources for agencies, which is continually updated and will be updated with geospatial reporting information prior to reporting deadlines, is available at <https://www.nationalrtap.org/Resource-Center/Resource-Library>.

Demand Response: States Reporting on Behalf of Subrecipients

One comment inquired if State DOTs could answer these questions on behalf of rural subrecipients instead of agencies filling out the forms themselves.

FTA Response: In general, States complete NTD reports on behalf of their rural subrecipients, as described in the NTD Reporting Manual. This demand response form is no exception. State DOTs would therefore not only be able to complete the forms on behalf of subrecipients, but they would also be required to do so.

Demand Response: Simplified Reporting

One comment recommended that FTA develop a simplified reporting process or portal, as well as a method to revise or update the reported information, for agencies whose staff might have less technical capacity.

FTA Response: FTA has designed the form to be as straightforward as possible to reduce the burden on reporters. In addition, FTA offers periodic trainings on how to report service to the NTD. After publication of this final Notice, this training will include information on how to complete this new form. In light of efforts taken to develop the form, in addition to FTA trainings and resources available to reporters, FTA does not

believe that there is a viable alternative reporting mechanism that would provide a simplified process. FTA will adopt the form as proposed and will make every effort to support agencies reporting their demand response services.

After consideration of the comments received, FTA will require the submission of the geospatial data form for demand response modes as proposed. FTA will implement this requirement in Report Year 2023.

F. Emergency Contact Information

FTA received seven comments on the proposal to require agencies to submit emergency contact information on the P-10 form. Six comments generally supported the proposal. One comment supported the proposal noting that it would facilitate better communication during emergencies.

FTA Response: FTA appreciates the support for this proposal and agrees that this data will facilitate better communication during emergencies.

Emergency Contact Information: Contractors

One comment sought clarification on whether the emergency contact requirements would apply only to the reporter or if they would also apply to contractors of a reporting agency.

FTA Response: This requirement will only apply to reporting agencies. It will not apply to contractors. If a reporter contracts out certain services, it should still provide emergency contact information for an employee of the reporter who can be reached during emergencies.

After consideration of the comments received, FTA will require the collection of emergency contact information as proposed. FTA will implement this requirement in Report Year 2023.

G. Comments on Vehicle Fuel Type

FTA received eight comments on the proposal to extend vehicle fuel type reporting requirements to all reporters. Six comments supported the proposed change.

Vehicle Fuel Type: Transit Asset Management (TAM) Alignment

One comment suggested that vehicle fuel type data should be collected in a way that is consistent with the existing protocols and standards of the Transit Asset Management (TAM) Program.

FTA Response: FTA strives for consistency in all its data reporting, through the NTD and other mechanisms. There is currently no existing mechanism for fuel type

reporting under the TAM Program. FTA will collect fuel type information through the NTD from rural, Tribal, and capital asset-only reporters that is consistent with the current NTD fuel type collection from full and reduced reporters; the only reporting change is extending the vehicle fuel type reporting requirement to new categories of reporters.

Vehicle Fuel Type: Fuel Categories

One comment suggested that FTA provide clear fuel categories on the A-30 form, in light of new and emerging technologies.

FTA Response: For purposes of data validation, the new fuel type reporting for tribal, rural, and capital asset-only reporters will remain consistent with previous data collection for full and reduced reporters. The expansion of vehicle fuel type reporting to new categories of reporters will not, at this time, include an expansion of the fuel categories. Currently, the vehicle fuel type categories include options for both electric propulsion and electric battery. While FTA may revisit fuel categories for future report years in order to further incorporate new and emerging technologies, for the upcoming report year (Report Year 2023) these categories will remain the same.

After consideration of the comments received, FTA will require the submission of vehicle fuel type information as proposed. FTA will implement this requirement in Report Year 2023,

Nuria I. Fernandez,
Administrator.

[FR Doc. 2023-04379 Filed 3-2-23; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD-2023-0041]

Buy America Request for Information; Federal Ship Financing Program

AGENCY: Maritime Administration (MARAD), Department of Transportation (DOT).

ACTION: Notice; request for information (RFI).

SUMMARY: MARAD, a modal agency of DOT, administers the Federal Ship Financing Program ("Title XI"), which provides loan guarantees to finance the construction of commercial vessels in U.S. shipyards or shipyard projects. Although Title XI provides important support for U.S. shipyards, the U.S.

maritime industry in general, including the shipbuilding sector, has been on the decline for decades. As a result, U.S. shipyards frequently turn to foreign manufacturers for a variety of components that are not made in the U.S. This RFI is intended to gather information regarding the availability of domestically manufactured components for commercial shipbuilding in the U.S., particularly considering the investment planned in commercial shipbuilding for support of offshore windfarm facilities by MARAD through loan guarantees from the Title XI program. MARAD is seeking input from the public, including stakeholders (such as State and local agencies, the marine component manufacturing industry, component suppliers, labor unions, related associations, ship operators, and transportation advocates), on the availability of ship components manufactured in the U.S. that can meet the Title XI domestic content requirement.

DATES: Comments must be received on or before April 3, 2023.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit all comments by only one of the following ways:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** W12-140 of the Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal Holidays. The telephone number is 202-366-9329.

- **Instructions:** You must include the agency name and the docket number, MARAD-2023-0041, at the beginning of your comments. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

- **Note:** Input submitted online via www.regulations.gov is not immediately posted to the site. It may take several business days before your submission is posted.

- **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>.

FOR FURTHER INFORMATION CONTACT: Mr. David Heller, MARAD Associate Administrator for Business and Finance Development, 202-366-1850, or via email at david.heller@dot.gov. For legal questions, please contact Ms. Lauren Gill, MARAD Office of Chief Counsel, 202-366-2150, or via email at lauren.gill@dot.gov. Office hours for MARAD are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

A copy of this Notice, all comments received on this Notice, and all background material may be viewed online at <https://www.regulations.gov> using the docket number listed above. Electronic retrieval help and guidelines are also available at <https://www.regulations.gov>. An electronic copy of this document also may be downloaded from the Office of the Federal Register's website at: www.FederalRegister.gov and the Government Publishing Office's database at: www.GovInfo.gov.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this RFI 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 RFI, it is important that you clearly designate the submitted comments as CBI. You may ask DOT to give confidential treatment to information you give to the Department by taking the following steps: (1) Mark each page of the original document submission containing CBI as "Confidential"; (2) send DOT, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, DOT will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this RFI. Submissions containing CBI should be sent to Mr. David Heller, Associate Administrator for Business and Finance Development, Room W21-318, MARAD, 1200 New Jersey Avenue SE, Washington, DC 20590. Any

comment submissions that DOT receives that are not specifically designated as CBI will be placed in the public docket for this matter.

Background

As expressed in Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475), it is the policy of the Executive Branch to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Although the Title XI statute does not contain any domestic content requirements, as a matter of policy, MARAD adopted a domestic content requirement by regulation, set forth in 46 CFR 298.13.¹ Rather than affirmatively requiring recipients to meet a domestic content standard as a condition of financial assistance, under Section 298.13(b)(2), MARAD excludes from the loan amount that MARAD guarantees the costs of foreign components and services used in vessel construction unless MARAD grants a waiver for these costs.

MARAD reviews waiver requests based on certifications from the applicant that:

(A) A foreign item or service is not available in the United States on a timely or price-competitive basis, or

(B) The domestic item or service is not of sufficient quality.

Under Title XI's domestic content requirement, an item is considered to be available in the United States (*i.e.*, domestic) if it is manufactured in the U.S. As indicated at 46 CFR 298.13(b)(2)(i), MARAD does not grant waivers for major foreign components of the ship's hull and superstructure. This requirement tracks the long-established U.S. construction requirement for ships to operate in the Jones Act trade, set forth in 46 CFR 67.97, which is regulated by the U.S. Coast Guard. Pursuant to section 67.97, a vessel must be assembled entirely in the United States, and all "major components of the hull and superstructure" must be

fabricated in the United States to be considered built in the United States.

Title XI's domestic content requirement is intended to incentivize shipowners to purchase vessels that have maximized the use of domestic-made products and components in an effort to create a steady source of demand that will help catalyze domestic production and bolster thin supply chains. However, the availability of components for commercial ships is heavily influenced by the nature and size of the product market. The U.S. has a significantly smaller domestic commercial shipbuilding industry than the European Union, Japan, South Korea, and China due to government support for that type of heavy-industrial manufacturing by those countries. In addition to the higher cost of operating in a small domestic market, U.S. commercial ship component manufacturers are also limited in their ability to compete by differences in domestic and international maritime specifications/standards. Consequently, domestically manufactured components specified for the construction of a ship are often either unavailable or, if available, cannot be used as a substitute within a system of components that is foreign manufactured. For instance, if a single manufacturer is responsible for a propulsion system, substituting a foreign-manufactured component with a comparable U.S. manufactured component may void the warranty for the entire system or make the entire propulsion system unreliable. As a result, the U.S. shipbuilding industry must incorporate some foreign manufactured components in almost all types of ships. Currently, MARAD has some understanding of the availability of ship components in the United States that can comply with Title XI's domestic content requirement but wishes to expand its available information, particularly with the recent significant interest and investments in offshore windfarm facilities. Therefore, with the goal of maximizing the use of and expanding ship component manufacturing in the U.S., MARAD is seeking information on sourcing compliant domestic components available to the U.S. commercial shipbuilding industry, based on a list of components that MARAD has previously identified as not typically available domestically. By shifting and maximizing manufacturing to the U.S. for ship components as soon as is practicable, domestic manufacturing firms have the potential to obtain significant benefits from the

investments planned in the commercial shipbuilding industry.

This RFI is intended to: (i) help MARAD better understand whether and to what extent domestic sourcing is available now or may be possible in the future for commercial ship components that have historically only been available from foreign sources; (ii) ensure U.S. shipbuilders and ship operators have the opportunity to identify any commercial ship component market resources meeting the Title XI domestic content requirement; and (iii) highlight the benefits of shifting manufacturing to the U.S., considering the investment planned in this area.

Request for Information

Through this RFI, MARAD seeks information and suggestions from the public and a broad array of stakeholders that may be familiar with or interested in manufacturing domestic ship components. Specifically, MARAD seeks information regarding the availability of domestic ship components to the U.S. commercial shipbuilding industry, and their inclusion in Title XI projects. This information will be used to better assess requests for waivers and encourage use of domestic-made components.

As a baseline, MARAD has identified the following categories of ship components it believes are not currently manufactured in the U.S. through information it has collected as part of its domestic content review of Title XI ship construction projects over the past decades:

- Marine Propulsion—energy generating systems, propulsion units, transmission propulsion systems, marine diesel, support systems, fuel service, spares.

- Navigation Systems—interior/exterior communications, surface surveyance, navigation systems (RADAR, GMDSS, ECDIS, INMARSAT), spares.

- Auxiliary Systems—pumps (including waterjet pumps and waterjet thrusters), climate control (HVAC systems), firefighting systems, compressed air systems, ventilation fans, boilers, ship control (steering, rudder, trim/heel, maneuvering, motion control/stabilizers and fins), cranes and elevators, anchoring and mooring systems.

- Electric Plant—electric power generation, power distribution systems (electrical switchboards and switchgear), electric motors, lighting systems, batteries (EV power generation), power generation supports, special purpose systems, spares.

¹ MARAD has determined that the requirements of the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act (Public Law 117–58, November 15, 2021), relating to the use of domestic steel, iron, manufactured products, and construction materials do not apply to the Title XI program because the recipients of such assistance are for-profit entities which, as indicated in the Office of Management and Budget's Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, M–22–11 (April 18, 2022), are not considered non-Federal entities for purposes of applying the BABA domestic preference requirements for public infrastructure projects.

■ Outfitting and Furnishings—ship fittings, hull compartmentation (grating, ladders), motion compensation (walkway, accommodation ladder), coatings, living spaces (modular cabins).

In this RFI, these items are referred to collectively as the “Foreign Components.” MARAD encourages commenters to identify ship components listed above that currently have sufficient domestic availability to support Title XI projects, or to recommend modifications to the above listed components or categories of components so domestic sources may be more readily identified. MARAD also encourages commenters to identify other components or categories of components that should be considered “Foreign Components.”

MARAD is providing the following questions to prompt feedback. MARAD encourages public comment on any or all of these questions, and also seeks any other information commenters believe is relevant.

In answering the questions below, MARAD asks that you specify in your written comments which question(s) you are answering and what type of ship component(s) you are discussing.

General Questions on the Listed Foreign Components

1. Are there any ship components commonly used in Title XI projects that are not identified in this RFI as Foreign Components but which, as a commercial shipbuilder or ship operator, you believe should be brought to MARAD’s attention as a Foreign Component not available in the US? If so, for each such identified ship component, please provide the following information:

a. What is the basis and need for that ship component to be included as a Foreign Component?

b. Please confirm that the component is not part of the hull or superstructure.

c. What is the typical total cost of the identified Foreign Component?

d. How much does the cost vary for each Foreign Component? Why does the cost vary?

e. What is the average delivery timeline for each Foreign Component identified? Please be specific about which ship component you are referencing.

f. How much does delivery time vary for each Foreign Component? Why does the delivery time vary?

g. Where is the place of manufacture of the Foreign Component?

Manufacturer(s) Ability To Meet Title XI’s Existing Domestic Content Requirement

2. Are you aware of any existing ship component manufacturers that can meet the Title XI domestic content requirement for one or more of the Foreign Components? If so, for each identified ship component, please provide the following information:

a. The make, model, and/or specifications of the identified ship component, as well as its place of final manufacture.

b. Explain how the component is designed for use in the marine environment.

c. How many of the ship components meeting Title XI’s existing domestic content requirement can be manufactured per year?

d. What is the price typically paid for the domestic ship component?

e. What is the typical delivery timeline for the domestic ship component?

f. How much does delivery time vary for each domestic ship component? Why does the delivery time vary?

g. Where is the place of manufacture of the component?

3. For those Foreign Components that currently cannot meet Title XI’s domestic content requirement, what steps can be taken to provide ship components that meet Title XI’s existing domestic content requirement? How long might it take to undertake those steps? What is the volume of ship components that could be shifted to manufacture in compliance with Title XI’s domestic content requirement? Can that volume be ramped up over time?

4. For manufacturers, ship builders, ship operators, and any other affected stakeholders, what are the anticipated administrative costs associated with complying with the Title XI domestic content requirement?

Ability To Maximize Domestic Content, Services, and Labor

5. Please provide information on how the domestic content of ships systems (including their components) could be maximized (even if all ship components cannot comply with the Title XI domestic content requirement).

6. Please provide information on how domestic services and labor used in the manufacturing of specific ship components could be maximized (even if the item cannot comply with the Title XI domestic content requirement).

7. In the absence of a waiver, how would the exclusion of the cost of foreign components from the amount of a loan under Title XI affect the financial feasibility of constructing a vessel?

8. How else might MARAD spur and incentivize domestic availability of ship components commonly used in Title XI projects?

(Authority: 46 U.S.C. chapter 537; 49 CFR 1.93(a), 46 CFR part 298)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–04352 Filed 3–2–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

CDFI and NACA Program Paperwork Reduction Act (PRA)

ACTION: Notice and request for public comment.

SUMMARY: The U.S. 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act (PRA) of 1995. Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the Community Development Financial Institutions Program (CDFI Program) and the Native American CDFI Assistance Program (NACA Program) Financial Assistance (FA) and Technical Assistance (TA) Applications, for the Fiscal Year (FY) 2023–FY 2025 funding rounds (hereafter, the Application or Applications). The FA Application includes optional questions that addresses Healthy Food Financing Initiative—Financial Assistance (HFFI–FA), Persistent Poverty Counties—Financial Assistance (PPC–FA) and Disability Funds—Financial Assistance (DF–FA). Information on CDFI Program and NACA Program Applications can be found on the CDFI Fund’s website at <https://www.cdfifund.gov/programs-training/programs/cdfi-program> for the CDFI Program and at <https://www.cdfifund.gov/programs-training/programs/native-initiatives> for the NACA Program. The CDFI Fund is required by law to make the Applications publicly available for comment prior to submission for a new PRA number.

DATES: Written comments must be received on or before May 12, 2023 to be assured of consideration.

ADDRESSES: Submit your comments via email to Pooja Patel, CDFI Program and NACA Program Manager, CDFI Fund, at cdfihelp@cdfi.treas.gov or via Service Request in the Awards Management Information System (AMIS).

FOR FURTHER INFORMATION CONTACT:

Pooja P. Patel, CDFI Program and NACA Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, or by phone (202) 653-0421, or email to cdfihelp@cdfi.treas.gov. Other information regarding the CDFI Fund and its programs may be obtained on the CDFI Fund website at <https://www.cdfifund.gov>.

Two documents are provided to aid the public in providing comments requested by this Notice. The FA Application and TA Application Templates, which present the questions that will comprise the online FA and TA Applications, show revisions relative to the existing Applications as highlighted in yellow. All documents may be obtained from the Request for Public Comments page of the CDFI Fund's website at <https://www.cdfifund.gov/requests-for-comments>.

SUPPLEMENTARY INFORMATION:

Title: CDFI Program and NACA Program Financial Assistance and Technical Assistance Applications.
OMB Number: 1559-0021.

Abstract: The CDFI Program is authorized by the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103-325, 12 U.S.C. 4701 *et seq.*). Funding for the CDFI Program and the NACA Program is made available by Congress to the CDFI Fund through its annual appropriations. The regulations governing the CDFI Program are found at 12 CFR parts 1805 and 1815 (the Regulations) and set forth evaluation criteria and other program requirements. For a complete understanding of the programs, the CDFI Fund encourages Applicants to review the Regulations, the Notice of Funds Availability (NOFA) for the FY 2022 Application round of the CDFI Program (87 FR 8085, February 11, 2022), the NOFA for the FY 2022 Application round of the NACA Program (87 FR 8107, February 11, 2022), the Applications, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (Uniform Administrative Requirements). Capitalized terms in this Request for Public Comment are defined

in the CDFI Program's authorizing statute, the Regulations, the FY 2022 CDFI Program and NACA Program NOFAs, the Applications, Application materials, and the Uniform Administrative Requirements. Through the CDFI Program and NACA Program's FA and TA awards, the CDFI Fund invests in and builds the capacity of for-profit and nonprofit community based lending organizations known as Community Development Financial Institutions (CDFIs).

CDFI Program and NACA Program award Recipients will be competitively selected after the CDFI Fund's careful review of their Applications. The proposed FA Application requires the submission of quantitative and qualitative information about the Applicant's Business Strategy, Products and Services, Market and Competitive Analysis, Management and Staffing, Financial Position, and Growth and Projections. The proposed TA Application requires the submission of quantitative and qualitative information about CDFI Certification Qualifications, an Organizational Overview, Business Strategy, and Use of Funds. Please refer to the FY 2022 CDFI Program and NACA Program NOFAs for additional guidance on the review and Application process for past funding rounds.

This request for public comment seeks to gather information on the CDFI Program and NACA Program TA and FA Applications, which include the optional questions for PPC-FA, HFFI-FA and DF-FA.

Current Actions: Renewal of existing Information Collection.

Type of Review: Regular Review.

Affected Public: Businesses or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in CDFI Fund programs.

Estimated Number of Respondents for Financial Assistance: 425.

Estimated Annual Time per Respondent for Financial Assistance including optional questions: 145 hours.

Estimated Total Annual Burden Hours for Financial Assistance: 61,625.

Estimated Number of Respondents for Technical Assistance: 225.

Estimated Annual Time per Respondent for Technical Assistance: 80 hours.

Estimated Total Annual Burden Hours for Technical Assistance: 18,000.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund's

website at <http://www.cdfifund.gov>. The CDFI Fund is seeking: (a) specific input on the content of the FA Application for the CDFI and NACA Programs; (b) specific input on the content of the TA Application for the CDFI and NACA Programs; (c) specific input on the content of the Healthy Food Financing Initiative—Financial Assistance (HFFI-FA) Application; (d) specific input on the content of the Persistent Poverty Counties—Financial Assistance (PPC-FA) Application; (e) specific input on the content of the Disability Funds—Financial Assistance (DF-FA) Application; (f) general input on other CDFI Program and NACA Program-related topics and considerations. The Application Templates for comment may be obtained on the CDFI Fund's website at <https://www.cdfifund.gov/requests-for-comments>.

Comments concerning the Applications are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information. In addition, the CDFI Fund requests comments in response to the following general questions about the Applications. *Commenters should ensure that their comments are clearly labeled corresponding to each section and question number.*

A. Financial Assistance (FA) Application

The following questions are related to the burden and information requested in the FA Application, and responses may be used to make modifications to the information being requested in the FA Application. Commenters should clearly distinguish their comments related to this section when providing their responses and ensure comments are clearly labeled corresponding to each section and question number.

1. Is the information that is proposed to be collected by the Application necessary and appropriate for the CDFI Fund to consider for the purpose of making award decisions?

2. Are certain data fields, questions or tables redundant or unnecessary? If yes, which ones and why?

3. Should any data fields, questions or tables be added to ensure collection of relevant information?

4. Are there requests for data in the Application that Applicants do not have readily available and that are burdensome to obtain and/or calculate?

5. Are any of the questions particularly burdensome or difficult to answer? If yes, which ones and why?

6. Are there questions that lack clarity as to intent or purpose? If yes, which questions, and what needs to be clarified in order for Applicants to provide a comprehensive response?

7. Are the character limitations for narrative responses appropriate? Should certain questions allow additional or fewer characters? If yes, please specify.

8. What additional guidance can the CDFI Fund provide in order to assist Applicants with completing an FA Application?

9. *Business Plan.* In general, does the data and information requested in the Application allow an Applicant to demonstrate its ability explain its business plan and ability to meet the FA Objectives described in the Application?

10. *Business Plan.* Is the data and information requested in the Application to assess the business plan adequate to assess the different CDFI activities?

11. *Business Plan.* What, if any, additional data and information should be collected to assess business plan activities?

12. *Beneficiary Data.* The CDFI Fund currently collects beneficiary data by income level in the Beneficiary Snapshot table to assess how well an organization is serving communities in economic distress. Reported data in this table combines those receiving Development Services and those receiving Financial Products/Financial Services and is only requested for the Applicant's most recent historic fiscal year.

a. The CDFI Fund is proposing to request beneficiary data separately for (1) Financial Products/Financial Services and (2) Development Services to provide a more accurate depiction of beneficiaries served. Is the proposal for separating out the beneficiary data points between beneficiaries receiving Financial Products/Financial Services versus those receiving Development Services appropriate? If not, why not? Will this proposed change be difficult or overly burdensome to report?

b. The CDFI Fund is considering to request beneficiary data projections for the three year Period of Performance to help assess the impact an Applicant's proposed activity with the FA award. Is the proposal to collect projected

beneficiary data appropriate for use in assessing the impacts of an Applicant's proposed activity with the FA award? If not, why not? Will this proposed data collection be difficult or overly burdensome to report?

13. *FA Objectives.* Currently, FA Applicants can select from the following list of seven FA Objectives (FAO): 1–1: Increase Volume of Financial Products, 1–2: Increase Volume of Financial Services, 1–3: New Geographic Area(s), 1–4: New Financial Product(s), 1–5: New Financial Service(s), 1–6: New Development Service(s), and 1–7: New Targeted Population(s). The CDFI Fund proposes to eliminate certain FAOs that are difficult to measure, evaluate and administer. Further, these FAOs are rarely selected by Applicants.

a. The CDFI Fund proposes to eliminate FAO 1–1: Increase Volume of Financial Services from the list of FAOs to select in the FA Application. However, Financial Services is still an eligible use of the FA award. Would all types of regulated CDFIs still be interested in applying if they could no longer select this FA Objective and required to select another one instead? If no, why not?

b. The CDFI Fund proposes to eliminate FAO 1–5: New Financial Services from the list of FAOs to select in the FA Application. However, Financial Services is still an eligible use of the FA award. Would all types of regulated CDFIs still be interested in applying if they could no longer select this FA Objective and required to select another one instead? If no, why not?

c. The CDFI Fund proposes to eliminate FAO 1–6: New Development Services from the list of FAOs to select in the FA Application. However, Development Services is still an eligible use of the FA award. Would all types of CDFIs still be interested in applying if they could no longer select this FA Objective and required to select another one instead? If no, why not?

14. *FA Objectives.* Currently, to select FAO 1–1: Increase Volume of Financial Products, an Applicant's three years of projected lending activity must exceed its historic three years of lending activity plus the FA award amount ("Increase in Volume"). The Increase in Volume becomes a Performance Goal & Measure (PG&M) in the Assistance Agreement. The CDFI Fund proposes to change the Increase in Volume formula for FAO 1–1: Increase Volume of Financial Products to be more consistent with other FAO PG&Ms and to more directly align with the amount of the FA award. One option is for the formula to be a multiplier of the award amount plus the Applicant's historic

three years of lending activity. For example, for a \$1 million award, if the multiplier were 2 and the Applicant's three most recent years of historic of lending were \$10 million, the FAO 1:1: Increase Volume of Financial Products PG&M would be \$12 million (\$1 million FA award times multiplier of 2 plus \$10 million historic lending equals \$12 million). For more detailed explanation of the proposed formula, please see Question 4d in the FA Application Template, found on the CDFI Fund's website at <https://www.cdfifund.gov/requests-for-comments>. The CDFI Fund is seeking input on the proposed change to FAO 1–1: Increase Volume of Financial Products. Is a multiplier of the FA award plus three years of historic lending an appropriate formula for FAO 1–1: Increase Volume of Financial Products PG&M? If yes, should the CDFI Fund require a standard multiplier or allow Applicants to propose their own multiplier as part of the Application? If a standard multiplier, what should the multiplier be? If a multiplier of the award plus three years of historic lending is not appropriate, why is it not an appropriate formula and what should the formula be?

15. *Ability to Serve Native Communities.* Should the CDFI Fund adjust its FA Application in order to better collect information and evaluate an Applicant's ability to serve the unique needs of Native Communities? If yes, what questions should the CDFI Fund include in the FA Application and what evaluation factors should the CDFI Fund consider when evaluating an Applicant's ability to serve the unique needs of Native Communities?

B. Technical Assistance (TA) Application

The following questions are related to the burden and information requested in the TA Application, and responses may be used to make modifications to the information being requested in the TA Application. Commenters should clearly distinguish their comments related to this section when providing their responses and ensure comments are clearly labeled corresponding to each section and question number.

1. Is the information that is proposed to be collected by the Application necessary and appropriate for the CDFI Fund to consider for the purpose of making award decisions?

2. Are certain data fields, questions or tables redundant or unnecessary? If yes, which ones and why?

3. Should any data fields, questions or tables be added to ensure collection of relevant information?

4. Are there requests for data in the Application that Applicants do not have readily available or that are burdensome to obtain and/or calculate?

5. Are any of the questions particularly burdensome or difficult to answer? If yes, which ones and why?

6. Are there questions that lack clarity as to intent or purpose? If yes, which questions, and what needs to be clarified in order for Applicants to provide a comprehensive response?

7. Are the character limitations for narrative responses appropriate? Should certain questions allow additional or fewer characters? If so, please specify.

8. What additional guidance can the CDFI Fund provide in order to assist Applicants with completing a TA Application?

9. *Evaluation Criteria by Application Type.* Do the questions in the TA Application allow the Applicant to clearly address the evaluation criteria for the following Applicant types? If no, what additional information should be included in the Application for each Applicant type?

(a) An Emerging and Certifiable CDFI and its ability to achieve certification;

(b) A Sponsoring Entity and its ability to create and receive certification for a new CDFI; and

(c) A Certified CDFI and its ability to build its capacity to expand operations, offer new products or services, or increase the volume of current business?

10. *Capacity to Serve Target Market(s).* The primary purpose of making a TA award to a Certified CDFI is to increase its capacity to serve its Target Market(s). How can the CDFI Program and NACA Program update the TA Application in order to make a more accurate determination as to whether or not a TA award will increase a Certified CDFI's capacity to serve its Target Market(s)?

11. *Eligible Uses of Funds.* Does the current TA Application, related guidance materials, and NOFAs provide sufficient clarity to help potential Applicants clearly understand what are, and are not, eligible uses of TA funds?

12. *Ability to Serve Native Communities.* Should the CDFI Fund adjust its TA Application in order to better collect information and evaluate an Applicant's ability to serve the unique needs of Native Communities? If yes, what questions should the CDFI Fund include in the TA Application and what evaluation factors should the CDFI Fund consider when evaluating an Applicant's ability to serve the unique needs of Native Communities?

13. *Sponsoring Entities.* The NACA Program allows organizations that serve Native Communities, Sponsoring

Entities, to apply for TA awards in order to create a new legal entity that will become a Certified CDFI. In recent history, Sponsoring Entities have largely struggled to find success in establishing a Certified CDFI. Between 2013 and 2020, only two Sponsoring Entities have created new legal entities that ultimately achieved CDFI Certification.

a. What questions should the Application include in order to better assess a Sponsoring Entity's ability to successfully create an emerging CDFI within one year and ensure that the emerging CDFI achieves CDFI Certification within four years?

b. Should the CDFI Fund require Sponsoring Entities to create the new legal entity that will become the Certified CDFI before being eligible to receive a NACA TA award?

C. Healthy Food Financing Initiative—Financial Assistance (HFFI-FA) Application

The following questions are related to the burden and information requested in the HFFI-FA Application, and responses may be used to make modifications to the information being requested in the HFFI-FA Application. Commenters should clearly distinguish their comments related to this section when providing their responses and ensure comments are clearly labeled corresponding to each section and question number.

1. Is the information being collected sufficient to determine whether an Applicant (1) is financing eligible Healthy Foods transactions and (2) can deploy an HFFI-FA award? If no, what other information should the CDFI Fund collect in order to determine whether an Applicant is financing eligible Healthy Foods transactions and can deploy an HFFI-FA award?

D. Persistent Poverty Counties—Financial Assistance (PPC-FA) Application

The following questions are related to the burden and information requested in the PPC-FA Application, and responses may be used to make modifications to the information being requested in the PPC-FA Application. Commenters should clearly distinguish their comments related to this section when providing their responses and ensure comments are clearly labeled corresponding to each section and question number.

1. Is the information collected sufficient to determine whether an Applicant (1) is providing eligible financing in Persistent Poverty Counties and (2) can deploy a PPC-FA award? What other information should the CDFI

Fund consider in order to determine whether an Applicant is providing financing in Persistent Poverty Counties and can deploy a PPC-FA award?

E. Disability Funds—Financial Assistance (DF-FA) Application

The following questions are related to the burden and information requested in the DF-FA Application, and responses may be used to make modifications to the information being requested in the DF-FA Application. Commenters should clearly distinguish their comments related to this section when providing their responses and ensure comments are clearly labeled corresponding to each section and question number.

1. Is the information collected sufficient to determine whether an Applicant (1) is financing eligible DF-FA transactions and (2) can deploy a DF-FA award? What other information should the CDFI Fund consider in order to determine whether an Applicant is financing eligible DF-FA transactions and can deploy a DF-FA award?

F. Other CDFI Program and NACA Program-Related Topics and Considerations

The following questions are related to CDFI Program and NACA Program policy topics and will not impact the burden or information requested in the Applications. Responses to these questions may inform future areas of focus for program design and information requested in future Applications. Commentators should clearly distinguish their comments related to this section when providing their responses.

1. *Measuring Economic Distress.* The CDFI Fund is considering developing place-based indicators to measure economic distress in the communities where CDFIs invest their dollars at the census tract level.

a. Are the following indicators appropriate to measure track record of serving economically distressed communities/populations? What, if any, other metrics should be used to measure the level of economic distress of communities/populations served?

i. *Median Family Income (MFI):* Calculated by dividing MFI of the census tract by the appropriate benchmark (Metropolitan Statistical Area MFI, state MFI, national metro MFI, or national non-metro MFI). For example, if MFI share is 136.9%, it means the census tract has an MFI that is 36.9% larger than the corresponding geographic benchmark. The benchmark used to calculate the MFI share of a tract is dependent on whether the census

tract is within a metro or non-metro area. Within a metropolitan area, the Metropolitan Statistical Area MFI or the national metropolitan area MFI, whichever is greater is used. Outside of a metropolitan area, the statewide non-metropolitan area MFI or the national non-metropolitan area MFI, whichever is greater is used.

ii. Unemployment Rate: Represents the number of unemployed people living in the census tract as a percentage of the labor force (the sum of the employed and unemployed).

iii. Poverty Rates: The ratio of the number of people living in the census tract whose income falls below the poverty line (minimum level of income deemed adequate in a particular area) as a percent of the population.

iv. Historical Poverty: An average of the poverty rates of people living in the census tract in the most current and previous two decennial censuses for the census tract.

v. Percentage of Other Targeted Populations residing in the underlying census tracts: Represents the number of OTPs living in the census tract as a percentage of the population.

b. For CDFIs with Low Income Target Population or Other Targeted Population Target Markets (versus geographically based Target Markets), are the indicators listed above in Question 1. appropriate to measure the track record of serving economically distressed communities/populations? What, if any, other metrics should be used to measure the level of economic distress of communities/populations served?

2. *Deep Impact Lending.* In addition to assessing an Applicant's track record serving economically distressed communities/populations and creating economic opportunities, the CDFI Fund is interested in incorporating an Applicant's commitment to "deep impact" lending/investment in its projected activity as part of the evaluation and/or compliance process. "Deep impact" lending/investment is financing activities that reach the hardest to serve borrowers and most underserved communities/populations.

a. Please provide input on the proposed definitions/metrics to qualify as "deep impact" lending, as defined by the U.S. Department of Treasury's Emergency Capital Investment Program (ECIP) Rate Reduction Incentive Guidelines. Are the following definitions appropriate to measure "deep impact" lending/investment for CDFIs? If not, why not? What, if any, other definitions/metrics should be used to qualify as "deep impact" lending/investment?

i. Lending/investment to Low-Income Borrowers. Low-Income means equal to or less than 80% of the area median income.

ii. Mortgage Lending to Other Targeted Populations.

iii. Lending/investment in Persistent Poverty Counties (PPC): PPC includes any county, including county equivalent areas in Puerto Rico, that has had 20% or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses and the 2011–2015 5-year data series available from the American Community Survey of the Bureau of the Census or any other territory or possession of the United States that has had 20% or more of its population living in poverty over the past 30 years, as measured by the 1990, 2000 and 2010 Island Areas Decennial Censuses, or equivalent data, of the Bureau of the Census.

iv. Lending/investments in Indian Reservations and Native Hawaiian Homelands.

v. Lending/investments in U.S. Territories: U.S. Territories include American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

vi. Lending/investments to Underserved Small Businesses: A loan/investment made to a business with revenues that do not exceed \$100,000 or that is majority owned by individual(s) that are low income and/or from Other Targeted Populations.

vii. Deeply Affordable Housing Financing: Financing for any (1) affordable housing units restricted to households earning below 30% of AMI for a period not less than 10 years, prorated based on the percentage that such units make up the total number of housing units; or (2) affordable housing development project in a "high opportunity area" as defined by the Federal Housing Finance Agency (FHFA).

viii. Public Welfare and Community Development Investments: Public Welfare Investments pursuant to 12 U.S.C. 24(eleventh) or 12 U.S.C. 338a if they primarily benefit Low-Income or Minority individuals or businesses.

b. The CDFI Fund is contemplating adding a CDFI's commitment to engage in "deep impact" lending going forward as part of the evaluation process and/or compliance process. As such, the CDFI Fund is considering adding a new PG&M based on an Applicant's projected activity for "deep impact" lending and investment. The new PG&M would be an additional performance goal and would not replace existing PG&Ms. Is it appropriate to consider

"deep impact" lending/investment as part of the evaluation process? How should such a PG&M be structured—as a percentage of overall projected activity, a percentage of the FA award amount, a dollar volume commitment to deep impact lending/investment, or something else (please describe)?

3. *Net Asset Ratio.* The CDFI Fund is interested in prioritizing FA awards to CDFIs that are most effectively leveraging their balance sheet and the resources they already have available to them, and for which an FA award is the most essential for the CDFI's growth and ability to leverage additional funds to serve communities in need. A CDFI's Net Asset Ratio represents a CDFI's net assets compared to its total assets and can be a measure of the overall capital structure of an organization. Is a CDFI's Net Asset Ratio the appropriate measure to assess if a CDFI is effectively utilizing its balance to leverage resources? If yes, what should the target Net Asset Ratio be? If not, what is the appropriate measure(s) and target benchmark(s)?

4. *Small and Emerging CDFI Assistance.* CDFIs may qualify as Small and Emerging CDFI Assistance (SECA) Applicants if their asset size does not exceed a pre-determined maximum amount based on financial institution type OR if they have conducted financing activities for four years or less prior to the opening of the funding round. Certified CDFIs that exceed the pre-determined maximum asset size thresholds and have more than four years of financing activity are considered as Core Applicants. Currently, SECA Applicants have different Application requirements and evaluation parameters than Core Applicants because of their small and/or emerging status. Mainly, Matching Funds requirements are typically waived for SECA Applicants. Also, a higher percentage of the SECA Applicant pool progresses from Step 3 to Step 4 of the award evaluation process (the top 70% of SECA Applicants versus top 60% of Core Applicants).

a. The CDFI Fund is seeking input on whether there should be a maximum number of three FA awards a CDFI can receive as a SECA Applicant. In other words, should CDFIs be required to apply as Core Applicants after they receive a maximum number of three FA awards under the SECA designation, regardless of asset size or financial activity start date of the CDFI? If not three, what should that maximum number of SECA awards be? If there should be no limit on the number of FA awards that a CDFI can receive as a SECA Applicant, why not?

b. As noted above, organizations may qualify for SECA if they started financing activities no more than four years prior to the opening of the funding round, regardless of asset size. Is the start date for financing activity to qualify for SECA appropriate? If not, what should it be? What, if any, other changes would you make to the financing activity start date component of the SECA definition?

5. Small and Emerging CDFI Assistance. As noted above, organizations may qualify as SECA Applicants if their asset size does not exceed a pre-determined maximum amount based on financial institution type, regardless of financial activity start date. SECA asset size thresholds have not been uniformly assessed and updated across all financial institutions types. The CDFI Fund is seeking input on the SECA maximum total asset size thresholds as follows:

a. Banks: Updating the threshold from \$250 million to \$346 million for banks/bank holding companies, which corresponds to the FY 2022 Community Reinvestment Act (CRA) asset size threshold for small banks set by the Federal bank regulatory agencies. This practice is consistent with the CDFI Fund's Bank Enterprise Award (BEA) Program, which uses asset size classes that correspond to CRA asset size thresholds in determining the cut off for small institutions. Should the threshold be updated? If yes, is \$346 million the appropriate threshold? If not, what is the appropriate threshold and why? Should the threshold be updated regularly to correspond with updates to the CRA asset size threshold for small institutions?

b. Credit Unions: Retaining the current threshold of \$100 million for credit unions, which aligns with the current National Credit Union Administration (NCUA) definition for small institutions. Should this threshold be retained? If it should not be retained, what is the appropriate threshold and why? Should the threshold be updated regularly to correspond with updates to NCUA's definition for small institutions?

c. Unregulated Institutions: The SECA asset size threshold for unregulated institutions is \$5 million and has not been updated since 2006. The CDFI Fund is considering updating the SECA asset threshold for unregulated institutions. One option is to adjust the current \$5 million threshold for inflation using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), the same index used by the Federal Reserve Board and Federal Depository

Institution Corporation (FDIC) in adjusting its threshold amounts for small banks. Using the CPI-W to adjust the \$5 million threshold in 2006 dollars would represent approximately \$7.5 million in 2022 dollars. Should the threshold be updated? If yes, is \$7.5 million the appropriate threshold? If \$7.5 million is not the appropriate threshold, what is the appropriate threshold and why? If the threshold should not change, why should it remain \$5 million? Should the threshold be updated regularly? If not, why not? If yes, is the CPI-W the appropriate inflation factor to use? If not, what source should be used as the benchmark for the updates?

6. Small and Emerging CDFI Assistance. Per the FY 2022 NOFA, the maximum FA award request for SECA Applicants is currently \$700,000 whereas the maximum FA award request for Core Applicants is \$1 million. Currently an FA Applicant that meets SECA requirements (called "SECA qualified Applicant") may choose to apply as a Core Applicant if the Applicant wants to request more than the \$700,000 SECA maximum award request (up to the \$1 million maximum award request for Core Applicants). SECA qualified Applicants that apply as Core are treated as Core Applicants, and are held to the Application requirements and evaluation parameters of a Core Applicant. The CDFI Fund is considering removing the option for SECA qualified Applicants to apply as Core Applicants, therefore only allowing SECA qualified Applicants to apply under the SECA Application (which would mean all SECA qualified Applicants would be limited to the lower maximum award request).

a. What feedback do CDFIs have on removing the option for SECA qualified organizations to apply as Core Applicant?

b. Are there ways the CDFI Fund can implement this change to minimize impacts to the affected Applicants?

7. Funding Levels for CDFIs. The CDFI Fund is prohibited by statute from obligating more than \$5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. Should the \$5 million funding cap be reduced? If yes, what should the funding cap be?

8. Funding Levels for CDFIs. Should larger CDFIs be limited on the total dollar amount or number of FA awards they receive within a certain timeframe? If yes, what should be the minimum asset size to be classified as a larger CDFI for each type of unregulated

institution, bank/bank holding company, and credit union? For the purposes of this Request for Public Comment, the CDFI Fund proposes the following asset sizes for "larger CDFIs":

- Banks with assets of more than \$1.5 billion
- Credit Unions with assets of more than \$1 billion
- Unregulated institutions with assets of more than \$25 million

9. Funding Levels for CDFIs. Please fill in the blanks for each for each institution type of unregulated institution, bank/bank holding company, and credit union: "CDFIs with asset size over \$_____ can receive a maximum of \$_____ in CDFI and NACA Program FA awards every _____ years."

10. Continued Viability for CDFIs. The Riegle Act requires that Applicants for FA provide a comprehensive strategic plan for the organization that contains a business plan of not less than five years in duration. The plan should demonstrate that the Applicant will be properly managed and will have the capacity to operate as a CDFI that will not be dependent upon assistance from the CDFI Fund for continued viability.

a. To what extent are CDFIs reliant on FA funding from the CDFI Fund for their continued viability?

b. What do CDFIs need in order to be independent from the CDFI Fund's assistance for continued viability? Would a program model in which CDFIs receive significantly larger award sizes for a three- to five-year period support viability independent from the CDFI Fund? If not, what would support a CDFI's growth towards such independence?

11. Sponsoring Entities. As noted earlier, the NACA Program allows organizations that primarily serve Native Communities, Sponsoring Entities, to apply for TA awards in order to create a new legal entity that will become a Certified CDFI. In recent history, Sponsoring Entities have largely struggled to find success in establishing a Certified CDFI. Between 2013 and 2020, only two Sponsoring Entities have created new legal entities that ultimately achieved CDFI Certification. Should the CDFI Fund consider eliminating the Sponsoring Entity model and focus resources on building the capacity of emerging Native CDFIs in other ways? If yes, please specify other ways in which the CDFI Fund can support the creation of new Native CDFIs. If no, please specify why this model is needed and what enhancements would be beneficial to increasing the success of Sponsoring Entities creating a legal entity that achieves CDFI Certification.

(Authority: Pub. L. 103–325; 12 U.S.C. 4703, 4703 note, 4710, 4717; 31 U.S.C. 321; 12 CFR part 1805)

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–04348 Filed 3–2–23; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

United States Mint

Establish Prices for 2023 Morgan and Peace Two-Coin Reverse Proof Set™

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for United States Mint numismatic products in accordance with the table below:

Product	2023 Retail price
Morgan and Peace Two-Coin Reverse Proof Set	\$185

FOR FURTHER INFORMATION CONTACT: Kai Washington, United States Mint, 801 9th Street NW, Washington, DC 20220, or call 1–202–354–7662.

Authority: Public Law 116–286.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2023–04444 Filed 3–2–23; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0919]

Agency Information Collection Activity Under OMB Review: Servicemembers' Group Life Insurance—Traumatic Injury Protection (TSGLI) Application for TSGLI Benefits and TSGLI Appeal Request Form

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. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to “OMB Control No. 2900–0919.”

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0919” in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Service Members' Group Life Insurance—Traumatic Injury Protection (TSGLI) Application for TSGLI Benefits (SGLV 8600) And TSGLI Appeal Request Form (SGLV 8600A)

OMB Control Number: 2900–0919.

Type of Review: Extension of a currently approved collection.
Abstract: The SGLV 8600 form is used by the Department of Veterans Affairs to request information in order to adjudicate TSGLI claims for benefits. The form is filled out by members or former members of the uniformed services who have suffered a traumatic injury while in service, and the uniformed services approve or disapprove the claim. If the uniformed services approve the TSGLI claim, then the insurer for the TSGLI program, The Prudential Insurance Company of America (Prudential), pays the claim. The form is authorized by 38 U.S.C. 1980A and 38 CFR 9.20.

The SGLV 8600a form is used by the Department of Veterans Affairs to request information in order to adjudicate TSGLI appeals for benefits. The form is filled out by members or former members of the uniformed services who have suffered a traumatic injury while in service and had their TSGLI claim disapproved. The form is authorized by 38 U.S.C. 1980A and 38 CFR 9.20.

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: 87 FR

80262 on December 29, 2022, pages 80262.

Affected Public: Individuals or Households.

Estimated Annual Burden: 190 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One per year.

Estimated Number of Respondents: 758.

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. 2023–04363 Filed 3–2–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a re-establishment for a matching program.

SUMMARY: This computer matching agreement sets forth the terms, conditions, and safeguards under which the Social Security Administration (SSA) will disclose tax return information to the Department of Veterans Affairs, Veterans Health Administration (VA/VHA). VA/VHA will use the tax return information to verify veterans' employment status and earnings to determine eligibility for its health benefit programs.

DATES: Comments on this matching program must be received no later than April 3, 2023. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new agreement 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. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Comments may be submitted through www.Regulations.gov or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to Computer Matching Agreement Between The Social Security Administration and The Department of Veterans Affairs Veterans Health Administration, Match #1052. Comments received will be available at

regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT:

Stacey Echols, Director, Health Eligibility Center VHA Member Services, Department of Veterans Affairs, 2957 Clairmont Rd. NE, Suite 200 Atlanta, GA 30329, Email: *stacey.echols@va.gov* Telephone: 404–828–5303.

SUPPLEMENTARY INFORMATION: The Health Eligibility Center (HEC) verifies the self-reported income of certain veterans whose eligibility for medical care is based on income level. HEC is an entity within the VHA, Member Services. “Tax return information,” for purposes of this agreement, means SSA’s records obtained under the authority of 26 U.S.C. 6103 concerning the amount of an individual’s earnings from wages or self-employment income, the period(s) involved, and the identities and addresses of employers.

Participating Agencies: Department of Veterans Affairs, Veterans Health Administration (VA/VHA) and Social Security Administration (SSA).

Authority for Conducting the Matching Program: This agreement is executed under the Privacy Act of 1974, 5 United States Code (U.S.C.) 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, and the regulations and guidance promulgated thereunder, and relevant provisions of the Internal Revenue Code (IRC), 26 U.S.C. 6103. The legal authorities for SSA to conduct this computer matching are sections 38 U.S.C. 5106, 5317, 1710, and 26 U.S.C. 6103(l)(7)(D)(viii). 38 U.S.C. 5106 and 5317 requires Federal agencies to furnish VA with information the VA Secretary may request for determining

eligibility for or the amount of VA benefits. 38 U.S.C. 1710 requires VA/VHA to collect income information from certain applicants for medical care and to use that income data to determine the appropriate eligibility category for the applicant’s medical care. 26 U.S.C. 6103(l)(7) authorizes the disclosure of tax return information with respect to net earnings from self-employment and wages, as defined by relevant IRC sections, to Federal, state, and local agencies administering certain benefit programs under Title 38 of the U.S.C. 7213 of the Intelligence Reform and Terrorism Prevention Act of 2004 provides SSA authority to add a death indicator to verification routines that the agency determines to be appropriate.

Purpose(s): This computer matching agreement sets forth the terms, conditions, and safeguards under which the Social Security Administration (SSA) will disclose tax return information to the Department of Veterans Affairs, Veterans Health Administration (VA/VHA). VA/VHA will use the tax return information to verify veterans’ employment status and earnings to determine eligibility for its health benefit programs.

Categories of Individuals: Veterans applying for VA Health Care Benefits.

Categories of Records: VA/VHA will provide SSA with the following information for each individual for whom VA/VHA requests tax return information: first name, last name, SSN, and date of birth (DOB). VA will not include the individual’s gender/sex in the finder file it submits to SSA. VA/VHA will provide the requested tax report year for which data is being requested.

System(S) of Records: SSA will match the data in VA/VHA’s electronic file

with SSA Enumeration data from the Master Files of SSN Holders and SSN Applications (referred to as the Enumeration System), 60–0058, last fully published at 87 FR 263 (January 4, 2022). SSA will subsequently run those verified SSNs against the Earnings Recording and Self-Employment Income System (referred to as the Master Earnings File (MEF)), 60–0059, last fully published at 71 FR 1819 (January 11, 2006) and amended at 78 FR 40542 (July 5, 2013) and 83 FR 54969 (November 1, 2018) to extract and disclose the needed tax return information to VA/VHA. VA/VHA will match SSA information with information extracted from its system of records “Income Verification Records—VA” (89VA10NB). The information in these systems of records may be updated during the effective period of this agreement as required by the Privacy Act.

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. John Oswalt, Chief Privacy Officer and Chair of the Data Integrity Board, Department of Veterans Affairs approved this document on January 24, 2023 for publication.

Dated: February 28, 2023.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

[FR Doc. 2023–04412 Filed 3–2–23; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for
Residential Clothes Washers; Proposed Rule

DEPARTMENT OF ENERGY**10 CFR Part 430****[EERE–2017–BT–STD–0014]****RIN 1904–AD98****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 and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act, as amended (“EPCA”), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential clothes washers (“RCWs”). EPCA also requires the U.S. Department of Energy (“DOE”) to periodically determine whether more-stringent, standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice of proposed rulemaking (“NOPR”), DOE proposes amended energy conservation standards for RCWs, and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Meeting: DOE will hold a public meeting via webinar on Tuesday, March 28, 2023, from 1:00 p.m. to 4:00 p.m. See section VII of this document, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this NOPR no later than May 2, 2023.

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 3, 2023.

ADDRESSES: 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:

Email: ConsumerClothesWasher2017STD0014@ee.doe.gov.

Include the docket number EERE–2017–BT–STD–0014 in the subject line of the message.

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.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

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

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

The docket web page can be found at www.regulations.gov/docket/EERE–2017–BT–STD–0014. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII of this document for information on how to submit comments through www.regulations.gov.

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the 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 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.

Ms. Melanie Lampton, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 751–5157. Email: Melanie.Lampton@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.

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 - 3. Description on Estimated Number of Small Entities Regulated
 - 4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities
 - 5. Duplication, Overlap, and Conflict With Other Rules and Regulations
 - 6. Significant Alternatives to the Rule
 - C. Review Under the Paperwork Reduction Act
 - D. Review Under the National Environmental Policy Act of 1969
 - E. Review Under Executive Order 13132
 - F. Review Under Executive Order 12988
 - G. Review Under the Unfunded Mandates Reform Act of 1995
 - H. Review Under the Treasury and General Government Appropriations Act, 1999
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 - A. Participation in the Webinar
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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 EPCA² 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.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m))

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for RCWs. The proposed standards, which 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 measured using the test procedure at title 10 of the Code of Federal Regulations ("CFR"), part 430, subpart B, appendix J ("appendix J"), are shown in Table I.1. These proposed standards, if adopted, would apply to all RCWs listed in Table I.1 manufactured in, or imported into, the United States starting on the date 3 years after the publication in the **Federal Register** of the final rule for this rulemaking. As shown in Table I.1 and discussed further in IV.A.1 of this document, DOE proposes standards for separate RCW product classes that are

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.

defined based on axis of loading (*i.e.*, top-loading or front-loading), clothes container capacity (measured in cubic feet (“ft³”)), and whether the product is automatic or semi-automatic.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

Product class	Minimum energy efficiency ratio (lb/kWh/cycle)	Minimum water efficiency ratio (lb/gal/cycle)
Semi-Automatic Clothes Washers	2.12	0.27
Automatic Clothes Washers:		
Top-Loading, Ultra-Compact (less than 1.6 ft ³ capacity)	3.79	0.29
Top-Loading, Standard-Size (1.6 ft ³ or greater capacity)	4.78	0.63
Front-Loading, Compact (less than 3.0 ft ³ capacity)	5.02	0.71
Front-Loading, Standard-Size (3.0 ft ³ or greater capacity)	5.73	0.77

A. Benefits and Costs to Consumers

Table I.2 presents DOE’s evaluation of the economic impacts of the proposed standards, represented by trial standard

level (“TSL”) 4, on consumers of RCWs, as measured by the average life-cycle cost (“LCC”) savings and the simple payback period (“PBP”).⁴ 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 13.7 years (see section IV.F.6 of this document).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF RESIDENTIAL CLOTHES WASHERS

Product class	Average LCC savings (2021\$)	Simple payback period (years)
Semi-Automatic Clothes Washers	\$329	0.3
Automatic Clothes Washers:		
Top-Loading, Ultra-Compact (less than 1.6 ft ³ capacity) *	n.a.	n.a.
Top-Loading, Standard-Size (1.6 ft ³ or greater capacity)	134	5.9
Front-Loading, Compact (less than 3.0 ft ³ capacity)	7	9.1
Front-Loading, Standard-Size (3.0 ft ³ or greater capacity)	19	3.2

*The entry “n.a.” means not applicable because the standard at the proposed TSL is the baseline.

DOE’s analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (“INPV”) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2022–2056). Using a real discount rate of 9.3 percent, DOE estimates that the INPV for manufacturers of RCWs in the case without amended standards is \$1,738.3 million in 2021\$. Under the proposed standards, the change in INPV is estimated to range from –30.5 percent to –20.8 percent, which is approximately –\$530.2 million to –\$361.6 million. In order to bring products into compliance with amended standards, it is estimated

that the industry would incur total conversion costs of \$690.8 million.

DOE’s analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (“MIA”) are presented in section V.B.2 of this document.

C. National Benefits and Costs⁵

DOE’s analyses indicate that the proposed 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 standards (2027–2056) amount to 1.45 quadrillion British thermal units (“Btu”), or quads of

energy and 2.53 trillion gallons of water, respectively.⁶

The cumulative net present value (“NPV”) of total consumer benefits of the proposed standards for RCWs ranges from \$5.14 billion (at a 7-percent discount rate) to \$14.52 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs and installation costs for RCWs purchased in 2027–2056.

In addition, the proposed standards for RCWs are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 53.21 million metric tons (“Mt”) of carbon dioxide (“CO₂”), 19.93 thousand tons of sulfur dioxide (“SO₂”), 92.39 thousand tons of nitrogen

⁴ The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of new or amended standards (see section IV.F.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).

⁵ All monetary values in this document are expressed in 2021 dollars.

⁶ The quantity refers to full-fuel-cycle (“FFC”) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas,

petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1 of this document.

⁷ A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO₂ are presented in short tons.

oxides (“NO_x”), 411.43 thousand tons of methane (“CH₄”), 0.48 thousand tons of nitrous oxide (“N₂O”), and 0.13 tons of mercury (“Hg”).⁸

DOE estimates the value of climate benefits from a reduction in greenhouse gases (“GHG”) using four different estimates of the social cost of CO₂ (“SC–CO₂”), the social cost of methane (“SC–CH₄”), and the social cost of nitrous oxide (“SC–N₂O”). Together these represent the social cost of GHG (“SC–GHG”).⁹ DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (“IWG”).¹⁰ 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 \$2.71 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 SO₂ and NO_x emissions reductions using benefit per ton estimates from the scientific literature, as discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be \$1.91 billion using a 7-percent discount rate, and \$4.57 billion using a 3-percent

discount rate.¹¹ DOE is currently only monetizing (for SO₂ and NO_x) PM_{2.5} precursor health benefits and (for NO_x) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM_{2.5} emissions.

Table I.3 summarizes the economic benefits and costs expected to result from the proposed 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 ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS
[TSL 4]

	Billion 2021\$
3% discount rate	
Consumer Operating Cost Savings	27.83
Climate Benefits *	2.71
Health Benefits **	4.57
Total Benefits †	35.11
Consumer Incremental Product Costs ‡	13.31
Net Benefits	14.52
7% discount rate	
Consumer Operating Cost Savings	12.73
Climate Benefits * (3% discount rate)	2.71
Health Benefits **	1.91
Total Benefits †	17.35
Consumer Incremental Product Costs ‡	7.58
Net Benefits	5.14

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

* Climate benefits are calculated using four different estimates of the social cost of carbon (SC–CO₂), methane (SC–CH₄), and nitrous oxide (SC–N₂O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate) (see section IV.L of this document). 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, but DOE does not have a single central SC–GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government’s emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana v. Biden*, No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit’s order, the preliminary injunction is no longer in effect, pending resolution of the Federal government’s appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from “adopting, employing, treating as binding, or relying upon” the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

⁸ DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2022* (“AEO2022”). AEO2022 represents current federal and state legislation and final implementation of regulations as of the time of its preparation. See section IV.K of this document for further discussion of AEO2022 assumptions that effect air pollutant emissions.

⁹ On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government’s emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana v. Biden*, No. 21–cv–

1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit’s order, the preliminary injunction is no longer in effect, pending resolution of the Federal government’s appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from “adopting, employing, treating as binding, or relying upon” the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and

presents monetized benefits where appropriate and permissible under law.

¹⁰ See Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021. www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.

¹¹ DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ and NO_x) PM_{2.5} precursor health benefits and (for NO_x) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM_{2.5} emissions. 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.

The benefits and costs of the proposed 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 benefits of emission reductions, all annualized.¹²

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of RCWs shipped in 2027–2056. The benefits associated with reduced emissions achieved as a result of the proposed standards are also calculated based on the lifetime of RCWs shipped in

2027–2056. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section IV.L of this document.

Table I.4 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_x and SO₂ emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this

rule is \$800.8 million per year in increased equipment costs, while the estimated annual benefits are \$1,344.2 million in reduced equipment operating costs, \$155.7 million in climate benefits, and \$202.0 million in health benefits. In this case, the net benefit would amount to \$901.1 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is \$764.0 million per year in increased equipment costs, while the estimated annual benefits are \$1,598.0 million in reduced operating costs, \$155.7 million in climate benefits, and \$262.2 million in health benefits. In this case, the net benefit would amount to \$1,251.8 million per year.

TABLE I.4—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS
[TSL 4]

	Million 2021\$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	1,598.0	1,544.5	1,657.8
Climate Benefits *	155.7	151.7	159.7
Health Benefits **	262.2	255.8	268.9
Total Benefits†	2,015.9	1,952.0	2,086.4
Consumer Incremental Product Costs ‡	764.0	778.7	695.5
Net Benefits	1,251.8	1,173.4	1,390.9
7% discount rate			
Consumer Operating Cost Savings	1,344.2	1,302.8	1,389.7
Climate Benefits * (3% discount rate)	155.7	151.7	159.7
Health Benefits **	202.0	197.5	206.7
Total Benefits†	1,701.9	1,652.0	1,756.1
Consumer Incremental Product Costs‡	800.8	813.3	737.9
Net Benefits	901.1	838.7	1,018.3

Note: This table presents the costs and benefits associated with RCWs shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2022 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.

¹² To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2021, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated

with each year's shipments in the year in which the shipments occur (e.g., 2030), and then discounted the present value from each year to 2021. The calculation uses discount rates of 3 and 7 percent for all costs and benefits. Using the present value,

DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

* Climate benefits are calculated using four different estimates of the global SC-GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC-GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC-GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana v. Biden*, No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from “adopting, employing, treating as binding, or relying upon” the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ and NO_x) PM_{2.5} precursor health benefits and (for NO_x) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM_{2.5} emissions. See section IV.L of this document for more details.

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

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

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K and IV.L of this document.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, products achieving these standard levels are already commercially available for all product classes covered by this proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed, to a great extent, the burdens of the proposed standards.

Using a 7-percent discount rate for consumer benefits and costs and NO_x and SO₂ reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for RCWs is \$800.8 million per year in increased product costs, while the estimated annual benefits are \$1,344.2 million in reduced product operating costs, \$155.7 million in climate benefits and \$202.0 million in health benefits. The net benefit amounts to \$901.1 million per year.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.¹³ For example, some covered products and equipment have substantial energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the proposed standards are projected to result in estimated national energy savings of 1.45 quads FFC, the equivalent of the primary annual energy use of 16 million homes. The NPV of consumer benefit for these projected energy savings is \$5.14 billion using a discount rate of 7 percent, and \$14.52 billion using a discount rate of 3 percent. The cumulative emissions reductions associated with these energy savings are 53.21 Mt of CO₂, 19.93 thousand tons of SO₂, 92.39 thousand tons of NO_x, 0.13 tons of Hg, 411.43 thousand tons of CH₄, and 0.48 thousand tons of N₂O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC-GHG at a 3-percent discount rate) is \$2.71 billion. The estimated monetary value of the health benefits from reduced SO₂ and NO_x emissions is \$1.91 billion using a 7-percent discount rate and \$4.57 billion using a 3-percent discount rate. As such, DOE has initially determined the energy savings from the proposed standard levels are “significant” within the meaning of 42 U.S.C. 6295(o)(3)(B).¹⁴ A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying technical support document (“TSD”).¹⁵

DOE also considered more-stringent energy efficiency levels as potential standards, and is still considering them in this proposed rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent

energy efficiency levels would outweigh the projected benefits.

Based on consideration of the public comments DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

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

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy

¹³ 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).

¹⁴ See section III.E.2 of this document for further discussion of how DOE determines whether energy savings are “significant” within the context of the statute.

¹⁵ The TSD is available in the docket for this proposed rulemaking at www.regulations.gov/docket/EERE-2017-BT-STD-0014.

conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for 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) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

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 the manufacturers and on the consumers of the products subject to such standard;

(2) 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 products which are likely to result from the imposition of the standard;

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

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of 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 imposition of 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 establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those

generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (“EISA 2007”), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE’s current test procedures for RCWs address standby mode and off mode energy use as part of the EER metric. In this rulemaking, DOE intends to incorporate such energy use into any amended energy conservation standards that it may adopt.

B. Background

1. Current Standards

The current energy conservation standards for RCWs were established in a direct final rule published on May 31, 2012. 77 FR 32308 (“May 2012 Final Rule”).¹⁶ These standards are consistent with a joint proposal submitted to DOE

¹⁶ DOE published a confirmation of effective date and compliance date for the direct final rule on October 1, 2012. 77 FR 59719.

by interested parties representing manufacturers, energy and environmental advocates, and consumer groups.¹⁷

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 (“ft³/kWh/cycle”), and maximum allowable integrated water factor (“IWF”), measured in gallons per cycle per cubic

foot (“gal/cycle/ft³”), as measured according to appendix J2. *Id.* The May 2012 Final Rule established four classes of RCW: top-loading, compact (less than 1.6 ft³ capacity); top-loading, standard-size (1.6 ft³ or greater capacity); front-loading, compact (less than 1.6 ft³ capacity); and front-loading, standard-size (1.6 ft³ or greater capacity). 77 FR 32308, 32316–32320. The May 2012 Final Rule established a two-phase compliance date—the first phase of

amended standards applied to RCWs manufactured on or after March 7, 2015. 77 FR 32308, 32380. The second phase of amended standards, which is currently applicable, applies to RCWs manufactured on or after January 1, 2018. *Id.*

The current energy conservation standards for RCWs are set forth in DOE’s regulations at 10 CFR 430.32(g)(4) and are shown in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION 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-Size (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-Size (1.6 ft ³ or greater capacity)	1.84	4.7

2. History of Standards Rulemaking for Residential Clothes Washers

On August 2, 2019, DOE published a request for information (“RFI”) to initiate an effort to determine whether to amend the current energy conservation standards for RCWs. 84 FR 37794 (“August 2019 RFI”). Specifically, through the August 2019 RFI, DOE sought data and information that could enable the agency to determine whether DOE should propose a “no new standard” determination because a more stringent standard: (1) would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of foregoing. *Id.*

On September 29, 2021, DOE published a notification of the availability of a preliminary technical support document for RCWs (“September 2021 Preliminary Analysis”). 86 FR 53886. In that notification, DOE sought comment on the analytical framework, models, and tools that DOE used to evaluate

potential standards for RCWs, the results of preliminary analyses performed, and the potential energy conservation standard levels derived from these analyses, which DOE presented in the accompanying Preliminary TSD (“September 2021 Preliminary TSD”).¹⁸ *Id.* On October 29, 2021, DOE extended the comment period for the September 2021 Preliminary Analysis for an additional 45 days. 86 FR 59889.

The September 2021 Preliminary Analysis was conducted based on energy and water use metrics as measured according to proposed amendments to the test procedure as published in a NOPR on September 1, 2021 (“September 2021 TP NOPR”). 86 FR 49140. Part of this analysis included developing translations between the metrics established by the current appendix J2 test procedure (*i.e.*, IMEF and IWF) and the new metrics proposed to be established by the new appendix J test procedure (*i.e.*, EER and WER).

On April 13, 2022, DOE published a notification of data availability

(“NODA”) presenting the results of additional testing conducted in furtherance of the development of the translations between the current test procedure and the proposed new test procedure. 87 FR 21816 (“April 2022 NODA”). The April 2022 NODA included a larger sample size of RCWs than the September 2021 Preliminary Analysis (44 units compared to 16 in the September 2021 Preliminary Analysis, and covering all proposed product classes). The April 2022 NODA presented detailed energy and water use measurements for each model as well as a summary of key characteristics pertaining to each model (*e.g.*, product class, capacity, cabinet width, *etc.*). On May 19, 2022, DOE reopened the comment period for the April 2022 NODA and provided additional information in response to stakeholder questions. 87 FR 30433.

DOE received comments in response to the September 2021 Preliminary Analysis and April 2022 NODA from the interested parties listed in Table II.2.

¹⁷ Available at: www.regulations.gov/document/EERE-2008-BT-STD-0019-0032.

¹⁸ September 2021 Residential Clothes Washers Energy Conservation Standards Preliminary Technical Support Document. Available online at

www.regulations.gov/document/EERE-2017-BTSTD-0014-0030.

TABLE II.2—WRITTEN COMMENTS RECEIVED IN RESPONSE TO THE SEPTEMBER 2021 PRELIMINARY ANALYSIS AND APRIL 2022 NODA

Commenter(s)	Abbreviation	Comment No. in the docket		Commenter type
		In response to September 2021 Preliminary Analysis	In response to April 2022 NODA	
Ameren Illinois, Commonwealth Edison Company, Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council Staff.	Ameren <i>et al</i>	42	* n/a	Efficiency Organization & Utilities.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, Natural Resources Defense Council.	ASAP <i>et al</i>	37	51	Efficiency Organizations.
Art Fraas	Fraas	35	n/a	Individual.
Association of Home Appliance Manufacturers	AHAM	40	53	Trade Association.
Commonwealth Edison Company and Northwest Energy Efficiency Alliance.	ComEd and NEEA	n/a	50	Utility & Efficiency Organization.
GE Appliances	GEA	38	n/a	Manufacturer.
Members of the committee of the National Academies of Sciences, Engineering, and Medicine.	NAS Members	34	n/a	National Advisors.
New York State Energy Research and Development Authority	NYSERDA	36	n/a	Public Benefit Corporation.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	43	52	Utilities.
Samsung	Samsung	41	n/a	Manufacturer.
Whirlpool Corporation	Whirlpool	39	n/a	Manufacturer.

* “n/a” signifies that the commenter or group of commenters did not provide a comment in response to the particular notification.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.¹⁹ To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the November 10, 2021, public meeting, DOE cites the written comments throughout this document. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this document.

GEA commented in support of AHAM’s comments and incorporated AHAM’s comments into its own by reference. (GEA, No. 38 at p. 2)

Whirlpool commented that it supports and echo AHAM’s positions. (Whirlpool, No. 39 at p. 2) Whirlpool added that its comments expand upon AHAM’s comments and provide additional detail or data to reinforce its positions, as well as to comment on areas where AHAM cannot comment. (*Id.*)

¹⁹ The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop energy conservation standards for RCWs. (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, page of that document).

NYSERDA commented that it supports the detailed comments provided by ASAP *et al.*, most notably investigating the correlation between clothes washer capacity and measured efficiency. (NYSERDA, No. 36 at p. 2)

AHAM specified that its comments in response to the April 2022 NODA do not supplant its previous comments submitted in response to the September 2021 Preliminary Analysis, but instead supplement those comments. (AHAM, No. 53 at p. 2)

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (“appendix A”), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking. While DOE published a preliminary analysis for this rulemaking, DOE did not publish a framework document in conjunction with the preliminary analysis. DOE notes, however, chapter 2 of the

September 2021 Preliminary TSD that accompanied the September 2021 Preliminary Analysis—entitled Analytical Framework, Comments from Interested Parties, and DOE Responses—describes the general analytical framework that DOE uses in evaluating and developing potential amended energy conservation standards. Additionally, prior to the notification of the September 2021 Preliminary Analysis, DOE published an RFI in which DOE identified and sought comment on the analyses conducted in support of the most recent energy conservation standards rulemakings for RCWs. 84 FR 37794. As such, publication of a separate framework document would be largely redundant of previously published documents.

Section 6(f)(2) of appendix A specifies that the length of the public comment period for a NOPR will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this NOPR, DOE has opted to instead provide a 60-day comment period. DOE requested comment in the August 2019 RFI on the technical and economic analyses and provided stakeholders a 60-day comment period, after publishing the comment period extension. 84 FR 37794, 84 FR 44557. Additionally, DOE initially provided a 75-day comment period for the September 2021

Preliminary Analysis with an extension to 120 days. 86 FR 53886, 86 FR 59889. DOE also provided a 30-day comment period for the April 2022 NODA and re-opened the comment period for an additional 9 days. 87 FR 21816, 87 FR 30433. The analytical methods used for this NOPR are similar to those used in previous rulemaking notices. As such, DOE believes a 60-day comment period is necessary and appropriate and will provide interested parties with a meaningful opportunity to comment on the proposed rule.

III. General Discussion

DOE developed this proposal after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. General Comments

This section summarizes general comments received from interested parties regarding rulemaking timing and process.

AHAM commented that publishing the September 2021 TP NOPR and the September 2021 Preliminary Analysis concurrently did not allow sufficient time for stakeholders to provide meaningful comments on either publication. (AHAM, No. 40 at pp. 2–4) AHAM commented that although DOE missed the statutory deadlines for both the test procedure and standards rulemakings, it is disingenuous to claim that the only option is to move forward concurrently on these rulemakings. (*Id.*) AHAM suggested that DOE should have published the test procedure earlier, considered implementing fewer changes to the test procedure, or made changes that do not require testing to evaluate or reestablish the baseline energy conservation standards. (*Id.*) AHAM expressed concern that DOE moving forward concurrently with these rulemakings will likely lead to DOE needing to conduct additional analysis based on the finalized test procedure before proposing a new energy conservation standard, and that DOE is missing the opportunity to receive meaningful feedback on the September 2021 Preliminary Analysis. (*Id.*) AHAM added that despite DOE's desire to move quickly to rectify missed statutory deadlines, DOE must ensure it meets other statutory criteria, including that a standard must be technically and economically justified. (*Id.*)

AHAM noted that the comment periods for the September 2021 Preliminary Analysis and the September 2021 TP NOPR overlapped by 34 days.

AHAM noted that it requested a 92-day comment period extension for the September 2021 TP NOPR to provide adequate time to evaluate the proposed changes to the test procedure through testing. (AHAM, No. 53 at p. 2) AHAM added that while it appreciated DOE considering that request and extending the comment period by 28 days, that extension was insufficient to complete the robust testing plan developed by AHAM and its members, gather the test data, and analyze the results. (AHAM, No. 40 at pp. 2–4; AHAM, No. 53 at p. 2)

AHAM stated that because of the insufficient time, it was unable to provide detailed comment on the accuracy, repeatability, and testing burden associated with the proposed test procedure and on its potential impact on measured efficiency, or fully comment on the proposed test procedures implications related to the September 2021 Preliminary Analysis. (AHAM, No. 53 at p. 2) AHAM further stated that it was planning its own testing in order to fully understand and evaluate DOE's proposed changes. (AHAM, No. 40 at pp. 2–4)

AHAM commented that it was poor process for DOE to issue a test procedure final rule before receiving comments on the April 2022 NODA, and to do so during a brief comment period extension. (*Id.*) AHAM added that DOE finalizing the test procedure during the brief NODA comment period extension made it nearly impossible for AHAM to review and analyze the final test procedure in addition to the new data and responses to AHAM's questions in order to formulate complete comments on the NODA. (*Id.*)

AHAM further commented that although DOE did not hold a public meeting for the April 2022 NODA, it appreciated that DOE answered its questions and provided more time for comments in order to allow commenters to review the updates. (AHAM, No. 53 at pp. 2–3) AHAM stated, however, that the timing of when DOE provided links to the updated data and responses to questions left very little time for review and analysis of the additional data and information. (*Id.*)

AHAM noted that although the April 2022 NODA is technically part of the energy conservation standards docket, comments on DOE's test data could relate to both the energy conservation standards and test procedure rulemakings. (AHAM, No. 53 at p. 3) AHAM stated that its comments in response to the April 2022 NODA therefore address both the test procedure and the energy conservation standards. (*Id.*) AHAM commented that

it was poor process for DOE to issue a test procedure final rule before receiving comments on the April 2022 NODA, and to do so during a brief comment period extension. (*Id.*) AHAM further explained that even though DOE answered or deferred most of AHAM's requests in the test procedure final rule and in the April 2022 NODA, AHAM's comments on the September 2021 Preliminary Analysis indicated that additional information was needed in order to provide full feedback to DOE on the test procedure. (*Id.*) AHAM added that DOE finalizing the test procedure during the brief NODA comment period extension made it nearly impossible for AHAM to review and analyze the final test procedure in addition to the new data and responses to AHAM's questions in order to formulate complete comments on the NODA. (*Id.*)

AHAM requested that DOE allow for 180 days between the publication of the test procedure final rule and the end of the comment period for the energy conservation standards NOPR. (AHAM, No. 40 at pp. 4–6; AHAM, No. 53 at p. 12)

Samsung also commented that, given the scope of changes proposed in appendix J, more data would be needed to establish the baseline and efficiency levels, which could further delay the finalization of the next energy conservation standards. (Samsung, No. 41 at p. 3) Samsung commented that it therefore believes more time and test data are needed to fully adopt appendix J. (*Id.*)

NYSERDA encouraged DOE to quickly proceed in this rulemaking to unlock additional significant savings for New Yorkers. (NYSERDA, No. 36 at p. 3)

In response to AHAM's comments regarding the timing of the September 2021 TP NOPR and the September 2021 Preliminary Analysis, DOE notes that the timing of the test procedure and energy conservation standards rulemakings have been conducted in accordance with DOE's procedures at appendix A to subpart C of part 430, *Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment* ("appendix A" or "Process Rule"). The Process Rule inherently recognizes a certain amount of overlap between test procedure and energy conservation standards rulemakings. In particular, the Process Rule specifies that new test procedures and amended test procedures that impact measured energy use or efficiency will be finalized at least 180 days prior to the close of the

comment period for a NOPR proposing new or amended energy conservation standards or a notice of proposed determination that standards do not need to be amended. Section 8(d)(1) of appendix A. Inherent to this requirement is a recognition that the earlier stages of the test procedure rulemaking (*i.e.*, the test procedure NOPR stage) would be conducted concurrently with the pre-NOPR stages of the energy conservation standards rulemaking (*i.e.*, the preliminary analysis stage). In other words, the implication of the timing established by the Process Rule is that a test procedure NOPR may provide the basis for a standards preliminary analysis; while a test procedure final rule provides the basis for a standards NOPR. DOE published a test procedure final rule on June 1, 2022 (“June 2022 TP Final Rule”). 87 FR 33316. This standards NOPR is publishing more than 180 days after the publication of the June 2022 TP Final Rule, in accordance with the requirements of the Process Rule.

As acknowledged by AHAM, DOE is conducting this rulemaking in fulfillment of its statutory obligations under EPCA. DOE recognizes and appreciates the information and data provided by multiple interested parties in response to the September 2021 TP NOPR, September 2021 Preliminary Analysis, and April 2022 NODA. As discussed throughout this NOPR, DOE has incorporated data and other information received during these prior rulemaking stages into the analyses conducted for this NOPR.

In response to the September 2021 Preliminary TSD, AHAM commented that DOE did not provide sufficient data to support the September 2021 Preliminary TSD, and that DOE’s analysis was not transparent. (AHAM, No. 40 at pp. 4–6) AHAM asserted that by providing summary data and conclusions without providing further detail, DOE failed to meet the requirements of the Administrative Procedure Act or the Data Quality Act. (*Id.*) AHAM further commented that the summary information that DOE provided as part of the September 2021 Preliminary TSD was somewhat helpful but did not allow stakeholders to fully assess the data and did not clearly demonstrate that DOE’s proposed translation between appendix J2 and proposed appendix J was accurate. (*Id.*) AHAM requested that DOE provide its full test data by model for all models tested to appendix J2 and new appendix J, via a NODA or other appropriate regulatory tool. (*Id.*) AHAM also requested that DOE share the model numbers of the clothes washers it tested

since it would help stakeholders, such as AHAM and its members, determine the representativeness of the sample. (*Id.*) Specifically, AHAM requested that all data released contain all variables including, but not limited to: total weighted per-cycle hot water energy consumption (“HE_T”), total weighted per-cycle machine electrical energy consumption (“ME_T”), total per-cycle energy consumption for removal of moisture (“DE_T”), combined per-cycle low power mode energy consumption (“ETLP”), and total weighted per-cycle water consumption (“Q_T”). (*Id.*) AHAM asked that if DOE cannot provide the information AHAM requested, DOE should issue an explanation as to why it cannot produce the data. (*Id.*) AHAM added that it will consider sharing its data confidentially with DOE once its analysis is complete so that DOE can include its analysis on the docket. (*Id.*)

AHAM stated that DOE should not issue an energy conservation standards NOPR until it publishes a NODA that provides updated data from DOE and AHAM members’ testing. (AHAM, No. 40 at pp. 4–6)

In response to the April 2022 NODA, AHAM commented that it had tested 26 RCW models that represent a cross-section of the market in terms of capacity and features. (AHAM, No. 53 at pp. 6–7) AHAM tested each model one to three times and averaged the results. (*Id.*) AHAM presented data comparing IMEF versus EER and IWF versus WER for the 26 units tested by AHAM and the 44 units tested by DOE in the April 2022 NODA, by product class. (*Id.*) AHAM concluded that DOE’s data presented in the April 2022 NODA appears to be similar to AHAM’s data in terms of test results, distribution of models, and variability. (*Id.*) AHAM commented that while it appreciates DOE including equations and other transparent information in the April 2022 NODA, DOE still has not provided model numbers for the units it tested. (*Id.*) AHAM therefore noted that it is impossible for AHAM to know whether DOE and AHAM tested some of the same models. (*Id.*)

The CA IOUs encouraged DOE to disclose clothes washer cycle time, length of spin time for extracting rinse water, and the maximum spin speed for the 62 clothes washers tested by DOE so that interested parties could better ascertain the trade-offs related to cycle time and gain a better understanding of the differences between the remaining moisture content (“RMC”)²⁰ as

calculated using appendix J2 versus appendix J. (CA IOUs, No. 43 at p. 4) The CA IOUs commented that in the September 2021 Preliminary TSD, higher spin speeds and longer spin times were both used as design options for efficiency level (“EL”) 3 and EL 4, depending on the product class and that based on the publicly available information, they were unable to assess the potential impacts to the overall cycle time or to understand the potential trade-offs for higher spin speeds in lieu of longer cycle times. (*Id.*)

As discussed in section II.B.2 of this document, the April 2022 NODA presented additional test data and detailed information characterizing each tested model. This data included the key energy and water use parameters requested by AHAM (*i.e.*, HE_T, ME_T, DE_T, ETLP, and Q_T) for each of the models tested. DOE also provided a number of key characteristics pertaining to each model (*e.g.*, product class, capacity, cabinet width, *etc.*) that illustrate the types of units on the market that were represented by DOE’s test program. DOE appreciates the additional test data subsequently provided by AHAM. As discussed in section IV.C.5 of this document, DOE used AHAM’s data in combination with DOE’s data to evaluate the appendix J2 to appendix J efficiency metric translation methods under consideration.

Regarding the CA IOUs’ comment requesting disclosure of the cycle time measured for each unit in DOE’s test sample, although the April 2022 NODA did not indicate the measured cycle time of each unit in DOE’s test sample, DOE has characterized the average cycle time associated with each defined efficiency level for each product, as described in chapter 5 of the NOPR TSD.

NAS Members commented generally on DOE’s analytical approach to setting efficiency standards and offered findings and recommendations for improving DOE’s methodology, and ultimately, the net social benefits of the efficiency standards DOE establishes under EPCA. (NAS Members, No. 34 at pp. 1–7)

AHAM commented that National Academy of Sciences (“NAS”) recently released a peer review of methods used by DOE in setting appliance and equipment standards. (AHAM, No. 40 at p. 9) AHAM recommended that DOE determine how it will address the NAS

²⁰ The RMC represents the amount of moisture remaining in the test load at the end of the washer cycle. RMC is used to calculate the drying energy

component of IMEF and EER. On most clothes washers, the drying energy component represents the largest portion of energy captured in the IMEF and EER metrics.

report before engaging in further rulemakings or new amended standards. (*Id.*) AHAM acknowledged that although this may not be feasible given the number of missed deadlines and the need to move forward to mitigate further missed deadlines, AHAM and its members are reviewing the NAS report and may have additional comments on how DOE should revise its methodology for future rulemakings both generally, and with regard to RCWs. (*Id.*)

In response to AHAM, DOE is addressing the contents of the NAS report²¹ in a separate rulemaking, in parallel with other ongoing rulemakings including this RCW rulemaking.

B. Scope of Coverage

This NOPR covers those consumer products that meet the definition of “clothes washer.” 10 CFR 430.2.

EPCA does not define the term “clothes washer.” 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, that must be one of the following classes: automatic clothes washers, semi-automatic clothes washers, and other clothes washers. *Id.*

An “automatic clothes washer” is a class of clothes washer that has a control system that 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 NOPR.

Other definitions relevant to RCWs have been established by the Environmental Protection Agency (“EPA”) for purposes of the ENERGY STAR program. For example, Version 8.1 of the Program Requirements Product Specification for Clothes Washers (“ENERGY STAR Version 8.1 Specification”)²² defines a “combination all-in-one washer-dryer” as a consumer product that meets the definition of an RCW and an electric clothes dryer or gas clothes dryer, which cleans and dries clothes in a single tumble-type drum; a drying cycle can be performed independently without first performing a wash cycle. During the drying cycle, combination all-in-one washer-dryers use one of two methods to dry the clothing load: either using circulated air (without the use of water) to cool and condense moisture from the dryer process air (*i.e.*, “combination all-in-one washer-dryers with air-only drying”), or consuming water to cool and condense moisture from the dryer process air (*i.e.*, “combination all-in-one washer-dryers with water-cooled drying”). In the ENERGY STAR Version 8.1 Specification, combination all-in-one washer-dryers with air-only drying are eligible for ENERGY STAR certification, whereas combination all-in-one washer-dryers with water-cooled drying are ineligible for ENERGY STAR certification.

The CA IOUs encouraged DOE to investigate water-cooled combination all-in-one washer-dryers and to take steps to address water usage concerns raised by the ENERGY STAR Version 8.1 Specification published in April 2021. (CA IOUs, No. 43 at pp. 6–7) The CA IOUs noted that combination all-in-one washer-dryers with water-cooled drying are not currently subject to any water use standards or water-usage testing requirements despite the recent changes finalized by the clothes dryer test procedure final rule published on October 8, 2021. (See 86 FR 56608; *Id.*) The CA IOUs expressed concern that there is unmeasured and unregulated water use in products that seemingly include a water standard for the washing mode of the same product. (*Id.*) The CA IOUs encouraged DOE to find ways to disclose this information, including requiring public disclosure of any product configurations that use

water during the drying cycle as part of the certification requirements and relevant product labeling; making changes to the consumer clothes dryer test procedure to measure water use for combination clothes washer products; and developing a separate test procedure and standard for combination all-in-one washer-dryers and laundry centers that include both the washing and drying functions. (*Id.*)

Evaluating or developing test procedures is outside the scope of this energy conservation standards rulemaking. DOE is not proposing any certification or labeling requirements in this NOPR. Instead, DOE may consider proposals to establish certification requirements and reporting for RCWs under a separate rulemaking regarding appliance and equipment certification.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE’s adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. 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).)

1. History of Appendix J

As discussed, the September 2021 TP NOPR proposed a new test procedure at appendix J, which proposed to define new energy efficiency metrics: an energy efficiency ratio (*i.e.*, EER) and a water efficiency ratio (*i.e.*, WER). 86 FR 49140, 49172. EER is defined as the weighted-average load size in pounds (“lbs”) divided by the sum of (1) the per-cycle machine energy, (2) the per-cycle water heating energy, (3) the per-cycle drying energy, and (4) the per-cycle standby and off mode energy consumption, in kilowatt-hours (“kWh”). *Id.* WER is defined as the weighted-average load size in lbs 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. *Id.* The September 2021 Preliminary Analysis was performed using the appendix J test procedure as it was proposed in the September 2021 TP NOPR.

As discussed, DOE finalized the new appendix J test procedure in the June 2022 TP Final Rule. 87 FR 33316. DOE used appendix J as finalized in the June

²¹ The Consensus Study Report, “Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards,” January 7, 2022. Available at www.nap.edu/catalog/25992/review-of-methods-used-by-the-us-department-of-energy-in-setting-appliance-and-equipment-standards.

²² ENERGY STAR Version 8.1 Program Requirements Product Specification for Clothes Washers. Available online at www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Version%208.1%20Clothes%20Washer%20Final%20Specification%20-%20Partner%20Commitments%20and%20Eligibility%20Criteria.pdf.

2022 TP Final Rule as the basis for the analysis in this NOPR.

AHAM commented that DOE did not finalize appendix J as proposed in the September 2021 TP NOPR and that the test procedure changes described in the June 2022 TP Final Rule could impact measured energy and water efficiency. (AHAM, No. 53 at p. 12) AHAM asserted that it may be premature to use the April 2022 NODA data or AHAM's additional data to inform the translation from appendix J2 metric to appendix J metrics because appendix J is not identical to the test procedure proposed in the September 2021 TP NOPR. (*Id.* at p. 3)

AHAM commented that it is still reviewing finalized appendix J and noted that even if DOE's and AHAM's samples together represent a significant portion of shipments, it may be necessary to reconsider the September 2021 Preliminary Analysis based on finalized appendix J. (*Id.*)

The appendix J test procedure finalized by the June 2022 TP Final Rule included only one change that affects measured energy consumption. Specifically, the June 2022 TP Final Rule updated the assumed final moisture content ("FMC") assumption in the drying energy formula from 4 percent as proposed in the September 2021 NOPR to 2 percent in finalized appendix J. *Id.* at 87 FR 33354. DOE specifically discussed in the September 2021 NOPR that it would consider updating the FMC from 4 percent to 2 percent. 86 FR 49140, 49176. The updated FMC value affects only the drying energy calculation and can be implemented formulaically on any test data that was acquired using the version of appendix J as proposed in the September 2021 TP NOPR. In the April 2022 NODA, DOE published two sets of translation equations corresponding to an FMC of 4 percent and 2 percent, respectively, providing interested parties with the opportunity to evaluate the data under both approaches. 87 FR 21816, 21817.

2. Metrics

As discussed, under appendix J2, energy efficiency is measured using the IMEF metric, measured in ft³/kWh/cycle, and water efficiency is measured using the IWF metric, measured in gal/cycle/ft³. Under appendix J, energy efficiency is measured using the EER metric, measured in lb/kWh/cycle, and water efficiency is measured using the WER metric, measured in lb/gal/cycle.

Samsung commented in support of the efficiency metric changes shifting from capacity-based to load size-based, stating that it would be better

understood by consumers. (Samsung, No. 41 at p. 3) Samsung recommended, however, that this be the only change that DOE implements to calculate the new energy and water efficiency metrics EER and WER. (*Id.*) Samsung added that shifting the metrics to EER and WER in this way will only result in a change in the numeric quantity of measured efficiency, given that the capacity and weighted-average load size relationship is linear. (*Id.*) Samsung commented that changing only the metric calculation would ease burden for manufacturers while making it easier for consumers to understand their clothes washer's efficiency. (*Id.*)

EPCA requires that any test procedures prescribed or amended by DOE shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product or equipment during a representative average use cycle or period of use, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) As presented in the June 2022 TP Final Rule, in general the changes in appendix J in comparison to appendix J2 improve the representativeness of test results and reduce test burden, among other benefits. 87 FR 33316, 33320–33321. In this NOPR, DOE is proposing standards based on the new metrics defined in appendix J as finalized. To aid interested parties in understanding the translation between the current metrics and the new metrics, the engineering analysis is presented using both the current metrics (*i.e.*, IMEF and IWF) and the new metrics (*i.e.*, EER and WER), as discussed in section IV.C of this document.

ASAP *et al.*, commented in support of DOE's change to make the efficiency metrics based on load size instead of capacity, which they asserted will help mitigate the current bias toward large-capacity clothes washers. (ASAP *et al.*, No. 37 at p. 2) ASAP *et al.*, expressed concern, however, that for top-loading standard-size clothes washers, large-capacity clothes washers still achieve higher efficiency ratings. (*Id.*) ASAP *et al.*, stated that while the correlation between large capacity and high efficiency is less pronounced for EER than for IMEF, it persists based on the data presented in the September 2021 Preliminary TSD. (*Id.*) ASAP *et al.*, therefore encouraged DOE to investigate whether this correlation results from larger clothes washers being inherently more efficient, larger clothes washers employing additional technology options that improve efficiency, or some

remaining inherent bias toward larger capacity clothes washers. (*Id.*)

The CA IOUs commented that while they agree that the appendix J test procedure offers improvements to the test procedure to reduce some inherent biases between efficiency metrics and capacity, tub capacity can still contribute to improved efficiency because a larger amount of clothing can be washed using an incremental increase in the quantity of water, and a larger drum diameter can exert a higher g-force on clothing, thereby removing more water during the final spin and reducing the drying energy. (CA IOUs, No. 43 at pp. 2–3)

Whirlpool commented that based on its initial testing, it does not agree with DOE's conclusion that there is no benefit to larger capacities using the EER metric. Whirlpool commented that since capacity is still factored into the load sizes used for testing, and those load sizes remain a part of the EER calculation, capacity will still affect efficiency ratings. (Whirlpool, No. 39 at p. 19)

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 advantage means that a larger-capacity clothes washer consumes more energy to wash a pound of clothes than a smaller-capacity clothes washer with the same IMEF rating. *Id.* This relationship applies similarly to water efficiency through the IWF equation. *Id.* This disproportionate benefit increases as average clothes washer capacity increases over time. *Id.* To avoid providing bias for large-capacity clothes washers, DOE changed the energy and water efficiency metrics in new appendix J by replacing the capacity term with the weighted-average load size. *Id.* Under appendix J, energy and water use scale proportionally with weighted-average load size, thus eliminating the efficiency "bias" currently provided to large-capacity clothes washers. *Id.*

To the extent that larger clothes washers continue to achieve higher ratings than smaller clothes washers under the new metrics, such higher performance reflects inherent design option advantages applicable to larger-

capacity clothes washers. For example, as noted by the CA IOUs, large-capacity clothes washers typically have wider drum diameters, which can exert higher g-forces on the load during the spin cycle for a given spin speed, effectively yielding a lower RMC measurement (*i.e.*, reduced drying energy) compared to an otherwise identical smaller clothes washer with a narrower drum diameter. Having removed the numerical “bias” inherent within the current IMEF and IWF metrics, any remaining performance advantage provided to larger-capacity clothes washers under the new metrics is an accurate and representative reflection of differences in efficiency between smaller- and larger-capacity clothes washers on a per-pound of clothing basis.

AHAM commented that it appreciates that the appendix J test procedure results in a reduction of test burden and that DOE could even further reduce test burden by eliminating the requirement to measure and calculate standby energy. (AHAM, No. 53 at p. 13) AHAM further commented that in most cases, the standby energy is so low that it is not offset by a benefit to the environment or consumers under EPCA. (*Id.*) AHAM added that because standby energy use is so low, it is unlikely that manufacturers will reduce it further in order to meet future energy conservation standards; and because manufactures are not likely to increase standby energy use since they have already invested in reducing it, standby energy use will not be a differentiator between products. (*Id.*) AHAM therefore recommended eliminating the standby measurement requirement because it will not have a material effect on overall energy savings or individual energy testing results. (*Id.*)

As discussed, EPCA requires that any test procedure for RCWs prescribed in a final rule after June 30, 2009 must include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission, with such energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that either the current test procedures already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or such an integrated test procedure is technically infeasible for a particular covered product, in which case EPCA requires the Secretary to prescribe a separate standby mode and off mode energy use test procedure

for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)–(B))

3. Test Cloth

Both appendix J2 and appendix J require the use of specialized test cloth that conforms to the specifications outlined in 10 CFR part 430, subpart B, appendix J3 (“appendix J3”). As discussed in the June 2022 TP Final Rule, the specifications for the energy test cloth were developed to be representative of the range of fabrics comprising consumer wash loads: a 50-percent cotton/50-percent polyester blended material was specified to approximate the typical mix of cotton, cotton/polyester blend, and synthetic articles that are machine-washed by consumers. 87 FR 33316, 33366. In developing the test cloth specifications, DOE also considered:

- *Manufacturability*: A 50/50 cotton-polyester momie weave was specified because at the time, such cloth was produced in high volume, had been produced to a consistent specification for many years, and was expected to be produced on this basis for the foreseeable future. 66 FR 3314, 3331.
- *Consistency in test cloth production*: The cloth material properties were specified in detail, including fiber content, thread count, and fabric weight; as well as requirements to verify that water repellent finishes are not applied to the cloth. *Id.*
- *Consistency of the RMC measurement among different lots*: A procedure was developed to generate correction factors for each new “lot” (*i.e.*, batch) of test cloth to normalize test results and ensure consistent RMC measurements regardless of which lot is used for testing. *Id.*

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. Due to differences between batches of cotton and polyester used to manufacture the test cloth, each lot has slightly different absorption properties. To account for these differences in absorption during the RMC measurement, appendix J3 specifies a procedure to determine correction factors for each lot that correlate the measured RMC values of the new test cloth lot with a set of standard RMC values established as the historical reference point. These correction factors are applied to the RMC test results in appendix J and appendix J2 to ensure the repeatability and reproducibility of test results performed using different lots of test cloth. In particular, the

measured RMC of each clothes washer is used to calculate the drying energy, which has a significant impact on the final IMEF or EER value. Application of these correction factors significantly reduces lot-to-lot variation in RMC, from over 10 percentage points uncorrected to around 3 percentage points corrected. 87 FR 33316, 33369.

AHAM commented that it recently notified DOE of an issue concerning Lot 24 of the test cloth used in clothes washer testing, stating that AHAM’s initial investigations have revealed serious issues with variation in Lot 24 that are impacting certification, verification, and regulatory testing efforts. (AHAM, No. 53 at pp. 4–5) AHAM specified that the correction factor for Lot 24 is not accurate across the entire lot. (*Id.*) AHAM further explained that this has resulted in an increased difficulty in meeting the applicable standard because the inaccurate correction factor is negatively impacting efficiency. (*Id.*) AHAM also specified that it is more difficult to certify products correctly or with certainty because the variation in results and enforcement are major concerns. (*Id.*) AHAM also expressed concern that testing related to appendix J may be questionable given the Lot 24 correction factor variation since both DOE and AHAM used Lot 24 for over half the units in their test samples. (*Id.*) AHAM therefore concluded that the results of DOE’s and AHAM’s testing should not be used to reestablish a baseline, as they likely do not accurately represent measured energy or water efficiency. (*Id.*) AHAM further commented that it convened its test cloth task force to address the correction factor variation issue with the goal of providing recommendations for DOE, and has sought guidance and an enforcement policy from DOE to address the Lot 24 issues in the short-term. (*Id.*) AHAM noted that since the test cloth Lot 24 variation will likely impact the accuracy of DOE and AHAM’s testing, AHAM will conduct further review of its data and may need to submit revised data and/or comments once the impact of this variation on the test data is better understood. (*Id.*) AHAM recommended that DOE work to understand the impact of this variation on the accuracy of its test data and standards analysis. (*Id.*) For example, AHAM noted that if it has been more difficult to meet current standards due to the uncertainty in Lot 24’s correction factor, DOE will need to understand whether current products have been tuned to be more efficient just because of the test cloth. (*Id.*) AHAM added that this could impact DOE’s

analysis of more stringent standards, as some technology options may already be in use due to the correction factor issue. (*Id.*) AHAM also recommended that DOE conduct its own analysis of AHAM's data, as well as the combined AHAM and DOE dataset, which should include an evaluation of the Lot 24 variation. (AHAM, No. 53 at p. 12)

AHAM also commented that for some time, several manufacturers and, likely other testing laboratories, have experienced delays in obtaining test cloth. (AHAM, No. 53 at p. 5) AHAM further explained that delays in obtaining test cloth mean that some companies need to ration testing and may not be able to do testing other than certification and/or audit testing until test cloth is received. (*Id.*) AHAM added that it will therefore take more time for AHAM and its members to provide test results to support DOE's rulemaking efforts related to clothes washers and clothes dryers. (*Id.*) AHAM requested that DOE ensure it does not move so quickly that its analysis (and manufacturers' comments) are unable to account for these test cloth challenges. (*Id.*)

DOE is acutely aware of the issues regarding variation in Lot 24 and is participating in the AHAM test cloth task force to help determine the root causes of the observed variation and to develop solutions to mitigate these concerns for Lot 24 as well as for future test cloth lots. Subsequent to the submission of AHAM's comment, the AHAM test cloth task force determined to divide Lot 24 into four distinct "sub-lots," each with its own correction factors developed using the process specified by appendix J3. DOE has added these sub-lot correction factors to the RCW test report template published on the DOE website.²³ Establishing these separate sub-lots, each with separate correction factors, has mitigated much of the concern regarding variability throughout Lot 24. DOE is aware that the task force continues to investigate the extent to which any variability that remains within each sub-lot can be further mitigated, and DOE continues to participate in those efforts.

With regard to delays in obtaining test cloth, DOE is aware that the causes of delay have largely been addressed and that the test cloth supplier is currently working to fulfill the backlog of test cloth orders.

²³ DOE's test report templates are available at energy.gov/eere/buildings/standardized-templates-reporting-test-results.

4. Other Test Procedure-Related Comments

In response to the September 2021 Preliminary Analysis and the April 2022 NODA, a number of stakeholders made comments pertaining to the clothes washer test procedure, many of which DOE subsequently addressed in the June 2022 TP Final Rule. Comments regarding certain test procedure issues that were not discussed in the June 2022 TP Final Rule are summarized in the paragraphs that follow. Addressing test procedure concerns is outside the scope of this energy conservation standards rulemaking; however, DOE encourages stakeholders to resubmit these comments during the next clothes washer test procedure rulemaking.

AHAM commented in opposition to DOE's decision to change the FMC assumption from 4 percent in appendix J2 to 2 percent in appendix J. (AHAM, No. 53 at p. 12) AHAM stated that the change in FMC assumption from 4 to 2 percent will overstate the impact of drying energy and will likely drive many clothes washer designs to increase spin speeds and spin times beyond an acceptable level. (*Id.*) AHAM expressed concern that this could change a clothes washer's core functionality into a water extractor, and in effect, remove the consumer functionality of washing the clothes. (*Id.*) AHAM commented that the test procedure should not drive design changes of this magnitude, and added that this change will limit the opportunity in the energy conservation standards rulemaking for technologically feasible and cost efficient improvements because there are limits on how much spin speeds can increase before the chassis needs to be redesigned or before safety and consumer utility are impacted. (*Id.*)

AHAM commented that if DOE moves forward with changing FMC from 4 to 2 percent, it must address the impact of the apparent mismatch between clothes washer drying energy and total per-cycle electric dryer energy consumption defined in the clothes dryer test procedures at 10 CFR part 430, subpart B, appendix D2 ("appendix D2") or 10 CFR part 430, subpart B, appendix D1 ("appendix D1"). (AHAM, No. 53 at p. 13) AHAM further explained that currently, the drying impact of a clothes washer is significantly over-credited as a result of the mismatch in clothes loads between the clothes washer and clothes dryer test procedures. (*Id.*) For example, AHAM noted that the average weight of the load in appendix J can be nearly 50 percent greater than the weight of a load in the clothes dryer test procedure. (*Id.*) AHAM stated that according to the

clothes washer test procedure, the annual weight to dry for a 6 ft³ clothes washer is 2,917 pounds per year, whereas the annual weight to dry according to the clothes dryer test procedure is 1,994 pounds per year, despite the units being a matching pair. (*Id.*) AHAM commented that it acknowledges that this difference makes sense because consumers do not dry in the clothes dryer all the clothes they wash in the clothes washer. (*Id.*) However, AHAM emphasized that lowering the FMC to 2 percent for clothes washer exacerbates this mismatch in energy contribution. (*Id.*)

ASAP *et al.* commented that both DOE's recent analysis for clothes dryers and real-world data suggest that drying energy usage in the clothes washers analysis is being underestimated and encouraged DOE to update its drying energy use calculations in the test procedure to better align with DOE's clothes dryers analysis and real-world energy usage. (ASAP *et al.*, No. 37 at pp. 3–4) ASAP *et al.* noted that in the September 2021 Preliminary TSD, DOE stated that drying energy use represents 75 to 83 percent of total energy usage. (*Id.*) ASAP *et al.* therefore commented that changes in drying energy estimates can have a significant impact on overall energy savings and economic analysis. (*Id.*) ASAP *et al.* emphasized that, based on DOE's April 2021 Clothes Dryers Preliminary TSD,²⁴ the active-mode energy use of a clothes dryer is between 67 and 93 percent greater than the estimated drying energy usage presented in the September 2021 Preliminary TSD for top-loading standard-size and front-loading clothes washers, respectively.²⁵ (*Id.*) ASAP *et al.* further commented that the clothes dryer analysis more closely agrees with real-world clothes dryer energy use estimates from data from the Energy Information Administration's ("EIA's") 2015 Residential Energy Consumption Survey ("RECS 2015"),²⁶ which estimates 776 kWh per year, and NEEA's Dryer Field Study published in 2014 ("NEEA's Dryer Field Study"),²⁷ which estimates 915 kWh per year. (*Id.*) ASAP *et al.* therefore commented that higher, more realistic drying energy

²⁴ Available online at www.regulations.gov/document/EERE-2014-BT-STD-0058-0016.

²⁵ ASAP *et al.* based this estimate on energy use of 700 kWh/year for clothes dryers, 419 kWh/year for top-loading clothes washers and 362 kWh/year for front-loading clothes washers.

²⁶ U.S. Department of Energy—Energy Information Administration, Residential Energy Consumption Survey: 2015 Public Use Data Files, 2015. Available at www.eia.doe.gov/emeu/recs/recspubuse15/pubuse15.html.

²⁷ Dryer Field Study, 2014. Northwest Energy Efficiency Alliance. Available online at [neea.org/resources/rbsa-laundry-study](https://www.neea.org/resources/rbsa-laundry-study).

usage estimates should further improve the cost-effectiveness of higher efficiency clothes washers that reduce drying energy use. (*Id.*)

Ameren *et al.* encouraged DOE to mathematically adjust RMC to account for the drying energy of 100 percent cotton textiles using the relationship established in the 2020 NEEA report²⁸ that analyzed the RMC of two types of test loads across a broad range of RCW efficiency levels and technology types: the 100-percent cotton load specified in AHAM's HLW-1-2013 test procedure and the 50/50 cotton-polyester momie weave test cloth specified in appendix J2 and appendix J. (Ameren *et al.*, No. 42 at pp. 12–13) The NEEA report also developed a linear mathematical relationship between the two types of load. (*Id.*) Ameren *et al.* found that this relationship has an R-squared value close to 1 and determined that it could be used to adjust the measured RMC of an appendix J2 test load to the expected RMC when using an AHAM load. (*Id.*) Ameren *et al.* stated that adjusting the RMC of an appendix J2 test load to an RMC typical of 100 percent cotton textiles would more realistically account for RCW impacts on drying energy use. (*Id.*) Ameren *et al.* further commented that most typical laundry loads have a much higher cotton content, which they asserted means that mathematically adjusting the RMC before calculating drying energy would better account for typical energy use. (*Id.*) Ameren *et al.* also commented that adjusting the RMC of appendix J2 textiles to an RMC typical of 100 percent cotton textiles would increase the alignment between the September 2021 Preliminary TSD's clothes washer drying energy use calculation and the measured appendix D2 clothes dryer energy use. (*Id.*) Ameren *et al.* added that while other constants such as DEF²⁹ in appendix J2 and appendix J are relatively consistent with most appendix D1 and D2 dryer measurements, the typical drying energy calculated in the existing appendix J2 clothes washer test procedure is much lower than the energy consumed by a conventional clothes dryer tested by appendix D1 or D2. (*Id.*) Ameren *et al.* further explained that the clothes dryer test procedures use an initial moisture

content of 57.5 percent for the clothes dryer test load, and using NEEA's mathematical adjustment to increase RMC before calculating drying energy would make the drying energy calculated in appendix J2 and J more similar to the drying energy calculated in appendix D1 and D2. (*Id.*)

ASAP *et al.* commented that one potential partial explanation for the apparent underestimation of drying energy usage in the clothes washer analysis is the estimate for DEF. (ASAP *et al.*, No. 37 at p. 4) ASAP *et al.* noted that while DOE assumes a DEF of 0.5 kWh per pound of moisture removed from clothes, ASAP *et al.* estimated a higher nominal DEF of about 0.6 kWh per pound of moisture removed using weighted-average clothes dryer efficiency ratings and parameters from the clothes dryers test procedure. (*Id.*) ASAP *et al.* also commented that a 2022 NEEA study³⁰ suggests that even the clothes dryer test procedure can underestimate drying energy usage, particularly when a non-ENERGY STAR-rated top-loading clothes washer is paired with a non-ENERGY STAR electric dryer. (*Id.*) ASAP *et al.* further noted that the Northwest Regional Technical Forum's most recent estimate for DEF is 0.65 kWh per pounds of moisture removed.³¹ (*Id.*)

As discussed, DOE is not addressing test procedure changes in this energy conservation standards rulemaking. DOE notes that FMC and the drying energy calculations were specifically addressed in section III.G.2 of the June 2022 TP Final Rule. 87 FR 33316, 33353–33354.

D. 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. Sections 6(b)(3)(ii)–(v) and 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 NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (“max-tech”) improvements in energy efficiency for 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 proposed rule and in chapter 5 of the NOPR TSD.

E. Energy Savings

1. Determination of Savings

For each trial standard level (*i.e.*, 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 proposed standards (2027–2056).³² The savings are measured over the entire lifetime of RCWs purchased in the previous 30-year period. DOE quantified the energy savings

²⁸ Foster Porter, Suzanne; Denkenberger, Dave. 2020. *Coming Clean: Revealing Real-World Efficiency of Clothes Washers*. Portland, OR: Northwest Energy Efficiency Alliance. Available online at: neea.org/resources/coming-clean-revealing-real-world-efficiency-of-clothes-washers.

²⁹ “DEF” is defined in section 4.3 of appendix J2 and section 4.4 of appendix J as the nominal energy required for a clothes dryer to remove moisture from clothes and is set equal to 0.5 kWh/lb.

³⁰ *Perfect Pairings? Testing the Energy Efficiency of Matched Washer-Dryer Sets*, 2022. Northwest Energy Efficiency Alliance. Available online at neea.org/resources/perfect-pairings-testing-the-energy-efficiency-of-matched-washer-dryer-sets.

³¹ Regional Technical Forum, Residential Clothes Washers, 2021. “Residential Clothes Washers v7.1.” Available online at rtf.nwccouncil.org/measure/clothes-washers-0.

³² Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (“NIA”) spreadsheet model to estimate national energy savings (“NES”) and national water savings (“NWS”) from potential amended or new 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.³³ 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.³⁴ 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 discussed in section V.C.1 of this document, DOE is proposing to adopt TSL 4, which would save an estimated 1.45 quads of energy (FFC) over 30 years. DOE has initially determined the energy savings from the proposed standard levels are “significant” within the meaning of 42 U.S.C. 6295(o)(3)(B).

F. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this proposed rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or

amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE’s LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory

³³ 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).

³⁴ The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670), was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70892).

requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.E of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this proposed rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (“DOJ”) provide its determination on this issue. DOE will publish and respond to the Attorney General’s determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide

improvements to the security and reliability of the Nation’s energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation’s electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation’s needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases 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 climate and health benefits from certain 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 effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of

impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE’s evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.9 of this proposed rule.

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.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (“GRIM”), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: www.regulations.gov/docket/EERE-2017-BT-STD-0014. Additionally, DOE used output from the latest version of the EIA’s *Annual Energy Outlook* (“AEO”), a widely known energy projection for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry

trends; and (6) technologies or design options that could improve the energy efficiency of RCWs. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Product Classes

When evaluating and establishing energy conservation standards, DOE may establish separate standards for a group of covered products (*i.e.*, establish a separate product class) if DOE determines that separate standards are justified based on the type of energy used, or if DOE determines that a product's capacity or other performance-related feature justifies a different standard. (42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE must consider factors such as the utility of the feature to the consumer and other factors DOE determines are appropriate. (*Id.*)

DOE currently defines separate energy conservation standards for four RCW product classes (10 CFR 430.32(g)(4)):

- Top-loading, compact (less than 1.6 ft³ capacity)
- Top-loading, standard-size (1.6 ft³ or greater capacity)
- Front-loading, compact (less than 1.6 ft³ capacity)
- Front-loading, standard-size (1.6 ft³ or greater capacity)

In the September 2021 Preliminary Analysis, DOE analyzed four potential product classes for RCWs using a threshold of 3.0 ft³ to differentiate between compact and standard-size front-loading RCWs, in contrast to the existing threshold of 1.6 ft³, resulting in the following product classes being analyzed:

- Top-loading, compact (less than 1.6 ft³ capacity)
- Top-loading, standard-size (1.6 ft³ capacity or greater)
- Front-loading, compact (less than 3.0 ft³ capacity)
- Front-loading, standard-size (3.0 ft³ capacity or greater)

As noted in chapter 2 of the September 2021 Preliminary TSD, there are no front-loading RCWs with a capacity less than 1.6 ft³ certified to DOE, indicating that the current threshold of 1.6 ft³ may no longer be a relevant differentiator of capacity within the front-loading RCW market. Based on front-loading RCW models certified in DOE's Compliance Certification

Database ("CCD"),³⁵ DOE identified a gap in front-loading capacity between 2.8 ft³ and 3.4 ft³ (*i.e.*, no products are available on the market within this range). The capacity gap is directly related to cabinet size—capacities less than 2.8 ft³ correspond to a 24-inch cabinet width, and capacities larger than 3.4 ft³ correspond to a 27-inch cabinet width. In the September 2021 Preliminary Analysis, DOE evaluated an updated capacity threshold of 3.0 ft³ between compact-size and standard-size to align more closely with product differentiation in the market.

In the September 2021 Preliminary Analysis, DOE requested comment on whether it should revise the definitions of the front-loading product classes by increasing the capacity threshold of the front-loading compact product class to 3.0 ft³. DOE also requested comment on whether any other changes to product class definitions are warranted.

Prior to the May 2012 Final Rule, DOE also defined a separate RCW product class for top-loading semi-automatic clothes washers. Semi-automatic clothes washers are designed to be intermittently attached to a kitchen or bathroom faucet and require user intervention to regulate the water temperature by adjusting the external water faucet valves. Top-loading semi-automatic clothes washers were subject to a design standard requiring an unheated rinse water option, as established by the National Appliance Energy Conservation Act of 1987, Public Law 100–12 ("NAECA"). NAECA amended EPCA to require that all rinse cycles of RCWs shall include an unheated water option, but may have a heated water rinse option, for products manufactured on or after January 1, 1988.

In the May 2012 Final Rule, DOE eliminated the top-loading semi-automatic product class distinction, having determined based on its market research and comments submitted by AHAM and three manufacturers that such products were no longer available on the market. 77 FR 32308, 32317. The top-loading standard-size levels that were established in the May 2012 Final Rule were based on consideration of only top-loading automatic clothes washers.

In chapter 2 of the September 2021 Preliminary TSD, DOE discussed that it is now aware of multiple top-loading semi-automatic clothes washers on the market, from multiple manufacturers. DOE stated that it was considering

whether it should reinstate an RCW product class definition for top-loading semi-automatic clothes washers, and whether it should consider a performance-based standard rather than the design standard established by EPCA as amended. DOE noted, however, that because the user of a semi-automatic clothes washer controls the water temperature by adjusting the external water faucet valves, semi-automatic clothes washers inherently provide the option for an unheated rinse. Therefore, DOE believes that a design standard that requires an unheated rinse option may be superfluous for semi-automatic clothes washers.

In the September 2021 Preliminary Analysis, DOE requested comment on whether it should reinstate a product class definition for top-loading semi-automatic clothes washers. DOE requested comment on its preliminary conclusion that that a design standard that requires an unheated rinse option may be superfluous for semi-automatic clothes washers.

AHAM presented data indicating the shipment weighted average capacity for clothes washers from 1981–2020. (AHAM, No. 40 at pp. 13–14) Based on this data, AHAM commented that a reassessment of the "compact" definition would be justified since clothes washer capacities in general have increased from an average of 2.63 ft³ in 1990 to 4.25 ft³ in 2020. (*Id.*)

AHAM recommended that DOE change the definition of the compact product class in order to retain consumer utility of smaller-capacity and smaller-width products for consumers. (AHAM, No. 40 at pp. 13–15) AHAM recommended that DOE add an upper width limit of 24 inches in the proposed compact product class definition, such that a top-loading or front-loading compact product would either have a capacity less than 1.6 ft³, or a width less than or equal to 24 inches. (*Id.*) AHAM also commented that typically, based on a review of retailer websites, products advertised as "compact" or "portable" today appear to be under 1.6 ft³ or 24 inches in width or less. (*Id.*) AHAM commented that it agrees with DOE's assessment that products with smaller widths and capacities provide a utility to consumers since they can be used in smaller spaces, can be moved more easily from place-to-place, or can be used together with a standard-size clothes washer. (*Id.*) AHAM also agrees with DOE's acknowledgement that these products, due to their smaller size, cannot achieve the same levels of efficiency as larger products due to technological limitations such as drum

³⁵ DOE's Compliance Certification Database is available at www.regulations.doe.gov/certification-data.

diameter and capacity, or due to being geared toward niche consumer usage such as portability or an add-on to a standard-size clothes washer. (*Id.*)

Whirlpool commented that it agrees with DOE's proposal to change the threshold for the front-loading compact product class and suggested that DOE make further product class changes. (Whirlpool, No. 39 at p. 19) Whirlpool specifically suggested that DOE change the definition of compact clothes washers to be based on product width, corresponding to how they are marketed to consumers as compact or standard size. (*Id.*) Whirlpool added that clothes washers with 24-inch widths and smaller are overwhelmingly marketed as "compact," regardless of their capacity. (*Id.*)

Whirlpool also recommended that for standard-size clothes washers, DOE separate the standard-size product class into three product classes: standard, small (≤ 4.0 ft³); standard, medium (> 4.0 ft³ to ≤ 5.0 ft³); and standard, large (> 5.0 ft³ and above). (Whirlpool, No. 39 at p. 19) Whirlpool commented that there are numerous performance, technology, efficiency, and consumer-relevant differences between clothes washers in Whirlpool's suggested product classes. (*Id.*) Whirlpool further explained that entry-level price point clothes washers generally have capacities less than or equal to 4 ft³ and that the smaller diameter wash baskets of these units create challenges in driving water extraction. (*Id.*) Whirlpool added that these clothes washers also have shorter cycle times and more basic feature sets and controls. (*Id.*)

Whirlpool added that even with a removal of the capacity benefit in the EER and WER efficiency metrics, there are still other technological challenges for clothes washers with smaller cabinet widths since spatial limitations prevent adding technologies that increase efficiency, including larger motors and larger wash baskets to increase spin speed. (Whirlpool, No. 39 at p. 19)

The CA IOUs commented that adjustments to increase the size of the front-loading compact product class are not warranted, and added that they are instead supportive of an equation-based metric that can account for the efficiency differences related to capacity. (CA IOUs, No. 43 at pp. 3–4) The CA IOUs added that they believe the definition of standard-size versus compact product classes artificially segments the data, and that performance is correlated with capacity without a clear delineation. (*Id.*) The CA IOUs expressed three primary concerns related to the changes to the product class definitions. (*Id.*) First, the CA IOUs

commented that the proposed changes to capacity definitions would create a different definition of "compact" for top- and front-loading RCWs, which the CA IOUs asserted would add confusion to the market. (*Id.*) Second, the CA IOUs commented that there likely remains an inherent relationship between capacity and performance in the test procedure, which is insufficiently represented by the two large discrete product class groupings of compact size and standard size. (*Id.*) The CA IOUs noted that there was significant interest from stakeholders in response to the August 2019 RFI for DOE to consider narrower capacity ranges to facilitate a separate analysis for larger clothes washers. (*Id.*) The CA IOUs commented that, while they believe this may result in some statistical improvement in the original analysis, they would prefer an equation-based standard that can correct for the continuum of product capacities. (*Id.*) The CA IOUs also specified that creating more narrow capacity ranges may have unintended consequences of incentivizing manufacturers to produce products in one capacity size over another due to less stringent efficiency standards in neighboring classes. (*Id.*) Third, the CA IOUs commented that while DOE can use capacity or another "performance related" feature to justify a higher or lower standard under EPCA, the CA IOUs expressed concern regarding the arbitrary nature of the capacity definitions, particularly for front-loading clothes washers. (*Id.*) The CA IOUs added that under the appendix J2 efficiency metrics, product efficiencies strongly varied with capacity and may continue to do so under the appendix J efficiency metrics. (*Id.*) The CA IOUs commented that a more appropriate approach would be to use an equation-based standard with a capacity, similar to what is used under the consumer refrigerators/refrigerator-freezers/freezers standard. (*Id.*)

Ameren *et al.* commented that while they do not have a specific recommendation for the compact RCW definition, they encourage DOE to ensure that changing the compact product class to incorporate larger capacities does not enable backsliding. (Ameren *et al.*, No. 42 at p. 18) Ameren *et al.* commented that DOE's working definition of less than 1.6 ft³ for top-loading clothes washers and less than 2.5 ft³ for front-loading clothes washers would not result in backsliding because there is not a front-loading product less than 1.6 ft³ on the market. (*Id.*) However, Ameren *et al.* noted that, if defined differently, RCW models presently considered standard-sized

(and therefore subject to a higher efficiency standard) could be recategorized as compact (and therefore subject to a lower efficiency standard). (*Id.*)

As discussed, currently, no front-loading products with a capacity less than 1.6 ft³ are certified to DOE as being available on the market, indicating that the current threshold of 1.6 ft³ is no longer a relevant differentiator of capacity within the front-loading RCW market. DOE analysis tentatively confirms AHAM and Whirlpool's comments that despite the removal of the capacity "bias" in the EER and WER efficiency metrics, the reduced dimensions of smaller-width products limit the use of certain technologies for increasing efficiency, such as larger wash baskets that can exert a higher g-force on clothing. For this reason, DOE tentatively concludes that a separate product class is warranted for space-constrained front-loading RCWs at a revised threshold that is more relevant to the current market.

DOE recognizes that one of the defining characteristics of front-loading RCWs marketed as "compact" is the width-constrained design (*i.e.*, the ability for the clothes washer to be installed in narrow space that would not accommodate a full-size clothes washer). DOE considered defining the front-loading compact-size product classes on the basis of width. Based on DOE's market research, and supported by comments from AHAM and manufacturers, products marketed as "compact" typically have a nominal cabinet width of 24-inches, whereas full-size products most typically have a nominal cabinet width of 27 inches. DOE has identified a number of practical challenges in basing the product class distinction on a measurement of the width of a clothes washer. The test procedure would need to require measuring the width of the clothes washer and would need to specify how the measurement would be performed. While DOE could consider such amendments to its test procedure, DOE has identified nuances in product design that could create complexities in defining such a measurement. For example, on front-loading clothes washers, DOE has observed that certain aesthetic features, such as the borders of the control panel, may extend beyond the width of the main body of the cabinet. In general, certain measurements of width may not provide an appropriate representation of product width as it relates to product class designation. DOE also notes that although front-loading clothes washers are most often marketed according to

their nominal width as a whole number, the actual width may be a fraction of an inch higher or lower than the advertised nominal width. Furthermore, DOE is concerned that by defining the “compact-size” threshold as a width equal to or less than 24 inches, for example, if a manufacturer were to bring to market a 25-inch width product, such a product would be defined as standard-size but would presumably share many of the same inherent efficiency constraints as a 24-inch product (*i.e.*, a 25-inch product may be more appropriately classified as compact-size rather than standard-size).

Having considered these challenges in defining the front-loading compact-size threshold on the basis of product width, DOE further considered defining the threshold based on an updated capacity value that would be more relevant to the current market than the existing threshold of 1.6 ft³. Based on front-loading RCW models currently certified in DOE’s CCD, there is a gap in front-loading capacity between 2.8 ft³ and 3.4 ft³ (*i.e.*, no products are available on the market within this range), consistent with DOE’s findings presented in the September 2021 Preliminary TSD. DOE evaluated every front-loading model in the CCD and has determined that this capacity gap directly correlates with nominal cabinet size—capacities less than 2.8 ft³ correspond to a nominal 24-inch cabinet width, and capacities larger than 3.4 ft³ correspond to a nominal 27-inch cabinet width or greater. Based on this analysis, DOE tentatively concludes that for front-loading RCWs, using a capacity threshold rather than a width threshold would provide a perfectly correlated proxy for differentiating between standard-size products and space-constrained products. DOE therefore proposes to define a threshold of 3.0 ft³ to differentiate between compact-size and standard-size front-loading RCWs. DOE further notes that given the current gap in capacity between 2.8 ft³ and 3.4 ft³ for units currently on the market, defining the threshold at 3.0 ft³ would provide opportunities for manufacturers to introduce compact-size products with slightly higher capacity, or standard-size products with slightly lower capacity, with such potential products being classified within the appropriate product class. DOE would consider other means for defining the threshold between the compact-size and standard-size front-loading product classes if in the future a capacity threshold were to no longer provides a clear proxy to distinguish between standard-size

products and space-constrained products.

Specific to the front-loading standard-size product class, DOE evaluated the merits of separately defining a larger product class (*e.g.*, greater than 5.0 ft³), as suggested by multiple commenters. Data submitted by AHAM indicates a shipment-weighted average capacity of around 4.2 ft³ for all RCWs, and the results of the engineering analysis indicate that a capacity of 4.2 ft³ is representative of the baseline efficiency level for the standard-size front-loading product class. DOE’s testing and teardown analysis indicates that all of the evaluated efficiency levels for the standard-size front-loading product class can be achieved by units at 4.2 ft³ capacity (*i.e.*, an increase in capacity is not required as a means for achieving the higher efficiency levels analyzed). On this basis, DOE tentatively determines that additional capacity-based product classes within the standard-size front-loading product class are not warranted.

For top-loading clothes washers, DOE proposes in this NOPR to maintain the existing “compact” and “standard” product class distinctions (*i.e.*, using a capacity threshold of 1.6 ft³ to differentiate the two classes); however, DOE continues to consider alternative approaches as discussed further in the paragraphs that follow and in chapter 3 and chapter 5 of the NOPR TSD.

Unlike for front-loading RCWs, top-loading compact-size products are available on the market at capacities less than 1.6 ft³ (*i.e.*, the current threshold). Considering only automatic top-loading clothes washers,³⁶ those with capacity less than 1.6 ft³ are exclusively height-constrained “companion” clothes washers, which are designed to serve as an auxiliary clothes washer for washing a small or delicate load while simultaneously washing a “normal” load in the accompanying standard-size RCW.³⁷ Among standard-size top-loading clothes washers (*i.e.*, those with capacity equal to or greater than 1.6 ft³), DOE’s CCD indicates a relatively continuous spectrum of capacities available on the market across the entire range (*i.e.*, no large gaps in capacity),

³⁶ As discussed further in section IV.C.2.c of this document, the CCD includes both automatic clothes washer models and semi-automatic clothes washer models certified within the top-loading compact product class.

³⁷ Companion clothes washers are currently available in two different configurations: (1) Integrated into (*i.e.*, built into) the cabinet above a standard-size front-loading RCW, and (2) built into a pedestal drawer for installation underneath a standard-size front-loading RCW. Both configurations are constrained in the height dimension.

with no apparent capacity threshold that closely correlates with product differentiation on the market.

For standard-size top-loading RCWs, DOE’s engineering analysis indicates that despite the removal of capacity “bias” from the EER and WER metrics, increases in capacity are required to achieve higher efficiency levels beyond EL 1. (See chapter 5 of the NOPR TSD). DOE continues to consider whether this conclusion justifies separating the standard-size product class into separate product classes, as suggested by Whirlpool. Given this close relationship between efficiency and capacity, DOE also continues to consider whether to specify an equation-based standard for the top-loading standard-size product class, as suggested by the CA IOUs. Chapter 5 of the NOPR TSD provides further details of DOE’s consideration of these potential alternate product class definitions for top-loading standard-size RCWs.

DOE recognizes that an equations-based standards approach would be unfamiliar to RCW stakeholders and would significantly alter the structure of the standards analysis. As such, the analysis of potential amended standards, and how such standards would impact the existing market, could be difficult for stakeholders to interpret, particularly given the proposed change in metrics to EER and WER. DOE also recognizes that implementing equation-based standards could potentially increase compliance burden from manufacturers. For example, a simple modification made to the balance ring on a top-loading model or the door shape on a front-loading model for aesthetic purposes could change the model’s measured capacity, which would in turn change the standard applicable to that unit and would therefore require corresponding changes to the controls to reduce energy and water use. As manufacturers iterate product designs, any change that would affect a model’s measured capacity would result in the model being subject to a different standard.

In addition, defining an equation-based standard for only the top-loading standard-size product class would create complexity that may lead to confusion or added regulatory burden for manufacturers.

At this time, DOE tentatively determines that the increased complexity and potential burdens of an equation-based standard outweigh the benefits. As discussed, in this NOPR, DOE proposes a numerically based standard for the top-loading standard-size product class.

In response to the CA IOUs' concern that having a different definition of the "compact" threshold for top-loading and front-loading RCWs would add confusion to the market, DOE is proposing to rename the product class for top-loading RCWs with capacities less than 1.6 ft³ as "ultra-compact."

In response to Ameren *et al.*'s comment that changing the compact product class threshold should not enable backsliding, DOE notes that, as discussed, EPCA 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)) As discussed in section IV.C.2.a of this document, DOE used the current DOE standard applicable to front-loading standard-size clothes washers as the baseline efficiency level for the newly created front-loading compact-size product class, which prevents any possibility of backsliding.

Ameren *et al.* provided comments pertaining to portable clothes washers, which the comment equates with semi-automatic clothes washers. (Ameren *et al.*, No. 42 at pp. 6–8). Ameren *et al.* commented that since the last standards rulemaking, portable RCWs are now widely available for sale through national retailers and online direct-to-consumer marketplaces. (*Id.*) Ameren *et al.* referenced NEEA research as verifying that the portable RCWs currently on the market meet or exceed current standards, and that therefore they do not require a separate product class. (*Id.*) Ameren *et al.* also commented that nothing should prevent efficient technologies employed in conventional automatic top-loading RCWs from being leveraged in portable top-loading RCWs, including wash plates and higher spin speeds. (*Id.*)

DOE cautions that portable clothes washers³⁸ as a whole represent a broader category of clothes washers than semi-automatic clothes washers specifically. Although all semi-automatic clothes washers currently on the market are portable, not all portable clothes washers on the market are semi-automatic—certain portable clothes washers are automatic (*i.e.*, they provide means for internal regulation of water temperature, as opposed to requiring the

user to adjust the water temperature externally to the clothes washer).

With regard to Ameren *et al.*'s comment that portable RCWs currently on the market meet or exceed current standards and therefore do not require a separate product class, DOE does not agree that this conclusion can be applied to semi-automatic clothes washers specifically, since many of the data points referenced by Ameren *et al.* correspond to automatic top-loading clothes washers. In addition, appendix J includes significant changes to the testing of semi-automatic clothes washers—which improve the representativeness of the test results while reducing test burden—such that when tested under appendix J, a semi-automatic clothes washer uses significantly more hot water (and therefore has inherently lower EER values) than would a similarly-sized automatic clothes washer.³⁹ Section IV.C.2.c of this document provides further discussion of the efficiency level analysis for semi-automatic clothes washers.

Given the reemergence of semi-automatic clothes washers on the market, and improvements to the test procedure to improve the representativeness of test results for semi-automatic clothes washers, DOE is proposing to re-establish a separate product class for semi-automatic clothes washers and to establish performance-based standards for semi-automatic clothes washers.

In summary, for this NOPR, DOE analyzed five product classes for RCWs as follows:

- Semi-automatic clothes washers
- Automatic clothes washers:⁴⁰
 - Top-loading, ultra-compact (less than 1.6 ft³ capacity)
 - Top-loading, standard-size (1.6 ft³ or greater capacity)
 - Front-loading, compact (less than 3.0 ft³ capacity)
 - Front-loading, standard-size (3.0 ft³ or greater capacity)

DOE seeks comment on the product class structure analyzed in this NOPR.

³⁹ For example, most automatic clothes washers offer only a cold rinse, whereas appendix J requires semi-automatic clothes washers to be tested on both Hot Wash/Hot Rinse, and Warm Wash/Warm Rinse cycles, based on the assumption that the user would not adjust the water temperature during the cycle. 87 FR 33316. Significantly more hot water is used in these cycles than on the equivalent cycles (Hot Wash/Cold Rinse and Warm Wash/Cold Rinse) on an automatic clothes washer.

⁴⁰ For simplicity, many of the tables in the following sections of this document omit the designation that these four product classes pertain to automatic clothes washers.

2. Technology Options

In the preliminary market analysis and technology assessment, DOE identified a comprehensive list of technology options that would be expected to improve the efficiency of RCWs, as measured by the DOE test procedures.⁴¹ Initially, these technologies encompass all those that DOE believes are technologically feasible.

In the September 2021 Preliminary Analysis, DOE requested information on any technology options not identified in the September 2021 Preliminary TSD that manufacturers may use to attain higher efficiency levels of RCWs.

Ameren *et al.* commented in support of DOE's inclusion of all relevant technologies, including those to reduce drying energy. (Ameren *et al.*, No. 42 at p. 19) Ameren *et al.* also commented that they appreciate DOE's consideration of technologies that have been found in working prototypes in addition to those available in current models. (*Id.*)

In this NOPR, DOE considered the technology options listed in Table IV.1. In addition to the technology options DOE considered for the September 2021 Preliminary Analysis, DOE added capacity increase as a technology option for this NOPR.⁴²

TABLE IV.1—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.

⁴¹ See section 3.15.2 of the September 2021 Preliminary TSD. Available online at www.regulations.gov/document/EERE-2017-BTSTD-0014-0030.

⁴² In this NOPR, DOE considers capacity increase only as a technology option of "last resort." In defining a representative "path" that manufacturers would be expected to use to achieve higher efficiency levels, DOE included capacity increase only for those efficiency levels that cannot be reasonably achieved without an increase in capacity. See chapter 5 of the NOPR TSD for more details.

³⁸ In this NOPR, DOE uses the term "portable clothes washer" to mean a clothes washer, typically with caster wheels, designed to be easily moved by the consumer.

Chapter 3 of the NOPR TSD includes the detailed descriptions of each technology option.

DOE seeks comment on the technology options not identified in this NOPR that manufacturers may use to attain higher efficiency levels of RCWs.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.*

Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility.* If a technology is determined to have a significant adverse impact on the utility of the product to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a proprietary technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology

option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded ("screened out") based on the screening criteria.

1. Screened-Out Technologies

In chapter 4 of the September 2021 Preliminary Analysis, DOE screened out electrolytic disassociation of water, ozonated laundering, and polymer bead cleaning on the basis of their practicability to install, manufacture and service. DOE also noted that electrolytic disassociation of water could have impacts on product utility or availability and that polymer bead cleaning was a unique-pathway proprietary technology.

In the September 2021 Preliminary Analysis, DOE sought comment on whether any additional technology options should be screened out on the basis of any of the screening criteria.

AHAM commented that decreasing water temperature, particularly on the warmest warm wash temperature, could decrease cleaning and rinsing performance by making it harder to remove fatty soils, which are soluble around 85 degrees Fahrenheit ("°F"). (AHAM, No. 40 at pp. 9–10) AHAM added that despite the existence of some detergents designed for lower temperatures, detergents alone cannot solve this issue. (*Id.*) AHAM commented that decreased water temperature could also have negative impacts on fabric care resulting from reduced detergent removal, biofilm accumulation, reduced particulate removal, and increased white residues on clothing. (*Id.*) AHAM also noted that if wash time is increased to compensate for a decrease in cleaning performance at lower wash temperatures, the cycle time will consequently increase. (*Id.*)

Whirlpool suggested that lowering wash temperatures from current levels should not be a technology option considered by DOE. (Whirlpool, No. 39 at pp. 6–8) Whirlpool added that it strongly believes that wash temperatures are already low enough, and that lowering temperatures further will effectively create a disconnect between consumer perceptions of acceptable wash water temperatures and what Whirlpool could actually offer. (*Id.*) Whirlpool commented that this impact is compounded by the proposed appendix J test procedure, which proposes to test the hottest and coldest Warm Wash/Cold Rinse settings for all clothes washers instead of using the 25/50/75 test.⁴³ (*Id.*) Whirlpool commented

that changing the test procedure at the same time as the energy conservation standards may impede Whirlpool's ability to offer warm wash temperatures that consumers find acceptable and could affect clothes washers' ability to consistently clean laundry to the consumers' satisfaction, since higher temperatures are needed to effectively remove fatty soils, white residue, and particulates from laundry. (*Id.*) Whirlpool further commented that DOE's standards should not drive wash water temperatures below levels that are acceptable based on consumer perceptions of these temperatures. (*Id.*) Whirlpool recommended that instead, DOE's standards should protect the ability of clothes washers to offer adequate wash temperatures that align with consumer expectations and can deliver on the core purpose of owning and using a clothes washer, which is to remove soils and clean clothes. (*Id.*) Whirlpool noted that the overall impact of lowering wash temperature on improving efficiency is minimal in comparison to other technology options like improving spin speed, but it is still something manufacturers must consider when making tradeoffs between cost and efficiency when designing a clothes washer to meet new standards. (*Id.*)

Whirlpool further commented that detergents become less effective at lower wash temperatures, and that consumers will see this reduction immediately or within several loads, depending on the soil type on the clothing. (Whirlpool, No. 39 at p. 11) Whirlpool added that even detergents formulated specifically for cold water washing may not be validated for temperatures below 70 °F. (*Id.*) Whirlpool noted that in northern states such as Michigan, yearly ground water temperatures are in the 42–49 °F range, and that Whirlpool is not aware of any detergent that was formulated and validated for performance at temperatures that low. (*Id.*) Whirlpool stated that many clothes washers on the market today have tap cold options, and some have a variety of cold and cool temperatures that mix in some amount of hot water. (*Id.*) Whirlpool commented that some clothes washers offer these temperatures in the 55 °F range. (*Id.*) Whirlpool expressed concern that, due to any amendments to the standards that necessitate a reduction in wash

washer that has four or more Warm Wash/Cold Rinse temperature selections to be tested at the 25-percent, 50-percent, and 75-percent positions of the temperature selection device between the hottest hot ($\leq 135^{\circ}\text{F}$ (57.2°C)) wash and the coldest cold wash. If a selection is not available at the 25-, 50- or 75-percent position, in place of each such unavailable selection, the next warmer temperature selection shall be used.

⁴³ The "25/50/75" test refers to the provision in section 3.5 of appendix J2 that allows a clothes

temperatures, the temperature range of these tap cold, cold, and cool settings may be driven down well below the validated temperatures for good performance for even the best detergent formulations on the market. (*Id.*) Whirlpool added that this problem would be even more pronounced for the cheaper and less effective detergents, which may be popular with low-income consumers. (*Id.*) Whirlpool concluded that detergents would need to be reformulated to reflect this broad-scale lowering of wash temperatures in clothes washers, and Whirlpool is not sure if it would be possible to validate a detergent for good performance at these lower temperatures. (*Id.*)

Unlike certain other discrete technology options evaluated by DOE (e.g., direct drive motor), wash temperature decrease can be implemented to varying extents. For example, some manufacturers may implement it to small extent (e.g., a decrease by 0.5 °F), whereas other manufacturers may implement it to a significantly larger extent (e.g., a decrease of 5 °F or more). In addition, DOE observes through testing that manufacturers employ a wide variety of “paths” to achieve higher efficiency levels—some manufacturers may opt to reduce wash temperatures as a means for achieving a particular efficiency level, whereas other manufacturers may prioritize maintaining wash temperatures and instead reducing motor energy use or drying energy. Indeed, through its testing, as discussed in a test report accompanying this NOPR (hereafter, the “performance characteristics test report”), which is available in the docket for this rulemaking, DOE has observed a wide range of wash temperatures available on the market among products with identical efficiency ratings. Because of this variation in implementation from manufacturer to manufacturer, and because DOE observes that some manufacturers choose a “path” to higher efficiency that includes reduced wash temperatures, DOE has not screened out decreased wash temperatures as a design option for improving efficiency.

In chapter 5 of the NOPR TSD, section 5.5.3 describes the design option paths most typically associated with each analyzed efficiency level within each product class, based on DOE’s testing and teardowns of a representative sample of units on the market. For the top-loading standard-size product class, the design option path considered by DOE for the analysis incorporates a slight reduction in hot wash water temperatures at EL 3 and a more substantive reduction in hot wash water

temperatures at EL 4, reflecting the most prevalent design option path used by units currently on the market at these ELs. Although the most typical design option path includes reduced wash temperatures, DOE’s analysis described in the performance characteristics test report suggests that the proposed efficiency level (in particular, EL 3 for the top-loading standard-size product class) can be achieved through a variety of design option paths, including paths that do not require a substantive reduction in wash temperatures compared to the range of wash temperatures provided by lower-efficiency units. Such design option paths could incorporate more efficient motors or higher spin speeds, for example, in lieu of any reductions in wash water temperatures. Such alternate design option paths would have higher manufacturing costs than a path that uses reduction in wash water temperatures.

Additionally, for this NOPR analysis, 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.

For the reasons discussed in chapter 4 of the NOPR TSD, for this NOPR analysis DOE screened out ozonated laundering, and polymer bead cleaning on the basis of their practicability to install, manufacture and service.

DOE seeks comment on whether any additional technology options should be screened out on the basis of any of the screening criteria in this NOPR.

2. Remaining Technologies

Through a review of each technology, DOE retained (*i.e.*, did not screen out) the technology options listed in Table IV.2 and tentatively concludes that each of these technologies meets all five screening criteria to be examined further as design options.

TABLE IV.2—RETAINED DESIGN OPTIONS FOR RESIDENTIAL CLOTHES WASHERS

<i>Methods for Decreasing Water Use:*</i>
Adaptive water fill controls.
Hardware features enabling lower water levels.
Spray Rinse.
<i>Methods for Decreasing Machine Energy:</i>
More efficient motor.
Direct drive motor.
<i>Methods for Decreasing Water Heating Energy:</i>

TABLE IV.2—RETAINED DESIGN OPTIONS FOR RESIDENTIAL CLOTHES WASHERS—Continued

Wash temperature decrease.
<i>Methods for Decreasing Drying Energy:</i>
Hardware features enabling spin speed increase.
Spin time increase.
<i>Methods for Decreasing Standby Energy:</i>
Lower Standby power components.
<i>Methods for Increasing Overall Efficiency:</i>
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.

DOE has initially determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.*, practicable to manufacture, install, and service; do not result in adverse impacts on product utility or product availability; do not result in adverse impacts on health or safety; and do not represent unique-pathway proprietary technologies). For additional details, see chapter 4 of the NOPR TSD.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of 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).

In this section, DOE discusses comments received in response to the prediction tool developed in support of the September 2021 Preliminary Analysis. In the sections that follow, DOE details the efficiency levels analyzed for each product class; the approach used to develop cost estimates for each efficiency level and the resulting cost-efficiency relationship; the equations used to translate IMEF and IWF into EER and WER; and the

approach used to develop the manufacturer markup.

In response to the September 2021 Preliminary Analysis, ASAP *et al.* commented generally in support of DOE's approach to select efficiency levels based on the proposed new efficiency metrics, EER and WER. (ASAP *et al.*, No. 37 at p. 1)

1. Preliminary Analysis Prediction Tool

In support of the September 2021 Preliminary Analysis, DOE tested a sample of RCWs under both appendix J2 and appendix J as proposed in the September 2021 TP NOPR. As described in chapter 5 of the September 2021 Preliminary TSD, DOE supplemented its tested dataset with "predicted" EER and WER values for a larger sample of units. The EER and WER predictions which were estimated based on each model's measured performance under appendix J2 and on the model's physical and operational characteristics. DOE also published an explanation of how the predictive tool was developed, including a table listing the impacts to each underlying variable that were assumed as part of the predictive analysis. DOE explained that it planned to continue testing additional units to appendix J to increase the number of tested, rather than predicted, EER and WER values in future stages of the rulemaking.

AHAM commented that DOE did not provide sufficient explanation for the "prediction tool" that DOE used to predict a clothes washer's EER and WER values based on appendix J2 test results. (AHAM, No. 40 at pp. 4–6) AHAM further explained that its data, which include models representing approximately half of total 2020 shipments, contradicted the data presented in the September 2021 Preliminary TSD. (*Id.*) AHAM expressed concern that DOE did not provide any statistical outcomes to justify the accuracy of the prediction tool it used to predict a clothes washers EER and WER values based on appendix J2 test results. (AHAM, No. 40 at pp. 15–17) AHAM commented that without data on statistical outcomes, AHAM cannot assess the accuracy of the prediction tool. (*Id.*) AHAM also commented that based on the analysis that transposes efficiency levels, DOE's prediction tool appears to be inaccurate and that under the best-fit line method for front-loading clothes washers, the R-squared values show the prediction tool is insufficient. (*Id.*) AHAM therefore recommended that DOE update its analysis based on tested data instead of predicted data, especially for top-loading standard clothes washers with capacities less

than 3.0 ft³, and for front-loading compact clothes washers. (*Id.*) AHAM also requested that DOE provide appendix J2 and appendix J test data; the statistical data demonstrating correlation of the prediction tool; the data supporting the development of the tool, including the equations the prediction tool used; and DOE's comparison between predicted and tested EER where applicable. (*Id.*) AHAM noted that, unlike DOE, its data was all based on actual testing instead of using a model or prediction tool. (*Id.*)

AHAM presented a table showing the variation in tested HE_T, ME_T, DE_T, E_{TLP}, Q_T, and corrected RMC between appendix J2 and appendix J for the AHAM data, DOE data, and the combined AHAM and DOE dataset. (AHAM, No. 53 at pp. 7–8) AHAM measured variation by measuring the percent difference in each metric between appendix J2 and appendix J for all units, and presented an overall variation in each metric by calculating the average percent differences for each metric, the standard deviation of the percent differences for each metric, and the range of percent differences for each metric. (*Id.*) AHAM noted that on average, values for HE_T, ME_T, DE_T, E_{TLP}, Q_T, and corrected RMC were higher under appendix J than under appendix J2. (*Id.*) AHAM also noted that the level of variation was particularly high for DE_T and E_{TLP}. (*Id.*) AHAM commented that, while the overall impact of standby energy in the final calculation for energy efficiency is quite small, the impact of dryer energy on the final calculated efficiency is significant. (*Id.*) Based on its analysis, AHAM concluded that this variation shows that a direct translation between the appendix J2 and appendix J test procedures is not possible. (*Id.*) AHAM specifically pointed out that the total dryer energy consumption showed an average increase of 22.5 percent, but that the range of differences with the tested models is quite wide, indicating that it is impossible to predict the impact of appendix J on dryer energy consumption. (*Id.*) AHAM added that the appendix J2 to appendix J translation has a similar effect on corrected RMC, and is most apparent with respect to E_{TLP}, where measured values varied by as much as 221 percent. (*Id.*) AHAM further explained that the relatively high standard deviations of percent differences underscore the wide ranges in the measured value differences between appendix J2 and appendix J. (*Id.*)

Samsung commented that the prediction tool used in the September 2021 Preliminary TSD does not have a

high correlation between EER and IMEF. (Samsung, No. 41 at p. 3)

ASAP *et al.* commented that they support DOE's approach to use its predictive tool and that they support conducting additional testing using the new proposed appendix J test procedure to refine this approach. (ASAP *et al.*, No. 37 at p. 1)

Ameren *et al.* expressed support for DOE's approach to predict EER and WER values from tested IMEF and IWF value and commented that they support future testing with appendix J to collect more results with the proposed new appendix J test procedure. (Ameren *et al.*, No. 42 at pp. 19–20). Ameren *et al.* added that DOE's RMC and Warm Wash temperature results are consistent with findings in the 2020 NEEA report. (*Id.*) Ameren *et al.* added that the non-linear nature of the relationship between IMEF and IWF values and EER and WER values is similar to the non-linearity that NEEA identified in a translation of appendix J2 tests to real-world energy use. (*Id.*)

As noted, DOE stated in the September 2021 Preliminary TSD that it planned to continue testing additional units to appendix J to increase the number of tested, rather than predicted, EER and WER values for future stages of this proposed rulemaking.

As described in the April 2022 NODA, DOE has tested additional 28 additional RCW models to both appendix J2 and appendix J in order to provide additional data points for the translation equations and to eliminate the need to rely on "predicted" EER and WER values in the translation analysis. 87 FR 21816, 21817. DOE's total test sample includes 44 units across all five product classes analyzed for this NOPR. DOE made available detailed appendix J and appendix J2 test data for its full set of tested units as part of the April 2022 NODA. As discussed in section IV.C.5 of this document, for this NOPR DOE relied exclusively on tested data for developing translation equations for each automatic clothes washer product class and did not continue the usage of its prediction tool as part of its analysis. The discontinuation of the prediction tool addresses many of the concerns expressed by AHAM and Samsung. As detailed in section IV.C.5 of this document, the comprehensive dataset has enabled DOE to develop robust translations between the appendix J2 and appendix J metrics.

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 “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 NOPR, 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 further in section IV.C.5 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 NOPR 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 the September 2021 Preliminary Analysis, DOE presented an initial set of baseline levels for each product class, as shown in Table IV.3.

TABLE IV.3—PRELIMINARY BASELINE EFFICIENCY LEVELS PRESENTED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

Product class	Source	Minimum IMEF (ft ³ /kWh/cycle)	Maximum IWF (gal/cycle/ft ³)
Top-Loading, Compact (<1.6 ft ³) *	Current DOE standard	1.15	12.0
Top-Loading, Standard-Size (≥1.6 ft ³)	Current DOE standard	1.57	6.5
Front-Loading, Compact (<3.0 ft ³)	Current DOE standard for front-loading, standard-size (≥1.6 ft ³)**	1.84	4.7
Front-Loading, Standard-Size (≥3.0 ft ³)	ENERGY STAR v. 7.0 ***	2.38	3.7

* As discussed in section IV.A.1 of this document, DOE is proposing in this NOPR to rename the top-loading compact product class analyzed in the September 2021 Preliminary Analysis to top-loading “ultra-compact.”

** 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 proposed baseline efficiency level reflects 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.

Additionally, in the September 2021 Preliminary Analysis, DOE sought comment on whether the baseline efficiency levels identified in its analysis for each product class were appropriate.

The CA IOUs presented data from their analysis of front-loading standard-size products available on DOE’s CCD. (CA IOUs, No. 43 at pp. 5–6) The CA IOUs commented that, according to their analysis of the CCD, eight models ranging from 4.3 ft³ to 5 ft³ are rated at the current federal minimum standard

of 1.84 IMEF and 4.7 IWF, and recommended that DOE update the baseline definition to the current minimum efficiency levels to prevent an undercount of the overall savings potential. (*Id.*) The CA IOUs also identified some models rated at 2.92 IMEF and 4.5 IWF in the CCD, which reflects a worse IWF (although a better IMEF) than the baseline level analyzed in the September 2021 Preliminary Analysis. (*Id.*)

NYSERDA commented that DOE’s CCD shows front-loading standard-size

clothes washers from 4.3 to 5.0 ft³ rated at the current minimum standard level of 1.84 IMEF. (NYSERDA, No. 36 at p. 2) NYSERDA recommended that DOE therefore consider the existing standard as the baseline for these products instead of the ENERGY STAR 2015 level of 2.38 IMEF. (*Id.*)

In response to the CA IOUs and NYSERDA’s comment that the CCD includes standard-size front-loading clothes washers that are rated at the current standard level of 1.84 IMEF, DOE has determined through testing

that these units perform significantly above their rated value at the current standard level. DOE has also confirmed these findings through confidential manufacturer interviews.

In response to the CA IOUs' comment that the CCD also includes a model with a worse IWF rating of 4.5 IWF, DOE notes that this unit's rating appears to be

a typographical error. DOE notes that this unit is listed in the ENERGY STAR database with an IWF rating of 2.9 and a capacity of 4.5 ft³, suggesting that the capacity measurement was inadvertently reported as the IWF value in DOE's CCD.

For these reasons, DOE tentatively concludes that for the standard-size

front-loading product class, the lowest available efficiency on the market is 2.38 IMEF and 3.7 IWF, and this level is an appropriate representation of baseline efficiency.

Accordingly, in this NOPR, DOE analyzed the baseline efficiency levels shown in Table IV.4 for each automatic product class.⁴⁴

TABLE IV.4—BASELINE EFFICIENCY LEVELS ANALYZED IN THIS NOPR

Product class	Source	Minimum IMEF (ft ³ /kWh/cycle)	Maximum IWF (gal/cycle/ft ³)
Top-Loading, Ultra-Compact (<1.6 ft ³)	Current DOE standard	1.15	12.0
Top-Loading, Standard-Size (≥1.6 ft ³)	Current DOE standard	1.57	6.5
Front-Loading, Compact (<3.0 ft ³)	Current DOE standard for front-loading, standard-size (≥1.6 ft ³) *.	1.84	4.7
Front-Loading, Standard-Size (≥3.0 ft ³)	ENERGY STAR v. 7.0 **	2.38	3.7

* 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 proposed baseline efficiency level reflects 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 has an efficiency rating of 2.38 IMEF/3.7 IWF.

DOE seeks comment on whether the baseline efficiency levels analyzed in this NOPR for each product class are appropriate.

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.⁴⁵

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.

DOE has tentatively determined that the max-tech efficiency level for each RCW product class corresponds to the maximum available level for each product class. In other words, DOE has not defined or analyzed any efficiency levels higher than those currently available on the market.

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.⁴⁶ 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.

In the September 2021 Preliminary Analysis, for all product classes except top-loading compact, DOE considered efficiency levels higher than baseline levels based on specifications prescribed by ENERGY STAR® and the Consortium for Energy Efficiency ("CEE")'s Super Efficient Home-Appliances Initiative,⁴⁷ as well as gap-fill levels. At the time of the September 2021 Preliminary Analysis, large clusters of models were available at the ENERGY STAR and CEE Tier levels, as evident in the market distribution plots presented in chapter 3 of the September 2021 Preliminary TSD. At the time of the September 2021 Preliminary Analysis, no automatic top-loading compact RCWs were available on the market that exceeded the baseline level. Accordingly, DOE did not consider any higher efficiency levels for this product class.

In chapter 5 of the September 2021 Preliminary TSD, DOE established the preliminary efficiency levels for each product class as presented in Table IV.5 through Table IV.8.

⁴⁴ See section IV.C.2.c of this document for a discussion of efficiency levels for the semi-automatic product class.

⁴⁵ DOE's Compliance Certification Database is available at www.regulations.doe.gov/certification-data. Analysis conducted May 2022.

⁴⁶ 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.

⁴⁷ CEE Super-Efficient Home Appliance Initiative available at cee1.org/content/cee-program-resources. Accessed July 13, 2022.

TABLE IV.5—TOP-LOADING, COMPACT * (<1.6 ft³) PRELIMINARY EFFICIENCY LEVELS, AS PRESENTED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)
Baseline	Current DOE standard	1.15	12.0

* As discussed in section IV.A.1 of this document, DOE is proposing in this NOPR to rename the top-loading compact product class analyzed in the September 2021 Preliminary Analysis to top-loading “ultra-compact.”

TABLE IV.6—TOP-LOADING, STANDARD-SIZE (≥1.6 ft³) PRELIMINARY EFFICIENCY LEVELS, AS PRESENTED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)
Baseline	Current DOE standard	1.57	6.5
1	Gap fill	1.70	5.0
2	ENERGY STAR (v. 8.1)	2.06	4.3
3	2015–2017 CEE Tier 1	2.38	3.7
4	2015 ENERGY STAR Most Efficient/Maximum available	2.76	3.5

TABLE IV.7—FRONT-LOADING, COMPACT (<3.0 ft³) PRELIMINARY EFFICIENCY LEVELS, AS PRESENTED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)
Baseline	Current DOE standard for front-loading, standard-size (≥1.6 ft ³)	1.84	4.7
1	ENERGY STAR v. 8.1 level for units ≤2.5 ft ³	2.07	4.2
2	2018–2022 ENERGY STAR Most Efficient for units ≤2.5 ft ³	2.20	3.7
3	ENERGY STAR v. 7.0 level for units >2.5 ft ³	2.38	3.7
4	ENERGY STAR v. 8.1 level for units >2.5 ft ³ /Maximum available	2.76	3.2

TABLE IV.8—FRONT-LOADING, STANDARD-SIZE (≥3.0 ft³) PRELIMINARY EFFICIENCY LEVELS, AS PRESENTED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)
Baseline	ENERGY STAR v. 7.0	2.38	3.7
1	Gap fill	2.60	3.5
2	ENERGY STAR v. 8.1	2.76	3.2
3	2018–2022 ENERGY STAR Most Efficient	2.92	3.2
4	Maximum available	3.00	2.9

DOE sought comment on whether the preliminary higher efficiency levels identified in the September 2021 Preliminary Analysis for each product class were appropriate.

The CA IOUs, ASAP *et al.*, and NYSEDA recommended that DOE consider revisiting max-tech and higher efficiency levels based on currently available products, for the top-loading compact product class. (CA IOUs, No. 43 at pp. 4–5; ASAP *et al.*, No. 37 at p. 4; NYSEDA, No. 36 at p. 2.) These stakeholders expressed concern that DOE did not consider any products above the baseline levels of 1.15 IMEF and 12.0 IWF, since the ratings in DOE’s CCD indicates top-loading compact models that exceed these levels. (*Id.*) ASAP *et al.* noted that DOE’s CCD includes 8 top-loading compact models with IMEF ratings between 1.24 and

1.36. (ASAP *et al.*, No. 37 at p. 4) Furthermore, ASAP *et al.* commented that the new proposed test procedure could change the relative rankings and range of efficiency ratings for top-loading compact models. (*Id.*)

DOE’s CCD currently includes both automatic clothes washer models and semi-automatic clothes washer models certified within the top-loading compact product class. While the certification database does not differentiate between automatic and semi-automatic configurations, DOE conducted an analysis of product literature for each certified model to identify the configuration of each model in the CCD. DOE’s analysis indicates that considering only *automatic* top-loading compact clothes washers, models are available only at the baseline efficiency level. All of the other top-loading

compact-size models in the CCD at higher efficiency levels are *semi-automatic* top-loading clothes washers with capacities less than 1.6 ft³. When evaluating only automatic top-loading compact clothes washers in the CCD, only products with baseline efficiency have been certified to DOE. Therefore, because DOE is not aware of any *automatic* top-loading compact RCWs available on the market at the time of this analysis that exceed the baseline level, DOE is not proposing any higher efficiency levels for this product class.

Section IV.C.2.c of this document discusses the efficiency levels that DOE proposes for semi-automatic clothes washers.

The CA IOUs and NYSEDA also recommended that DOE consider revisiting max-tech and higher efficiency levels based on currently

available products, for the top-loading standard-size product class. (CA IOUs, No. 43 at p. 5; NYSERDA, No. 36 at p. 2) These stakeholders commented that according to their analysis of the CCD, nine models are certified to lower (more efficient) IWFs than the most efficient considered efficiency level presented in the September 2021 Preliminary TSD. (*Id.*) The CA IOUs therefore recommended that DOE adjust the maximum achievable efficiency level to reflect the market availability of top-loading standard-size products. (CA IOUs, No. 43 at p. 5) NYSERDA recommended that DOE add an EL 5 using the maximum technologically available efficiency ratings rather than the 2015 ENERGY STAR Most Efficient level to better reflect the constantly improving market. (NYSERDA, No. 36 at p. 2)

The CA IOUs and NYSERDA also recommended that DOE consider revisiting max-tech and higher efficiency levels based on currently available products, for the front-loading standard-size product class. (CA IOUs, No. 43 at pp. 5–6; NYSERDA, No. 36 at p. 2) These stakeholders commented that the CCD contains units with higher efficiencies than the max-tech level DOE considered in the September 2021 Preliminary Analysis and recommended that DOE adjust the highest efficiency levels to reflect the availability of these products. (*Id.*) The CA IOUs identified 11 models that surpass the IMEF and IWF maximum available level presented

in the September 2021 Preliminary TSD, at 3.1 IMEF and 2.7 and 2.9 IWF. (CA IOUs, No. 43 at pp. 5–6)

In response to changes in availability on the market since the September 2021 Preliminary Analysis, as reflected by the models in DOE's CCD identified by commenters, DOE has updated the max-tech levels for the top-loading standard-size and front-loading standard-size product classes to reflect the maximum efficiency available in the CCD at the time of this NOPR analysis. The updated max-tech level for top-loading standard-size is 2.76 IMEF/3.2 IWF, which DOE notes corresponds to the 2016/2017 ENERGY STAR Most Efficient criteria. The updated max-tech level for front-loading standard-size is 3.10 IMEF/2.9 IWF. Although DOE also identified two RCW models in DOE's CCD that are rated at 3.10 IMEF/2.7 IWF, these units have extra-large capacity drums that necessitate cabinet widths greater than 27 inches. As discussed in section IV.B.1 of this NOPR, DOE excluded from consideration any drum capacities increase that require a cabinet width increase beyond 27 inches.

DOE also updated the definition of the top-loading standard-size gap-fill level (*i.e.*, EL 1) to reflect changes in the market since September 2021 Preliminary Analysis. In the September 2021 Preliminary Analysis, DOE defined EL 1 as 1.70 IMEF/5.0 IWF based on a small cluster of units in DOE's CCD rated at or near that level. Subsequent

to the September 2021 Preliminary Analysis, these units have been discontinued from the market and are no longer listed in DOE's CCD; in addition, DOE's market research indicates that the brand associated with these units no longer offers top-loading clothes washers for sale in the U.S. market. In lieu of any product offerings currently on the market between the baseline level (corresponding to the DOE minimum standard) and EL 2 (corresponding to the applicable ENERGY STAR criteria), in this NOPR DOE has defined EL 1 as the numerical midpoint between the baseline and EL 2 levels.

Lastly, DOE updated the definition of EL 3 for the front-loading compact product class to better align with an existing market cluster. In the September 2021 Preliminary Analysis, DOE had defined EL 3 as 2.38 IMEF/3.7 IWF, which represented the ENERGY STAR v. 7.0 level for units with capacity greater than 2.5 ft³. This resulted in a relatively large gap in IMEF between EL 3 and EL 4 (2.38 to 2.76 IMEF). For this NOPR, DOE has instead defined EL 3 as 2.50 IMEF/3.5 IWF as a gap fill level representing a market cluster at that point. This also results in EL 3 being closer to the midpoint of EL 2 and EL 4.

In summary, for this NOPR, DOE analyzed the efficiency levels for each product class shown in Table IV.9 through Table IV.12.

TABLE IV.9—TOP-LOADING, ULTRA-COMPACT (<1.6 ft³) EFFICIENCY LEVELS ANALYZED IN THIS NOPR

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)
Baseline	Current DOE standard	1.15	12.0

TABLE IV.10—TOP-LOADING, STANDARD-SIZE (≥1.6 ft³) EFFICIENCY LEVELS ANALYZED IN THIS NOPR

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)
Baseline	Current DOE standard	1.57	6.5
1	Gap fill	1.82	5.4
2	ENERGY STAR v. 8.1	2.06	4.3
3	2015–2017 CEE Tier 1	2.38	3.7
4	Maximum available (2016/2017 ENERGY STAR Most Efficient)	2.76	3.2

TABLE IV.11—FRONT-LOADING, COMPACT (<3.0 ft³) EFFICIENCY LEVELS ANALYZED IN THIS NOPR

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)
Baseline	Current DOE standard for front-loading, standard-size (≥1.6 ft ³)	1.84	4.7
1	ENERGY STAR v. 8.1 level for units ≤2.5 ft ³	2.07	4.2
2	2023 ENERGY STAR Most Efficient for units ≤2.5 ft ³	2.20	3.7
3	Gap fill	2.50	3.5
4	Maximum available (ENERGY STAR v. 8.1 level for units >2.5 ft ³)	2.76	3.2

TABLE IV.12—FRONT-LOADING, STANDARD-SIZE (≥ 3.0 ft³) EFFICIENCY LEVELS ANALYZED IN THIS NOPR

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)
Baseline	ENERGY STAR v. 7.0	2.38	3.7
1	Gap fill	2.60	3.5
2	ENERGY STAR v. 8.1	2.76	3.2
3	2023 ENERGY STAR Most Efficient	2.92	3.2
4	Maximum available	3.10	2.9

DOE seeks comment on whether the higher efficiency levels analyzed in this NOPR for each product class are appropriate.

c. Semi-Automatic

As discussed, DOE's CCD includes both automatic clothes washer models and semi-automatic clothes washer models certified within the top-loading compact product class. While the certification database does not differentiate between automatic and semi-automatic configurations, DOE conducted an analysis of product literature for each certified model to identify whether each model is automatic or semi-automatic.

In the September 2021 Preliminary TSD and the April 2022 NODA, DOE did not present any data or analysis for semi-automatic clothes washers. As discussed in section IV.A.1 of this document, in this NOPR, DOE is proposing to re-establish a separate product class for semi-automatic clothes washers and to establish performance-based standards for semi-automatic clothes washers.

As discussed previously, CCD currently includes both automatic

clothes washer models and semi-automatic clothes washer models certified within the top-loading compact product class. While the certification database does not differentiate between automatic and semi-automatic configurations, DOE conducted an analysis of product literature for each certified model to identify the semi-automatic models in the CCD.

To define the efficiency levels for analysis for the semi-automatic product class, DOE did not rely on any ratings currently provided in the CCD. As discussed in the September 2021 TP NOPR, DOE identified areas in which the current test procedure does not provide explicit instruction with regard to semi-automatic clothes washers. 86 FR 49140, 49147. As a result, DOE stated that it recognizes that the proposed specifications for testing semi-automatic clothes washers in appendix J may differ from how manufacturers are currently testing semi-automatic clothes washers under appendix J2. *Id.* at 86 FR 49168.

As finalized, appendix J includes significant changes to the testing of semi-automatic clothes washers, which

improve the representativeness of the test results while reducing test burden. Given the lack of specificity in appendix J2 regarding 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. Therefore, in this NOPR analysis, DOE defined 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. DOE defined the proposed efficiency levels for semi-automatic clothes washers by testing a representative sample of models on the market and observing the range of EER and WER results. Table IV.13 shows the proposed efficiency levels for the semi-automatic product class. See chapter 5 of the NOPR TSD for more details.

TABLE IV.13—SEMI-AUTOMATIC EFFICIENCY LEVELS ANALYZED IN THIS NOPR

EL	Efficiency level description	EER (ft ³ /kWh/cycle)	WER (gal/cycle/ft ³)
Baseline	Minimum available	1.60	0.17
1	Gap fill	2.12	0.27
2	Maximum available	2.51	0.36

DOE seeks comment on whether the efficiency levels analyzed in this NOPR for semi-automatic RCWs are appropriate.

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, 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.

The detailed description of DOE's determination of costs for baseline and

higher efficiency levels is provided in chapter 5 of the NOPR TSD.

Ameren *et al.* noted that the vast majority of RCW energy savings documented in the September 2021 Preliminary TSD is driven by the top-loading standard-size product class, and recommended that DOE take a rigorous approach to evaluate the baseline technologies, likely technology pathways, and associated incremental cost for this product class. (Ameren *et al.*, No. 42 at pp. 3–4) As discussed, DOE followed a rigorous approach to

developing the cost-efficiency relationship for each product class.

4. Cost-Efficiency Results

In the September 2021 Preliminary Analysis, DOE conducted teardowns on 31 models, which covered the entire range of efficiency levels within each analyzed product class.

The preliminary baseline MPCs presented in the September 2021 Preliminary Analysis for each product class are shown in Table IV.14.

TABLE IV.14—PRELIMINARY BASELINE MANUFACTURER PRODUCTION COSTS (2020\$), AS PRESENTED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

Product class	Manufacturer production cost
Top-Loading, Compact (less than 1.6 ft ³ capacity) *	\$311.00
Top-Loading, Standard-Size (1.6 ft ³ or greater capacity)	241.97
Front-Loading, Compact (less than 3.0 ft ³ capacity)	292.85
Front-Loading, Standard-Size (3.0 ft ³ or greater capacity)	410.15

* As discussed in section IV.A.1 of this document, DOE is proposing in this NOPR to rename the top-loading compact product class analyzed in the September 2021 Preliminary Analysis to top-loading "ultra-compact."

The incremental MPCs presented in the September 2021 Preliminary Analysis for top-loading standard-size; front-loading compact; and front-loading standard-size product classes

are shown in Table IV.15 through Table IV.17, respectively. As described previously, DOE did not analyze any higher efficiency levels for the top-loading compact product class in the

September 2021 Preliminary Analysis since no units on the market exceeded the baseline level.

TABLE IV.15—PRELIMINARY INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR TOP-LOADING, STANDARD-SIZE (≥1.6 ft³) PRODUCT CLASS (2020\$), AS PRESENTED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	IMEF	IWF	Incremental cost
Baseline	1.57	6.5	
1	1.70	5.0	\$39.44
2	2.06	4.3	69.34
3	2.38	3.7	112.83
4	2.76	3.5	115.50

TABLE IV.16—PRELIMINARY INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR FRONT-LOADING, COMPACT (<3.0 ft³) PRODUCT CLASS (2020\$), AS PRESENTED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	IMEF	IWF	Incremental cost
Baseline	1.84	4.7	
1	2.07	4.2	\$17.97
2	2.20	3.7	45.58
3	2.38	3.7	83.81
4	2.76	3.2	94.53

TABLE IV.17—PRELIMINARY INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR FRONT-LOADING, STANDARD-SIZE (≥3.0 ft³) PRODUCT CLASS (2020\$), AS PRESENTED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	IMEF	IWF	Incremental cost
Baseline	1.57	6.5	
1	1.70	5.0	\$39.44
2	2.06	4.3	69.34
3	2.38	3.7	112.83
4	2.76	3.5	115.50

In the September 2021 Preliminary Analysis, DOE sought comment on the cost efficiency relationships developed for each product class. In particular, DOE sought data and information that could be used to further improve the determination of cost at each efficiency level.

Ameren *et al.* commented that NEEA commissioned a laboratory engineering teardown study (“2019 NEEA Teardown”), comparing appendix J2 testing and teardown results of a top-loading standard-size RCW rated at the ENERGY STAR level with a similar top-loading standard-size RCW rated at the baseline level. (Ameren *et al.*, No. 42 at pp. 13–14) Ameren *et al.* stated that the 2019 NEEA Teardown revealed the key difference between the two RCW models was technology that improved water extraction and therefore reduced drying energy. (*Id.*) Specifically, the ENERGY STAR model had a 0.4 horsepower motor, whereas the baseline model had a 0.33 horsepower motor, and the ENERGY STAR model had a slightly larger diameter pulley that enabled a higher spin speed of 800 rpm compared to the 700 rpm of the baseline model. (*Id.*) Ameren *et al.* added that even though these differences resulted in slightly higher machine energy use for the ENERGY STAR model, the overall IMEF was better than the baseline model because the ENERGY STAR model had better water extraction capability. (*Id.*) Based on the data from the 2019 NEEA Teardown, Ameren *et al.* recommended that DOE consider an increased motor size and alternate pulley ratio as a lower-cost compliance pathway to enable higher spin speeds and lower drying energy sufficient to meet EL 2 as proposed in the September 2021 Preliminary TSD. (*Id.*) Ameren *et al.* added that this lower-cost technology pathway may be more likely given the higher manufacturing cost of the significant redesign needed to employ a direct drive motor for compliance with EL 2. (*Id.*)

As noted, DOE conducted teardowns on a wide range of top-loading RCWs to inform the cost-efficiency relationships presented in the September 2021 Preliminary Analysis and in this NOPR. DOE’s analysis confirms Ameren *et al.*’s finding that reduced drying energy through improved water extraction is a key difference between the baseline level and the ENERGY STAR level (*i.e.*, EL 2) in the top-loading standard-size product class. As noted by Ameren *et al.*, DOE’s teardown analysis conducted in support of the September 2021 Preliminary Analysis indicated that to achieve EL 2, manufacturers would likely incorporate a wash plate

(sometimes also called an “impeller”); direct-drive motor; spray rinse; and other hardware features to enable a spin speed increase. As described previously, the cost-efficiency relationship developed for each product class reflects DOE’s assessment of a market-representative “path” to achieve each higher efficiency level; *i.e.*, it does not necessarily reflect the lowest-cost pathway employed by a particular manufacturer. Through the breadth of models torn down at the baseline level and EL 2, DOE determined that the most typical approach currently being used by manufacturers to achieve EL 2 is through the use of a direct-drive motor. DOE also notes that regardless of whether higher spin speeds are achieved through the use of a conventional motor or direct-drive motor, other hardware-related changes must also be employed to safely enable higher spin speeds. The cost-efficiency relationship reflects the totality of these costs.

The CA IOUs commented that the September 2021 Preliminary TSD does not appear to incorporate lower standby components at any efficiency levels for top-loading clothes washers, despite lower standby power being listed in remaining design options of the screening analysis. (CA IOUs, No. 43 at p. 5) The CA IOUs therefore recommended that DOE consider adding lower standby power components as a design option for top-loading products when incorporating changes to its analysis. (*Id.*)

Through its testing and teardowns conducted in support of the September 2021 Preliminary Analysis as well as this NOPR, DOE has not observed any consistent trend of lower-standby power components being used to achieve higher efficiency levels within the top-loading standard-size product class. As discussed, the cost-efficiency relationship developed for each product class reflects DOE’s assessment of a market-representative “path” to achieve each higher efficiency level. DOE notes that given the relatively small contribution of standby power to the total energy measured by the test procedure, reducing standby power has a relatively minor impact on EER compared to other design options.

AHAM commented that based on its test data, it would be challenging for low priced top-loading clothes washers to meet the efficiency levels DOE analyzed in the September 2021 Preliminary Analysis. (AHAM, No. 40 at p. 16) Whirlpool commented that many of the design options DOE suggested in the September 2021 Preliminary Analysis to reach EL 2 would present

significant challenges to manufacturers and cautioned DOE against considering some of these design options as viable technology options. (Whirlpool, No. 39 at p. 3)

With regard to top-loading standard-size EL 2 specifically, in the September 2021 Preliminary Analysis, DOE indicated that the following design options are used: wash plate, direct-drive motor, spray rinse, and hardware features enabling spin speed increase. As discussed, DOE’s identification of design options reflects DOE’s observations through teardowns of those design options that manufacturers are currently employing to achieve each higher efficiency level. DOE’s analyses consider the costs required to implement these design options as well as other implications that may be associated with each higher efficiency level.

Ameren *et al.* commented that NEEA’s market research identified key characteristics of baseline top-loading standard-size RCWs, including capacity, water fill control, number of programs, number of wash temperatures, price, and wash basket material type, based on a sample of 9 RCWs, representing 6 brands, and comprising 32 percent of total top-loading standard-size RCW sales. (Ameren *et al.*, No. 42 at p. 3–6) Ameren *et al.* concluded that NEEA’s data matched well with DOE’s characterization of the baseline product market with one key exception: NEEA observed a dominance of stainless-steel wash baskets in the baseline market, while DOE characterizes the baseline product as having an enameled steel wash basket. (*Id.*) NEEA found that, among RCWs with a retail price less than \$600, 64 percent of top-loading baseline efficiency RCWs had stainless-steel wash baskets, and that among RCWs with a retail price less than \$500, 51 percent of RCWs had stainless-steel wash baskets. (*Id.*) Given NEEA’s findings, Ameren *et al.* recommended that DOE adjust the engineering analysis to include stainless-steel wash baskets in its characterization of the baseline model by either adopting a representative baseline model with a stainless-steel wash basket to represent the baseline top-loading standard-size RCWs, or developing a sales-weighted average cost of the top-loading RCW baseline model and a sales-weighted average incremental cost for EL 1 and EL 2. (*Id.*)

Whirlpool also commented on the use of stainless-steel wash baskets as a design option. Whirlpool commented that its testing confirmed DOE’s statement that drying energy is the largest component of overall efficiency

and stated that a faster and longer spin speed is the number one technology option for many clothes washer models to enable increased efficiency as measured using IMEF or EER.

(Whirlpool, No. 39 at pp. 4–6)

Whirlpool added that for some clothes washers, increasing spin speed or spin time would be the only viable path to meet EL 2. (*Id.*) Whirlpool commented that using stainless-steel wash baskets instead of porcelain ones is a necessary technology upgrade to increase spin speed and spin time because porcelain tends to chip or crack at higher speeds, which exposes the underlying steel, which then rusts. (*Id.*) Whirlpool commented that an increase to amended standards could drive porcelain wash baskets out of the market and force a massive costly shift to stainless-steel wash baskets. (*Id.*) Whirlpool noted that clothes washers with porcelain wash baskets comprise a majority of its opening-price-point top-loading standard-size clothes washers, which are popular with consumers for their traditional look and affordability. (*Id.*) Whirlpool expressed concern that the transition to using stainless-steel wash baskets would lead to increased costs for redesign, retooling, lost sales volume, reduced margins, marketing and retooling, and potential job losses, all of which may be a cost burden to bear by low-income consumers. (*Id.*)

DOE defines a baseline model for each product class as a reference point against which any changes resulting from energy conservation standards can be measured. The baseline model in each product class represents the characteristics of common or typical products in that class. Typically, a baseline model is one that exactly meets the current minimum energy conservation standards. DOE's cost efficiency curves are intended to represent incremental costs associated with design options that are required in order to achieve higher efficiency levels above the baseline. For top-loading standard-size clothes washers, the faster spin speed at EL 2 requires the use of a stainless-steel wash basket, which has higher strength than the enameled steel material used in baseline models. For top-loading standard-size products at lower efficiency levels (*i.e.*, baseline and EL 1), stainless steel may be used for aesthetic purposes but is not required in order to operate at that efficiency level.

DOE teardowns indicate that use of an enameled steel material is representative of a “true” baseline top-loading compact RCW, and DOE maintains this as the basis for its baseline manufacturing cost estimate in this NOPR. However, DOE notes that its industry conversion cost estimates account for the costs associated with transitioning the portion of the market using porcelain wash baskets to stainless-steel wash baskets.

Whirlpool also commented that in addition to using a stainless-steel wash basket, other hardware features would be needed to enable the higher spin speeds required under EL 2 including motor power and powertrain upgrades; more robust product structure such as drive stampings, suspension, and attachments; and components that keep noise and vibration levels consistent with current products. (*Id.*) Whirlpool concluded that, while DOE captured some of the design options needed to increase spin speed and spin time, DOE's analysis may not be comprehensive of the number and scale of changes needed when simultaneously changing the test procedure and standards. (*Id.*)

Whirlpool commented that, while implementing a direct drive motor could use up to 50 percent less motor energy, which corresponds with about 5 percent less total energy, the larger savings would come from the increase to spin speed enabled by these new motors and powertrain systems. (Whirlpool, No. 39 at p. 6) Whirlpool also commented that most ENERGY STAR level clothes washers have a direct drive motor or more advanced brushless permanent magnet (“BPM”) motor, while baseline models typically use a permanent split capacitor (“PSC”) motor, which is less expensive, but is not capable of reaching higher speeds without tradeoffs. (*Id.*)

AHAM commented that increasing spin speed and spin time will drive motor structure and other product design changes including larger counterweights in front-loading clothes washers. (AHAM, No. 40 at pp. 9–10) AHAM further commented that increasing spin speed and spin time could cause increased vibration and noise, negatively impact fabric care due to tangling and wrinkling, and increase cycle time. (*Id.*)

Whirlpool commented that more efficient spray rinses are a critical piece in the package of technology options needed to meet EL 2 for top-loading standard-size clothes washers.

(Whirlpool, No. 39 at p. 6) Whirlpool further explained that while spray rinse is already being used for most models, a further reduction of the amount of water used during spray rinses will be necessary at higher efficiency levels. (*Id.*) Whirlpool commented that changes to make spray rinse technology even more efficient may impact the design of dispensers and hydraulic components to use less water for the removal of detergent from the load. (*Id.*) Whirlpool commented that it is uncertain whether DOE has adequately captured these additional design considerations for spray rinse technology and recommended that DOE ensure that they are captured. (*Id.*)

In response to Whirlpool and AHAM's comments regarding the costs associated with specific design options, DOE notes that it developed its cost-efficiency relationships based on comprehensive teardowns in which DOE physically dismantles commercially available products, component-by-component, to develop a detailed bill of materials for the product. In this regard, any ancillary components or parts that accompany the major design options indicated in chapter 5 of the NOPR TSD would also be accounted for in DOE's cost estimates. In particular, with regard to hardware features needed to enable higher spin speeds, DOE's teardown costs include the cost increases associated with motor structure, bearings, and counterweights. With regard to hardware features needed to enable spray rinse, DOE's teardown costs include the cost increases associated with water dispensers and tubing.

As discussed, DOE conducted additional testing and teardowns following the September 2021 Preliminary Analysis. Table IV.18 shows the updated MPCs for each product class. Table IV.19 through Table IV.22 provide the incremental MPCs for each higher efficiency level for each product class. 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.18—BASELINE MANUFACTURER PRODUCTION COSTS
[2021\$]

Product class	Manufacturer production cost
Semi-Automatic	\$192.96
Top-Loading, Ultra-Compact (less than 1.6 ft ³ capacity)	374.62
Top-Loading, Standard-Size (1.6 ft ³ or greater capacity)	272.42
Front-Loading, Compact (less than 3.0 ft ³ capacity)	326.18
Front-Loading, Standard-Size (3.0 ft ³ or greater capacity)	525.52

TABLE IV.19—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR SEMI-AUTOMATIC PRODUCT CLASS
[2021\$]

EL	EER	WER	Incremental cost
Baseline	1.60	0.17	.....
1	2.12	0.27	\$5.45
2	2.51	0.36	9.55

TABLE IV.20—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR TOP-LOADING, STANDARD-SIZE (≥1.6 ft³)
PRODUCT CLASS
[2021\$]

EL	IMEF	IWF	Incremental cost
Baseline	1.57	6.5	.....
1	1.82	5.4	\$55.49
2	2.06	4.3	108.76
3	2.38	3.7	114.95
4	2.76	3.5	117.90

TABLE IV.21—INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR FRONT-LOADING, COMPACT (<3.0 ft³) PRODUCT CLASS
[2021\$]

EL	IMEF	IWF	Incremental cost
Baseline	1.84	4.7	.....
1	2.07	4.2	\$32.21
2	2.20	3.7	62.07
3	2.50	3.5	82.10
4	2.76	3.2	84.04

TABLE IV.22—MANUFACTURER PRODUCTION COSTS FOR FRONT-LOADING, STANDARD-SIZE (≥3.0 ft³) PRODUCT CLASS
[2021\$]

EL	IMEF	IWF	Incremental cost
Baseline	1.57	6.5	.....
1	1.70	5.0	\$11.41
2	2.06	4.3	19.71
3	2.38	3.7	30.52
4	2.76	3.5	43.64

DOE seeks comment on the baseline MPCs and incremental MPCs developed for each product class.

5. Translations

As discussed in section III.C of this document, the June 2022 TP Final Rule established a new test procedure, appendix J, which established new efficiency metrics: EER and WER. 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.

a. Preliminary Analysis Approach

In chapter 5 of the September 2021 Preliminary TSD, DOE performed an initial analysis to translate the appendix J2 efficiency levels into appendix J efficiency levels, expressed in EER and

WER. Since appendix J was not yet finalized at the time of publication for the September 2021 Preliminary Analysis, DOE's initial analysis was performed using the version of appendix J proposed in the September 2021 TP NOPR.

In the September 2021 Preliminary Analysis, DOE explored two potential methods for translating the IMEF and IWF efficiency levels into equivalent

values of EER and WER: using a best-fit line equation for each product class, and using a more qualitative market-cluster method. The IMEF–EER plots generally had lower R-squared values⁴⁸ than the IWF–WER plots, indicating a weaker correlation between EER and IMEF than the relatively stronger correlation between WER and IWF. In particular, the front-loading standard-size product class had an R-squared value of 0.08—indicating a high amount of variance around the line of best fit—such that the

linear translation formula would not provide a robust prediction of how individual front-loading standard-size models would be rated under appendix J compared to under appendix J2. Conversely, the top-loading standard-size product class had a higher R-squared value of 0.77 for the IMEF to EER translation, indicating a much higher degree of confidence in the prediction of how individual top-loading standard-size models would be rated under appendix J. Given the lack

of strong R-squared value correlation for the front-loading product classes using the best-fit line method, for the September 2021 Preliminary Analysis, DOE used a market-cluster approach to define the EER and WER levels corresponding to the selected IMEF and IWF efficiency levels.

The translated EER and WER efficiency levels presented in the September 2021 Preliminary Analysis are shown in Table IV.23 through Table IV.26.

TABLE IV.23—TOP-LOADING, COMPACT * (<1.6 ft³) PRELIMINARY EFFICIENCY LEVELS ANALYZED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	Efficiency Level Description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)	EER (lb/kWh/cycle)	WER (lb/gal/cycle)
Baseline	Current DOE standard	1.15	12.0	4.26	0.33

* As discussed in section IV.A.1 of this document, DOE is proposing in this NOPR to rename the top-loading compact product class analyzed in the September 2021 Preliminary Analysis to top-loading “ultra-compact.”

TABLE IV.24—TOP-LOADING, STANDARD-SIZE (≥1.6 ft³) PRELIMINARY EFFICIENCY LEVELS ANALYZED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)	EER (lb/kWh/cycle)	WER (lb/gal/cycle)
Baseline	Current DOE standard	1.57	6.5	3.73	0.42
1	Gap fill	1.70	5.0	4.05	0.54
2	ENERGY STAR v. 8.1	2.06	4.3	4.37	0.65
3	2015–2017 CEE Tier 1	2.38	3.7	4.96	0.73
4	2015 ENERGY STAR Most Efficient/Maximum available.	2.76	3.5	5.30	0.73

TABLE IV.25—FRONT-LOADING, COMPACT (<3.0 ft³) PRELIMINARY EFFICIENCY LEVELS ANALYZED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)	EER (lb/kWh/cycle)	WER (lb/gal/cycle)
Baseline	Current DOE standard for front-loading, standard-size (≥1.6 ft ³).	1.84	4.7	4.20	0.61
1	ENERGY STAR v. 8.1 level for units ≤2.5 ft ³	2.07	4.2	4.49	0.66
2	2018–2022 ENERGY STAR Most Efficient for units ≤2.5 ft ³ .	2.20	3.7	4.78	0.71
3	ENERGY STAR v. 7.0 level for units >2.5 ft ³	2.38	3.7	5.10	0.78
4	ENERGY STAR v. 8.1 level for units >2.5 ft ³ /Maximum available	2.76	3.2	5.60	0.88

TABLE IV.26—FRONT-LOADING, STANDARD-SIZE (≥3.0 ft³) PRELIMINARY EFFICIENCY LEVELS ANALYZED IN THE SEPTEMBER 2021 PRELIMINARY ANALYSIS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)	EER (lb/kWh/cycle)	WER (lb/gal/cycle)
Baseline	ENERGY STAR v. 7.0	2.38	3.7	4.90	0.81
1	Gap fill	2.60	3.5	5.10	0.85
2	ENERGY STAR v. 8.1	2.76	3.2	5.30	0.90
3	2018–2022 ENERGY STAR Most Efficient.	2.92	3.2	5.60	0.90
4	Maximum available	3.00	2.9	6.06	1.10

⁴⁸ The R-squared values of each line of best fit represents the variability of the data around the

lines of best fit. The closer the R-squared value is to 1.0, the more the equation of best fit is an

accurate representation of the conversion between the two metrics.

In the September 2021 Preliminary Analysis, DOE sought comment on the EER and WER levels identified as being equivalent to the IMEF and IWF efficiency levels. DOE further requested data from manufacturers indicating the EER and WER values equivalent to the IMEF and IWF values, respectively, for RCW models currently on the market.

Whirlpool commented that DOE underestimated the impacts of the amended test procedure on RCW efficiency and overestimated the number of models that could meet the EER associated with EL 2 in the September 2021 Preliminary TSD, when tested under appendix J. (Whirlpool, No. 39 at p. 3) Whirlpool also commented that many current ENERGY STAR certified RCWs meet the IMEF and IWF levels associated with preliminary EL 2, but would not meet the EER and WER levels defined for EL 2. (*Id.*) Whirlpool commented that this discrepancy could indicate that the impact of the proposed amended standards could be more severe than DOE analyzed. (*Id.*)

AHAM commented that without a proven translation between appendix J2 and appendix J, DOE has no reliable means to estimate energy savings from its incremental ELs. (AHAM, No. 40 at p. 16) AHAM commented that it attempted to evaluate the accuracy of DOE's translation by comparing tested appendix J2 and appendix J data among clothes washers that AHAM tested. (*Id.*) AHAM presented a table comparing R-squared values for AHAM test data with those presented by DOE in the preliminary analysis. (*Id.*) AHAM commented that its results are consistent with DOE's statement that the best-fit line method is insufficient for front-loading clothes washers. (*Id.*) Additionally, AHAM concluded that DOE's best-fit line equations show low levels of correlation between appendix J2 and appendix J testing, especially for top-loading standard-size and front-loading compact products. (*Id.*) AHAM therefore recommended that DOE update its analysis to improve the accuracy of the best-fit line equations and that DOE further investigate the impact of changing from a capacity-based test procedure to a load size-based test procedure on energy and water use. (*Id.*)

AHAM also presented data that plotted DOE's proposed efficiency levels as well as EER versus WER data for the clothes washers that AHAM tested. (AHAM, No. 40 at pp. 16–17) Based on the data, AHAM found that 65 percent of the top-loading standard-size RCWs it tested, which represent about half of top-loading standard-size clothes

washer shipments, are less efficient than the EER/WER baseline proposed in the September 2021 Preliminary TSD. (*Id.*) AHAM similarly noted that 44.5 percent of DOE's tested and predicted results are less efficient than the proposed EER/WER baseline. (*Id.*) AHAM therefore recommended that DOE shift the baseline for top-loading standard-size clothes washers so that it appropriately represents the least efficient clothes washers on the market. (*Id.*) AHAM suggested that DOE evaluate a gap-fill level between a baseline level that accounts for the RCWs that fall below DOE's proposed baseline level and DOE's proposed EL 1. (AHAM, No. 40 at p. 18) AHAM further commented that the baseline EER/WER level DOE proposed in the September 2021 Preliminary Analysis could serve as a gap-fill level. (*Id.*)

AHAM commented that it is challenging for top-loading standard-size RCWs to reach the EER and WER levels associated with preliminary EL 2. (AHAM, No. 40 at pp. 17–18) Since the IMEF and IWF efficiency levels associated with preliminary EL 2 are the same as the current ENERGY STAR levels, AHAM sought to clarify that DOE should not assume that the current ENERGY STAR penetration values would represent the percentage of models or shipments that can meet EL 2 when tested under appendix J. (*Id.*)

Regarding DOE's method to evaluate average performance among market clusters, AHAM commented that since DOE did not provide critical calculation and evaluation metrics for its results, AHAM cannot properly assess this approach or test the method's accuracy using AHAM's data. (AHAM, No. 40 at p. 16)

AHAM commented that the models it tested represent approximately half of total 2020 shipments, and that its test results bring into question the accuracy to DOE's data. (AHAM, No. 53 at pp. 10–11) AHAM recommended that DOE carefully evaluate AHAM's dataset and integrate it with its own data in order to update its analysis. (*Id.*)

ASAP *et al.* commented that they support DOE's approach to use the market cluster approach outlined in EPCA to develop efficiency levels. (ASAP *et al.*, No. 37 at p. 1)

The CA IOUs expressed concern that for the top-loading compact product class, the IMEF versus EER and IWF versus WER translations indicate opposite trends compared to the other three product classes, showing a negative relationship between IMEF and EER and a positive relationship between IWF and WER. (CA IOUs, No. 43 at p. 3)

Following publication of the September 2021 Preliminary Analysis, DOE published the April 2022 NODA, which presented the results of additional testing conducted in furtherance of the development of the translations between the current test procedure and the proposed new test procedure. 87 FR 21816. The improved translation equations addressed the concerns expressed by commenters regarding the translations presented in the September 2021 Preliminary Analysis. The following section summarizes the translation approach presented in the April 2022 NODA.

b. NODA Approach

In the April 2022 NODA, DOE published updated translation equations that were developed using data points from the 44 units it tested to both appendix J2 and appendix J. In a separate spreadsheet accompanying the April 2022 NODA and available in the rulemaking docket, DOE also published the underlying test results for each RCW model in its test sample. 87 FR 21816, 21817. The April 2022 NODA summarized analyses of RMC and water fill control system ("WFCS") type, which DOE tentatively determined have a significant impact on these translation equations. *Id.*

To account for the impacts of RMC, DOE developed values for "adjusted" EER based on an "adjusted" RMC, which is equivalent to the RMC value measured under appendix J2 plus 4 percentage points. *Id.* To account for the difference in efficiency level correlation between clothes washers with automatic and manual WFCS, DOE presented an alternate set of translation equations that separate top-loading portable RCWs (which use manual WFCS) from top-loading stationary RCWs (which provide either automatic WFCS or both manual and automatic WFCSs). 87 FR 21816, 21820.

The following sections summarize the adjusted RMC approach presented in the April 2022 NODA. As discussed previously, RMC is a significant contributor to both the IMEF and EER metrics. The approach presented in the April 2022 NODA provides the foundation for the approach used for this NOPR, as discussed further in section IV.C.5.c of this document.

i. Adjusted RMC

The following paragraphs explain the difference in RMC measurement methodology between appendix J2 and appendix J. This difference in methodology underlies DOE's careful consideration of RMC in developing the metric translation equations.

As discussed, the RMC is a measure of the amount of water remaining in the clothing load after completion of the clothes washer cycle. The RMC value is used to calculate the total per-cycle energy consumption for removal of moisture from the clothes washer test load in a clothes dryer to an assumed final moisture content, *i.e.*, the “drying energy,” which is one of the factors contained within both the IMEF and EER metrics. Lower values of RMC result in less drying energy and thus represent more-efficient performance.

Section 3.8.2 of appendix J2 requires that the RMC be calculated based on a test run with the maximum load size on the Cold Wash/Cold Rinse (“Cold/Cold”) temperature selection. Section 3.8.4 of appendix J2 requires that for clothes washers that have multiple spin settings⁴⁹ available within the energy test cycle that result in different RMC values, the maximum and minimum extremes of the available spin settings must be tested with the maximum load size on the Cold/Cold temperature selection.⁵⁰ In this case, the final RMC is the weighted average of the maximum and minimum spin settings, with the maximum spin setting weighted at 75 percent and the minimum spin setting weighted at 25 percent.

In contrast, appendix J requires measuring RMC on each of the energy test cycles (*i.e.*, each load size and each wash/rinse temperature combination included for testing) using the default spin setting. On some clothes washers, the default spin setting is not the maximum spin setting. In section 4.3 of appendix J, the final RMC is calculated by weighting the individual RMC measurements using the same temperature and load size weighting factors that apply to the water and energy measurements.

As discussed in the April 2022 NODA, multiple factors can affect the RMC of a particular cycle, including the spin speed and the duration of the spin portion of the wash cycle. 87 FR 21816, 21818. The size of the load can also affect RMC—generally, larger load sizes result in lower (better) RMC values, whereas smaller load sizes result in higher (worse) RMC values. *Id.* These

factors result in different measured RMC values for appendix J and appendix J2, specifically because under appendix J, RMC is measured across a wider range of cycles (compared to only the Cold/Cold cycle in appendix J2) and because the appendix J load sizes are smaller than the appendix J2 maximum load size (on which the appendix J2 RMC measurement is based). *Id.*

In the interest of improving the translation equations as presented in the September 2021 Preliminary Analysis, DOE conducted an in-depth analysis of the differences in RMC between the appendix J2 and proposed appendix J test procedures. *Id.* For each unit that DOE tested, DOE examined the cycle-by-cycle test results to determine the key driver behind the difference in RMC when testing to appendix J as compared to appendix J2. *Id.* Based on this analysis, DOE identified three categories of spin implementations that result in differences between the appendix J RMC value and the appendix J2 RMC value, described as follows.

- The first type, referred to as “consistent spin” throughout the remainder of this NOPR, is illustrative of units in which the characteristics of the spin cycle (*e.g.*, spin speed, spin time) are consistent across temperature selections. On these 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.⁵¹

- The second type, referred to as “Cold/Cold optimized spin” throughout the remainder of this NOPR, is illustrative of units in which the spin cycle is optimized on the Cold/Cold setting with maximum load size, corresponding to the one cycle combination for which RMC is measured under appendix J2. On these units, the spin portion of the cycle is significantly faster or longer on either the Cold/Cold setting, when using a maximum load size, or both as compared to the other temperature settings or load sizes that are tested as part of the energy test cycle.

- The third type, referred to as “non-default maximum spin” throughout the remainder of this NOPR, is illustrative of units in which the maximum spin speed setting (which is tested under appendix J2) is not the default spin speed setting on the Normal cycle. On these units, the default spin speed

setting tested under appendix J would provide a lower-speed spin or a shorter spin portion of the cycle. *Id.*

For clothes washers with “consistent spin,” the only source of difference between the measured RMC values under appendix J and appendix J2 is the use of smaller load sizes for appendix J. *Id.* The observed difference in RMC between the two test procedures is relatively consistent among models from different manufacturers of RCWs with this characteristic, as discussed further in this section. *Id.*

For clothes washers with “Cold/Cold optimized spin” the difference between the measured RMC values under appendix J and appendix J2 is due to a combination of both the smaller load sizes for appendix J and the different spin behavior on the temperature settings other than Cold/Cold. *Id.* The observed difference in RMC between the two test procedures varies significantly among models from different manufacturers of RCWs with “Cold/Cold optimized spin,” depending on the degree to which the Cold/Cold RMC differs from the RMC on all other tested cycles. *Id.*

For clothes washers with “non-default maximum spin,” the difference between the measured RMC values under appendix J and appendix J2 is due to a combination of both the smaller load sizes for appendix J and the different spin behavior on the maximum and default spin settings. *Id.* Similar to units with “Cold/Cold optimized spin,” the observed difference in RMC between the two test procedures varies significantly among models from different manufacturers of RCWs with “non-default maximum spin,” depending on the degree to which the maximum spin setting differs from the default spin setting. *Id.*

As discussed, the RMC value is the most significant contributor to both the IMEF metric measured by appendix J2 and the EER metric measured by appendix J. *Id.* Because of the more significant variation in RMC between the two test procedures for “Cold/Cold optimized spin” and “non-default maximum spin” units, the correlation between IMEF and EER for these units is less strong (*i.e.*, lower “R-squared” values for the best-fit line) than for “consistent spin” units. *Id.* at 87 FR 21819.

To investigate strategies for defining translation equations with a stronger correlation between IMEF and EER, DOE developed a second set of EER values based on an “adjusted” RMC value (substituted for the measured RMC value) that assumes a “consistent spin” characteristic for each unit in the

⁴⁹ The term “spin settings” refers to spin times or spin speeds. The maximum spin setting results in a lower (better) RMC.

⁵⁰ On clothes washers that provide a Warm Rinse option, appendix J2 requires that RMC be measured on both Cold Rinse and Warm Rinse, with the final RMC calculated as a weighted average using TUFs of 73 percent for Cold Rinse and 27 percent for Warm Rinse. DOE has observed very few RCW models on the market that offer Warm Rinse. For simplicity throughout this discussion, DOE references the testing requirements for clothes washers that offer Cold Rinse only.

⁵¹ DOE notes that the “consistent spin” designation is not meant to exclude clothes washers that offer multiple spin speed settings on the Normal cycle. Rather, the term “consistent” refers to a particular spin speed setting demonstrating substantially similar performance regardless of which wash/rinse temperature is selected.

test sample. *Id.* Under this approach, only the change in load size would be assumed to impact the RMC values measured under appendix J as compared to appendix J2. *Id.* DOE's test data indicated that the smaller load sizes under appendix J result in an increase in RMC of 4 percentage points compared to the RMC values measured under appendix J2 using the maximum load size. *Id.* Therefore, for this approach, DOE calculated an "adjusted RMC" for each unit as the tested RMC value under appendix J2 plus 4 percentage points. *Id.* DOE substituted this adjusted RMC for the RMC value in the drying energy equation within the EER calculation. *Id.* As demonstrated in the second set of "adjusted" translation plots, this approach produced translation equations with significantly higher R-squared values, indicating a stronger correlation between IMEF and EER. *Id.*

Comments submitted by a manufacturer in response to the September 2021 NOPR suggested that, were DOE to amend standards based on appendix J as proposed, manufacturers that currently use "Cold/Cold optimized spin" or "non-default maximum spin"—which yield lower (*i.e.*, better) RMC values on the Cold/Cold temperature setting compared to RMC values obtained using the other temperature settings for RCWs with "Cold/Cold optimized spin," and on the maximum spin setting for RCWs with "non-default maximum spin"—would likely implement similar strategies to decrease the RMC across all cycles required for testing under appendix J. (EERE-2016-BT-TP-0011, Whirlpool, No. 26 at p. 8–9). Specifically, for "Cold/Cold optimized spin" units, manufacturers would likely increase the spin speeds or spin durations across all temperature settings to match the spin behavior of the Cold/Cold temperature setting. For "non-default maximum spin" units, manufacturers would likely make the maximum spin speed the default spin setting to provide the lowest possible (*i.e.*, best possible) RMC measurement under appendix J.

In response to stakeholder questions, DOE published a supplemental data report providing additional details as to how it calculated an average increase in RMC of 4 percentage points due to the smaller load sizes defined in appendix J.⁵² DOE investigated two separate methods for determining the impact of test load size on RMC. Both methods

yielded nearly identical results, as described in the following paragraphs.

For Method 1, DOE compared the final corrected RMC values obtained under both test procedures for only those units that DOE designated as having a "consistent spin" spin implementation. As described, units designated as "consistent spin" demonstrate key characteristics of the spin cycle (*e.g.*, spin speed, spin time) that are consistent across temperature selections; as such, DOE expects that for these units, the difference between the two final RMC values is due primarily to the difference in load sizes between the two test procedures. Among all the "consistent spin" units in the test sample, appendix J yielded a final RMC value 3.7 percentage points higher than appendix J2, on average.

For Method 2, DOE measured and compared the cycle-specific corrected RMC values for only the following specific Cold/Cold cycles: the appendix J2 Cold/Cold cycle with a maximum load size and default spin settings; the appendix J Cold/Cold cycle with a large load size and default spin settings; and the appendix J Cold/Cold cycle with a small load size and default spin settings. These three cycles differ only in load size, such that the differences between the RMC values are due primarily to the difference in load sizes.

DOE first calculated the average RMC value of these two appendix J cycles (consistent with the equivalent load weighting factors for the large and small load sizes defined by appendix J) and compared the resulting value to the RMC value for this appendix J2 cycle. Among all the units in the test sample, this approach indicated that the average of the large and small load sizes under appendix J yielded a final RMC value 3.8 percentage points higher than the maximum load size under appendix J2, on average.

In summary, the results from both Method 1 and Method 2 suggest that the smaller load sizes under appendix J result in an increase in RMC of approximately 4 percentage points, on average, compared to the RMC values measured under appendix J2 using the maximum load size.

In the April 2022 NODA, DOE requested comment on whether, if DOE were to establish amended RCW standards based on appendix J as proposed, manufacturers that currently use the "Cold/Cold optimized spin" strategy for their RCWs would modify the spin behavior across all temperature settings to match the spin behavior of the Cold/Cold temperature setting; and whether manufacturers that currently use the "non-default maximum spin"

strategy for their RCWs would design the maximum spin speed to be the default spin setting. DOE further requested comment on the impact of such changes to the energy and water use, other aspects of consumer-relevant performance, and life-cycle cost of RCWs. 87 FR 21816.

The CA IOUs commented that all three of the spin strategies identified by DOE are currently on the market, and that identification of these three types of RMC strategies implemented in products currently on the market shows the value that appendix J will provide, in contrast to products optimized for the appendix J2 test rather than what the CA IOUs characterized as "real-world" operation. (CA IOUs, No. 52 at pp. 1–2)

According to ComEd and NEEA, NEEA's testing of 12 clothes washers representing more than 20 percent of sales from May 2018 to April 2019 confirms DOE's three spin implementation types for stationary RCWs; therefore, ComEd and NEEA encouraged DOE to continue to use these spin profiles. (ComEd and NEEA, No. 50 at p. 3)

ComEd and NEEA commented that they agree with DOE's assumption that manufacturers will likely maintain a similar measured efficiency of RCWs with the transition to appendix J, and they support DOE's assumption that manufacturers will modify RCWs to spin consistently across all cycles tested, enabling a comparable RMC and drying energy under appendix J. (ComEd and NEEA, No. 50 at pp. 2–4) According to ComEd and NEEA, most RCWs have a delicate wash program that consumers can use for textiles that may not be able to withstand higher spin speeds or longer spin durations, such that ComEd and NEEA do not expect changes to RMC as a result of appendix J to impact RCW utility. (*Id.*) For these reasons, ComEd and NEEA supported DOE's approach to developing the adjusted appendix J efficiency values proposed in the April 2022 NODA and encouraged DOE to employ the adjusted appendix J efficiency values to develop future candidate standards levels for RCW. (*Id.*)

ASAP *et al.* expressed support for DOE's April 2022 NODA approach to develop a more robust translation of RCW energy and water usage metrics from the current appendix J2 to the new appendix J test procedure. (ASAP *et al.*, No. 51 at pp. 1–2) Specifically, ASAP *et al.* expressed support for the approach of developing translations and resulting ELs based on adjusted RMC given the significant impact of RMC on overall

⁵² Available at www.regulations.gov/document/EERE-2017-BT-STD-0014-0048.

energy usage and resulting efficiency ratings. (*Id.*) ASAP *et al.* commented that given Whirlpool's comments suggesting that manufacturers with RCWs optimized for the appendix J2 spin settings would likely re-program these units to perform better when tested under new appendix J, ASAP *et al.* find it reasonable to assume that manufacturers would modify RCW spin settings if DOE were to establish amended standards based on the new appendix J. (*Id.*)

AHAM commented in response to the September 2021 Preliminary Analysis that DOE's proposed changes to the load sizes in new appendix J would lead to an increase in RMC. (AHAM, No. 40 at pp. 9–10) AHAM noted that accordingly, manufacturers would need to increase spin speed and spin times to compensate for this change so that they continue to comply with future energy conservation standards. (*Id.*)

In response to the April 2022 NODA, AHAM presented data that examined the corrected RMC of units with "consistent spin," including units that were tested by both AHAM and DOE. (AHAM, No. 53 at pp. 8–10) AHAM's data presented RMC for each unit as tested to appendix J2 and appendix J, and the difference between those values for each unit. (*Id.*) AHAM noted that when only considering units tested by AHAM, the average difference in RMC is 5.9 percent,⁵³ as opposed to the 3.7 percent average RMC difference calculated when only using the units in DOE's test sample from the April 2022 NODA. (*Id.*) AHAM also noted that when the AHAM and DOE datasets are combined, the average RMC difference is 4.7 percent. (*Id.*) AHAM commented that the difference in averages show that average RMC difference is subject to changes in sample content and size. (*Id.*) AHAM also commented that the range of RMC differences is wide. (*Id.*) AHAM noted that DOE's sample ranges from –1.6 to 11.3 percent difference, AHAM's sample ranges from –1.0 percent to 16.4 percent difference, and the combined sample has a range of –1.6 to 16.4 percent difference. (*Id.*) AHAM further commented that the models were well-distributed throughout the range and that the end points of this range are not outliers. (*Id.*)

AHAM commented that due to the wide range of differences in RMC between appendix J2 and appendix J testing among units in AHAM's and DOE's test samples, in AHAM's opinion, the average is not representative of the range of differences in the data. (AHAM,

No. 53 at p. 10) AHAM also added that the average difference in RMC is highly susceptible to change depending on which and how many units are included in the dataset, which demonstrates that the average is not a reliable value for determining an "adder" to account for design optimization to the new test procedure. (*Id.*) AHAM commented that without a proven translation between appendix J2 and appendix J, DOE has no reliable means to estimate energy savings from its incremental efficiency levels until it can conduct testing or receive test data to assist in re-establishing the baseline. (*Id.*)

AHAM commented that without a finalized test procedure to consider during the majority of the April 2022 NODA comment period and during the September 2021 Preliminary Analysis comment period, it was impossible to evaluate the percentage that would be appropriate for RMC adjustment, when the test procedure could change from DOE's proposal. (AHAM, No. 53 at p. 12) AHAM commented that even if an RMC adjustment is an appropriate approach for developing a translation between appendix J2 and appendix J, it does not change the overall concerns AHAM has with appendix J. (*Id.*) AHAM recommended that, now that DOE has finalized the test procedure, DOE should collect data to determine whether a translation equation or adjustment factor are possible and, if not, collect data to reestablish the baseline. (*Id.*)

AHAM further commented that without a proven translation between appendix J2 and appendix J, DOE has no reliable means to estimate energy savings from its incremental efficiency levels until it can conduct testing or receive test data to assist in re-establishing the baseline. (AHAM, No. 53 at p. 10) AHAM also commented that DOE needs to further investigate the impact of the change from capacity-based efficiency metrics to load-size based efficiency metrics. (*Id.*)

In response to AHAM's comment regarding the specific value of the "adjusted" RMC adder determined in the April 2022 NODA, DOE has closely reviewed AHAM's RMC data to understand the reason for the larger average difference between the test procedures than was observed in DOE's data. DOE also closely re-examined its own data, as presented in appendix 5A of the NOPR TSD. The following paragraphs summarize DOE's key conclusions from this analysis.

DOE notes that in both datasets, any differences above 10 percent appear to be outliers, as evidenced by a large gap in data points between 6 percent and 11

percent (whereas the data points less than 6 percent are fairly evenly distributed around the mean of 4 percent).

DOE re-evaluated the unit in its test sample with an RMC difference of 11.1 percent. Upon closer examination, DOE determined that this unit was incorrectly characterized in the April 2022 NODA as having a "consistent spin" spin implementation. Upon closer examination of the time series power data for each cycle, this unit exhibits "Cold/Cold optimized spin" behavior and therefore should be excluded from consideration for the purpose of determining an RMC adjustment factor based on load size differences alone. Although DOE does not have access to the time series power data underlying AHAM's data submission, DOE's determination that the outlier unit in DOE's test sample was incorrectly categorized suggests that the outlier units in AHAM's sample may also be incorrectly categorized as having "consistent spin" spin implementation. As discussed, given the large gap in data points between 6 percent and 11 percent, and given DOE's determination that it had incorrectly categorized its unit at 11 percent, DOE tentatively determines that the outlier data points above 11 percent very likely do not represent units with "consistent spin" spin implementation and therefore should be excluded from the analysis to determine an RMC adjustment factor based on load size differences alone.

Excluding such data points, DOE notes that the revised mean of DOE's dataset would be 3.4 percent. Excluding the values 12.1, 15.8, and 16.3 from AHAM's dataset, the revised mean would be 3.7 percent. Considering both datasets together, the revised mean of the joint dataset would be 3.5 percent.

Based on this analysis, DOE tentatively determines that a 4-percent-point adder (rounded to the nearest whole number) provides a representative estimate of the change in RMC between the two test procedures due to only the change in load size. In this NOPR, DOE maintains use of the 4-percent-point adder to calculate "adjusted RMC" for the purposes of developing translation equations.

ii. NODA Translation Equations

In the April 2022 NODA, DOE presented several versions of the translation equations that DOE could consider using to define potential higher efficiency levels based on the new EER and WER metrics. In particular, for the top-loading standard-size product class, DOE presented potential translations based on data points for all

⁵³ DOE uses the term "percent" in this context to refer to RMC percentage points.

configurations as well as separate translations specific to stationary units with automatic WFCS and portable units with manual WFCS.

In response to the April 2022 NODA, AHAM presented data showing the R-squared values for the translation equations developed using DOE's data from the April 2022 NODA and using AHAM's data. (AHAM, No. 53 at p. 11) AHAM commented that the R-squared value for "top-loading, standard, all configurations" is very low, and that there is not a meaningful improvement using the adjusted RMC approach using DOE's data alone, or the combined AHAM and DOE dataset. (*Id.*)

AHAM commented that it understands that DOE's 4-percent adjustment in RMC was developed only to account for changes in tested spin speeds between appendix J2 and appendix J. (AHAM, No. 53 at p. 11) However, AHAM noted that there could be other design changes manufacturers would employ to account for the new test procedure. (*Id.*) AHAM added that DOE indicated that it did not consider other potential design changes. (*Id.*) AHAM added that it is inappropriate for a test procedure to drive design changes in and of itself. (*Id.*)

AHAM commented that it does not believe at this time that the translation

equation can adequately address all models or changes in the test procedure to serve as a replacement for reestablishing the baseline through test data. (*Id.*) AHAM recommended that should DOE pursue a translation equation despite AHAM's comments that doing so is not supported by available data, DOE should consider design changes other than spin speed because spin speeds are not the only thing manufacturers will need to change in product design due to the new test procedure. (*Id.*)

DOE acknowledged in the April 2022 NODA that for the top-loading standard-size product class, each of the separate translation equations has a stronger correlation (*i.e.*, higher R-squared value) than the single translation equation in which top-loading portable and top-loading stationary products are combined. 87 FR 21816, 21820. DOE notes that the combined dataset for the top-loading standard-size sample contained 12 stationary units (representing 71 percent of the sample) and 5 portable units (representing 29 percent of the sample). Shipment data submitted by AHAM indicates that top-loading portable clothes washers represent approximately 1 percent of the top-loading market. This indicates that

the portable configuration was significantly over-sampled within the combined dataset.

For this NOPR, DOE proposes to use datapoints representing only stationary units to develop the translation equations for the top-loading standard-size product class, on the basis that these units' characteristics are significantly more representative of the market than the portable configuration. Appendix 5A of the NOPR TSD provides further details and discussion of the development of the translation equations for this NOPR.

c. NOPR Approach

For this NOPR, DOE used the "adjusted EER" approach presented in the April 2022 NODA to define the translation between the appendix J2 and appendix J metrics for this NOPR. Additionally, as discussed further in appendix 5A of the NOPR TSD, DOE used AHAM's dataset to confirm the accuracy and appropriateness of these translation equations. Table IV.27 through Table IV.30 show the efficiency level translations considered in this NOPR based on the updated efficiency metric translations presented in chapter 5 of the NOPR TSD.

TABLE IV.27—TOP-LOADING, ULTRA-COMPACT (<1.6 ft³) EFFICIENCY LEVEL TRANSLATIONS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)	EER (lb/kWh/cycle)	WER (lb/gal/cycle)
Baseline	Current DOE standard	1.15	12.0	3.79	0.29

TABLE IV.28—TOP-LOADING, STANDARD-SIZE (≥1.6 ft³) EFFICIENCY LEVEL TRANSLATIONS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)	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 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.29—FRONT-LOADING, COMPACT (<3.0 ft³) EFFICIENCY LEVEL TRANSLATIONS

EL	Efficiency level description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)	EER (lb/kWh/cycle)	WER (lb/gal/cycle)
Baseline	Current DOE standard for front-loading, standard-size (≥1.6 ft ³).	1.84	4.7	4.41	0.53
1	ENERGY STAR v. 8.1 level for units ≤2.5 ft ³	2.07	4.2	4.80	0.62
2	2023 ENERGY STAR Most Efficient for units ≤2.5 ft ³ .	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 ft ³).	2.76	3.2	5.97	0.80

TABLE IV.30—FRONT-LOADING, STANDARD-SIZE (≥ 3.0 ft³) EFFICIENCY LEVEL TRANSLATIONS

EL	Efficiency Level Description	IMEF (ft ³ /kWh/cycle)	IWF (gal/cycle/ft ³)	EER (lb/kWh/cycle)	WER (lb/gal/cycle)
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

d. Alternative Approaches

For this NOPR, DOE analyzed the efficiency levels determined by the dataset, translation equations, and baseline definition approach previously presented in section IV.C.5.c. However, DOE is also considering alternate approaches for each of these components (*i.e.*, the dataset to use, the method of defining translation equations, and the method for defining baseline) as well as any combination thereof, as described in the following sections.

i. Joint DOE–AHAM Dataset

As discussed, AHAM has shared RCW test data with DOE, which DOE used to confirm the accuracy and appropriateness of the NOPR translation equations. As discussed in appendix 5A of the NOPR TSD, DOE considered developing alternate translation equations using the joint dataset containing both DOE and AHAM test data. However, neither the DOE dataset nor the AHAM dataset identifies the individual model numbers of each unit in the sample; therefore, DOE cannot ascertain whether the joint dataset double-counts any individual models. For this reason, DOE has tentatively determined to not use translation equations based on the joint dataset in this NOPR. Rather, DOE has overlaid the AHAM data onto the translation equations developed using DOE's dataset in order to confirm that the AHAM and DOE datasets exhibit consistent trends, as discussed further in appendix 5A of the NOPR TSD.

DOE seeks comment on its tentative determination to use the DOE dataset as the basis for the translation equations rather than use the joint DOE–AHAM dataset.

ii. Merging Compact and Standard-Size Translation Equations

The CA IOUs suggested that DOE eliminate the standard-size and compact product classes when developing both the “best-fit line method” and the “average performance and market cluster method”. (CA IOUs, No. 43 at pp. 2–3) The CA IOUs stated that segmenting product classes into

standard-size and compact arbitrarily separates products at a discrete product capacity and assumes that the relationship of IMEF to EER and IWF to WER is impacted by assignment to compact and standard-size categories. (*Id.*) The CA IOUs commented that while product classes can be useful for categorization, this categorization should not be confused for statistically justifiable clusters when conducting a translation analysis. (*Id.*) The CA IOUs commented that, although it may be appropriate to segment the data by product classes or a subset of unique performance attributes (such as top-loading versus front-loading), these performance attributes should be demonstrated with supporting analysis. (*Id.*) The CA IOUs suggested that a statistical clustering analysis such as k-means clustering could be used to show that the relationship between appendix J2 and appendix J metrics has fundamental differences that impact performance. (*Id.*) The CA IOUs commented that the separate categorization between compact and standard-size clothes washers assumes performance is impacted by product class alone, and that a k-means clustering would confirm if these four categories were statistically justified. (*Id.*) The CA IOUs stated that the relationship between appendix J2 and appendix J metrics could instead operate on a continuum based on capacity. (*Id.*) The CA IOUs commented that they believe that product performance is impacted by capacity, which exists along a continuum in alignment with the product performance relationship to capacity. (*Id.*) The CA IOUs also commented that they believe the relationship between the appendix J2 and appendix J metrics should be controlled along that same continuum of capacity, and requested that DOE provide the measured EERs and WERs of products tested to appendix J so that this hypothesis can be tested. (*Id.*) The CA IOUs commented that combining data between compact and standard-size product classes will improve model fits to be better than the models presented in the September 2021 Preliminary TSD. (*Id.*) The CA IOUs also commented that

combining data will address the lack of tested appendix J data in the top-loading compact product class. (*Id.*)

DOE evaluated the CA IOUs' suggestion to develop only two sets of translation equations (*i.e.*, one per axis of loading) rather than four (*i.e.*, one per product class). Appendix 5A of the NOPR TSD presents the detailed results of this analysis.

DOE notes that automatic top-loading ultra-compact and automatic top-loading standard-size clothes washers have significantly different operational characteristics (beyond just a difference in capacity), such that DOE does not expect that there should be a consistent correlation between appendix J2 and appendix J performance across the two product classes. For example, DOE has observed that the top-loading ultra-compact units on the market offer only two wash temperatures (warm and cold), and as such, hot water heating energy makes up a significantly lower fraction of total energy compared to top-loading standard-size units.⁵⁴ Furthermore, although AHAM did not provide shipment data for the top-loading ultra-compact product class, DOE expects that because these represent niche products, this product class likely represents less than 1 percent of total sales. If DOE were to combine the 2 top-loading ultra-compact points with the 12 data points for top-loading standard-size units, the ultra-compact class would be significantly oversampled (*e.g.*, 14 percent of the data versus less than 1 percent of sales). For these reasons, DOE is not proposing to use translation equations for top-loading product classes based on a single dataset that combines top-loading ultra-compact units with top-loading standard-size units.

Similarly, for the front-loading product classes, if DOE were to combine its 13 front-loading compact points with

⁵⁴ As shown in the energy breakdown tables in chapter 7 of the NOPR TSD, hot water heating energy represents 5 percent of the total energy for the top-loading ultra-compact product class. Whereas, for the baseline efficiency level in the top-loading standard-size product class, hot water heating energy represents 16 percent of total energy use.

its 12 front-loading standard-size points, the compact class would be significantly oversampled (e.g., 52 percent of the data versus 6 percent of shipments, based on AHAM data). For this reason, DOE is not proposing to use translation equations for front-loading product classes based on a single dataset that combines front-loading compact-size units with front-loading standard-size units.

DOE seeks comment on its tentative determination not to merge the compact and standard-size translations, but to instead develop separate translations for each product class.

iii. “Unadjusted” Baseline Approach

The CA IOUs commented that DOE should base its translation analysis on currently available cycle settings and performance and not employ the proposed 4-percentage-point adjustment. (CA IOUs, No. 52 at pp. 1–2) The CA IOUs added that using the performance of currently available products more accurately reflects real-world energy and water efficiencies. (*Id.*) The CA IOUs commented that based on manufacturer input identified by DOE, the CA IOUs understand DOE’s consideration that manufacturers may simply implement strategies similar to Cold/Cold optimized spin and non-default maximum spin to decrease RMC. (*Id.*) The CA IOUs stated that while some manufacturers may take this approach, this presumption should not be used as part of the baseline translation for all products. (*Id.*) The CA IOUs further commented that improving the RMC of different cycle settings (e.g., operating small loads at higher spin speeds or software adjustments to optimize RMC for different wash/rinse temperatures) should be treated as a low-cost technology option for efficiency level development, and that DOE’s proposal of applying a 4-percentage point adjustment to the tested RMC of appendix J2 (the RMC of appendix J plus the difference in RMC for the smaller loads tested under appendix J2) only accounts for the natural difference in load size centrifugal force using the same spin speed and duration, effectively removes small load RMC improvements as a technology option. (*Id.*) The CA IOUs noted that this adjustment does improve the R-squared, the coefficient of determination for the translation correlation, but at the expense of accurately representing the differences between appendix J and appendix J2, which is what appendix J is partly designed to capture. (*Id.*) The CA IOUs added that while a higher R-squared translation correlation is preferable, the

CA IOUs stated it should not be achieved at the expense of removing product-to-product variation that represents the real-world operation of available products. (*Id.*)

ComEd and NEEA supported DOE’s efforts to develop a more robust translation from appendix J2 to appendix J and DOE’s general approach and methodology. (ComEd and NEEA, No. 50 at p. 2) However, ComEd and NEEA commented that NEEA estimates there will be 0.3 quads of newly realized real-world site energy savings achieved with this test procedure update that were counted earlier (by assuming a lower RMC across all cycles even though RMC was only tested on one cycle setting) but uncaptured in practice, and that this substantial energy savings is twice the site energy savings DOE calculated for EL 1 in the September 2021 Preliminary TSD. (*Id.*) ComEd and NEEA stated that this discrepancy validates DOE’s continued efforts to move forward with the translation analysis using appendix J. (*Id.*)

ComEd and NEEA recommended that DOE not justify costs associated with the translation of spin implementations from appendix J2 to appendix J for three key reasons. (ComEd and NEEA, No. 50 at p. 4) First, for the most common RCW spin implementation (“consistent spin”), there is zero incremental cost to obtain the adjusted appendix J EER value because no design changes are needed to retain spin performance. (*Id.*) Second, for RCWs with “cold-cold optimized” spin and “non-default maximum” spin implementations, the incremental cost to achieve the adjusted appendix J EER value is nearly zero. (*Id.*) Third, these costs were already accounted for in the May 2012 Final Rule in the case of RCWs with increased spin time over the appliance lifetime whose manufacturers choose to upgrade to more durable components. (*Id.*)

In response to the CA IOUs’ comments, DOE is also considering an alternate approach to the translation of IMEF to EER in which DOE would define the 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. EL 1, in contrast, would be represented by the baseline level presented in this NOPR (*i.e.*, reflecting the 4 percent “adjusted RMC” approach). As suggested by the CA IOUs, this approach would allow for a more explicit consideration of savings that are likely to occur solely as a result of the switching from appendix J2 to appendix

J, as opposed to those savings already being reflected at baseline level. Appendix 5A of the NOPR TSD details the specific efficiency levels that could be defined for each front-loading product class using this approach.

In response to ComEd and NEEA’s comment that DOE should not include the costs associated with changes to spin implementation as a result of the change in test procedure, DOE notes that all costs incurred by manufacturers in response to this NOPR have been included in this NOPR analysis. While there may be zero incremental manufacturing cost to changing spin implementation, such changes would incur product conversion costs, as discussed further in section IV.J.2.c of this document. With regard to the assertion that these costs were already accounted for in the May 2012 Final Rule, the standards enacted by the May 2012 Final Rule were based on a different test procedure (*i.e.*, appendix J2) than the test procedure proposed as a basis for the amended standards in this NOPR (*i.e.*, appendix J). To the extent that appendix J requires manufacturers to change designs of products as they currently exist in the market, such changes are justifiable in considering in this analysis, irrespective of the costs that may have been incurred previously by manufacturers as a result of product investments required to comply with the standards enacted by the May 2012 Final Rule.

DOE seeks 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.

D. Markups Analysis

The markups analysis develops appropriate markups (e.g., manufacturer markup, retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MPC 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.

To account for manufacturers’ non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (“MSP”) is the price at which the manufacturer distributes a unit into commerce. DOE developed an average manufacturer markup by examining the annual

Securities and Exchange Commission (“SEC”) 10-K reports filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes RCWs.⁵⁵ See chapter 12 of the NOPR TSD for additional detail on the manufacturer markup.

For RCWs, the main parties in the post-manufacturer distribution chain are retailers/distributors and consumers. DOE developed baseline and incremental markups for each of these. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating costs before and after amended standards.⁵⁶ DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.⁵⁷

Chapter 6 of the NOPR 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 2015 RECS.⁵⁸ 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 2015 RECS collected data on 5,686 housing units and was constructed by EIA to be a national representation of the household population in the United States.⁵⁹ 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 category being analyzed: standard-size or compact or semi-automatic, top-loading or front-loading RCWs. For compact and semi-automatic clothes washers, DOE developed a sub-sample consisting of households from multifamily 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 estimated the number of clothes washer cycles per year for each sample household using data given by RECS 2015 on the number of laundry loads washed (clothes washer cycles) per week.

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),⁶⁰ and combined low-power mode energy use.

1. Number of Annual Cycles

The average annual energy and water consumption reflects an average annual weighted usage of 238 cycles per year (233 for top-loading clothes washers and 254 for front-loading clothes washers). This average usage is obtained from 2015 RECS.⁶¹

Ameren *et al.* recommended that DOE not use the number of annual clothes washer cycles predicted by the RECS methodology because it relies on participant recollection and is therefore subject to recall bias. They stated that a single RECS respondent may not accurately count cycles of other household members, leading to underestimates. (Ameren *et al.*, No. 42 at pp. 16–17)

RECS asks “In a typical week, about how many times is your clothes washer used?” A response does not require recollection of behavior in the distant past. DOE acknowledges that recall bias is in general an issue in surveys where consumers are asked about their past behavior, but DOE does not believe that RECS households would significantly underestimate the number of washer cycles.

Ameren *et al.* encouraged DOE to increase the annual number of clothes washer cycles in its analysis and/or conduct its own field study to determine more accurately the average annual number of clothes washer cycles given that the RECS estimate is significantly lower than the annual number of cycles calculated in NEEA’s RBSA Laundry study published in 2014 (“2014 Laundry Study”).⁶² (Ameren *et al.*, No. 42 at pp. 17–18)

DOE reviewed the 2014 Laundry Study. Because the Study collected field metering data from 45 homes across three States, with more than 70 percent

⁶⁰ 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.

⁶¹ DOE acknowledges that the value of 238 average annual cycles used in the Energy and Water Use Analysis differs from the value of 234 annual cycles used in appendix J. As discussed above, the value of 238 was determined while excluding RECS households that do not use their clothes washer (*i.e.*, households with clothes washer use equal to 0 cycles per week) because these households’ clothes washers would not contribute to the nation’s total energy and water use. By comparison, the value of 234 used in appendix J did not exclude such households, because the test procedure is designed to represent the average household energy and water usage.

⁶² Hannas, B. and Gilman, L. 2014. *RBSA Laundry Study* (Report # E14–287). Portland, OR: Northwest Energy Efficiency Alliance. p. 38. 20 November. Retrieved from neea.org/resources/rbsa-laundry-study.

⁵⁵ U.S. Securities and Exchange Commission, *Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system*. Available at www.sec.gov/edgar/search/ (last accessed July 1, 2022).

⁵⁶ 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.

⁵⁷ US Census Bureau, *Annual Wholesale Trade Survey*. 2017. Available at www.census.gov/awts (last accessed May 2, 2022).

⁵⁸ U.S. Department of Energy—Energy Information Administration, *Residential Energy Consumption Survey: 2015 Public Use Data Files*, 2015. Available at www.eia.doe.gov/emeu/recs/recspubuse15/pubuse15.html (last accessed May 12, 2022).

⁵⁹ RECS 2015 is the most recent edition of RECS available at the time of this NOPR analysis. For the final rule analysis, DOE plans to use the microdata of the 2020 RECS.

of selected homes located in Washington State, it is not a representative sample of all U.S. households that use a clothes washer. The 2015 RECS is a nationally representative sample of U.S. households with more than 5,600 households with a clothes washer. For the final rule analysis, DOE plans to use the microdata of the 2020 RECS, which was released in July 2022 and contains a nationally representative sample of 18,500 occupied U.S. households.

2. Rebound Effect

In calculating energy consumption of RCWs, DOE considered whether it would be appropriate to include a rebound effect (also called a take-back effect), which represents the increased energy consumption that can result from increases in energy efficiency and the associated reduction in operating costs. The rebound effect assumes that consumers will increase their overall annual usage of a more efficient product, thereby decreasing their overall annual savings.

Ameren *et al.* commented in support of DOE's determination that there is no rebound effect associated with more efficient clothes washers and agreed with DOE that consumers will not use their clothes washers more if the efficiency increases. (Ameren *et al.*, No. 42 at p. 20)

DOE requests comment and information on the specific efficiency levels at which any potential rebound effects may happen, as well as the magnitude of the effect.

Chapter 7 of the NOPR TSD provides details on DOE's energy and water use analysis for RCWs.

3. Water Heating Energy Use

Per-cycle water heating energy consumption is one of the four energy components in the EER metric. Appendix J includes water-heating energy equations that estimate the energy required by the household water heater to heat the hot water used by the clothes washer. In section 4.1.2 of appendix J, the water heating energy consumption is calculated by multiplying the measured volume of hot water by a constant fixed temperature rise of 65 °F and by the specific heat of water. No efficiency or loss factor is included in this calculation, which implies an electric water heater efficiency of 100 percent.

Ameren *et al.* presented data from 3 studies that contradict DOE's assertion that 78 percent efficiency is typical for gas water heaters. Based on these 3 studies, Ameren *et al.* concluded that both market and field data analysis

reveal that typical gas water heater efficiency ranges from 62 to 70 percent. (Ameren *et al.*, No. 42 at pp. 14–16) ASAP *et al.* commented that they believe DOE's assumption of 100 percent efficiency for electric water heaters and 78 percent efficiency for gas water heaters is likely significantly overstating the efficiencies of water heaters in the field. ASAP *et al.* commented that based on shipment data from the last water heater rulemaking and current models in DOE's CCD, the shipment-weighted efficiencies for new water heaters are about 92 percent for electric water heaters and 64 percent for gas water heaters. (ASAP *et al.*, No. 37 at pp. 2–3)

In the 2019 preliminary analysis for consumer water heaters, DOE calculated the energy use of water heaters using a simplified energy equation, the water heater analysis model (WHAM). WHAM accounts for a range of operating conditions and energy efficiency characteristics of water heaters. To describe energy efficiency characteristics of water heaters, WHAM uses three parameters that also are used in the DOE test procedure: recovery efficiency, standby heat-loss coefficient, and rated input power. The September 2021 Preliminary TSD states that DOE used a recovery efficiency of 78 percent for gas water heaters, not 0.78 Energy Factor for the calculation of hot water energy savings. The hot water energy savings are almost directly proportional to the recovery efficiency, and the NOPR analysis uses the most recent data reported for the 2022 consumer water heater rulemaking.⁶³

ASAP *et al.* recommended that DOE clarify the hot water temperature rise estimate used in the hot water energy usage calculations and suggested that believe a value lower than 75 °F (e.g., 67.5 °F) would more accurately reflect hot water energy usage. (ASAP *et al.*, No. 37 at p. 5)

For this NOPR analysis, DOE revised hot water temperature rise from 75 °F to 65 °F based on the updates in the RCW test procedure. 87 FR 33316, 33326–33327.

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 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 2015 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

⁶³ DOE, 2022–03 Preliminary Analysis Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Consumer Water Heaters, March 2022. EERE–2017–BT–STD–0019–0018. Available at: www.regulations.gov/document/EERE-2017-BT-STD-0019-0018 (last accessed June 21, 2022).

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.⁶⁴ The model calculated the LCC for products at each efficiency level for 10,000 housing units per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-

new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more-efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for consumers of RCWs as if each were to purchase a new product in the expected year of required compliance with amended standards. Amended

standards would 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)) At this time, DOE estimates publication of a final rule in 2023. Therefore, for purposes of its analysis, DOE used 2027 as the first year of compliance with any amended standards for RCWs.

Table IV.31 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV.31—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 2021. 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.
Energy and Water Prices	<i>Variability:</i> Based on the 2015 RECS. <i>Electricity:</i> Based on EIA's Form 861 data for 2021. <i>Variability:</i> Regional energy prices determined for 9 Census Divisions. <i>Water:</i> Based on 2020 AWWA/Raftelis Survey. <i>Variability:</i> Regional water prices determined for 4 Census Regions.
Energy and water Price Trends	<i>Energy:</i> Forecasted using AEO 2022 price forecasts. <i>Water:</i> Forecasted using 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 washers.
Product Lifetime	<i>Average:</i> 13.7 years.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2027.

* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

Ameren *et al.* encouraged DOE to calculate and consider the return on investment for each efficiency level in its analysis to add additional insight for stakeholders and decision-makers. Ameren *et al.* commented that efficiency improvements to an appliance can be considered capital investments, with “returns” being the money saved from utility bill reductions. (Ameren *et al.*, No. 42 at pp. 18–19)

DOE acknowledges that return on investment is a metric that can be useful in evaluating investments in energy efficiency. However, the measures that DOE has historically used to evaluate the economic impacts of standards on consumers—LCC savings and PBP—are more closely related to the language in

EPCA that 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)) Therefore, DOE finds it reasonable to continue to use those measures.

AHAM commented that DOE's use of “Net Cost” for impacted households is incomplete and misleading. AHAM suggested that the “Net Cost” should be calculated only among the affected households. (AHAM, No. 40 at p. 21)

DOE maintains that showing the share of all consumers who would experience a net LCC cost is useful information, as

EPCA requires DOE to consider the impact of standards on “consumers,” not only those who would be affected by a standard.

1. Consumer Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described in section IV.C.6 of this document (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

⁶⁴ 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, 2022).

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.⁶⁵ 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 2019 from the Bureau of Labor Statistics’ (“BLS”) to form a time series price index representing household laundry equipment from 1948 to 2021.⁶⁶ 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 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 14.4 ± 1.7 percent. See chapter 8 of the NOPR TSD for further details on this topic.

Ameren *et al.* encouraged DOE to continue to apply a learning rate for product prices in its lifecycle cost and payback period analyses and encourages DOE to model as if RCW sales occurred before 1947, as this could produce a better fit to the model used and be more representative of the learning rate for the RCW industry. (Ameren *et al.*, No. 42 at p. 19)

The fit started in 1948 because that is the start year of the household laundry product PPI. In order to derive the corresponding cumulative productions, DOE performed a trend analysis to extrapolate shipments prior to AHAM historical data and determined the shipments were at a very low level and thus started the cumulative production accounting in 1948. DOE will explore alternative approaches for shipment extrapolation in the final rule analysis to better account for shipments prior to 1948 and improve the model fit.

⁶⁵ 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.

⁶⁶ Household laundry equipment PPI (PCU3352203352204) is available till May 2016, and major household appliance: primary products (PCU335220335220P) is available starting from 2016. See more information at: www.bls.gov/ppi/.

AHAM commented that equipment prices at EL 1 and EL 2 in the September 2021 Preliminary Analysis were underestimated and suggested that DOE use actual retail price differences between a baseline and higher efficiency level instead of taking the traditional approach of converting manufacturer production costs to consumer retail prices. (AHAM, No. 40 at p. 21)

The actual retail price differences between a baseline and higher efficiency level may include the price for other features in addition to engineering designs relating to efficiency, and also reflects economies of scale in production, as well as marketing strategies and profit margins of manufacturers and retailers. DOE maintains that its traditional approach, which has been subject to peer review, is better able to identify the incremental costs that are only connected to higher efficiency. Furthermore, for this NOPR analysis, DOE revised the engineering costs of top-loading standard-size clothes washers, and the estimated equipment price difference between the baseline level and the ENERGY STAR level is now \$163.50, before sales tax, which closely aligns with the retail price difference (*i.e.*, \$160 before sales tax) presented by AHAM.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from 2021 *RSMeans Residential Cost Data* to estimate the baseline installation cost for RCWs.⁶⁷ 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 captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity 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 2021 using data from EEI Typical Bills and Average Rates reports for summer and winter 2021.⁶⁸ 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).⁶⁹

DOE obtained data for calculating regional prices of natural gas from the EIA publication, *Natural Gas Navigator*.⁷⁰ 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 2020 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.

EIA provides historical monthly natural gas consumption and expenditures by state. This data was used to determine 10-year average marginal price factors for the RECS 2015 census divisions, which are then used to convert average monthly natural gas prices into marginal monthly natural gas prices. DOE interpreted the slope of the regression line (consumption vs. expenditures) for each State as the marginal natural gas price factor for that State.

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

⁶⁸ Edison Electric Institute. Typical Bills and Average Rates Report. Winter 2021, Summer 2021. Available at: www.eei.org/resourcesandmedia/products/Pages/Products.aspx.

⁶⁹ 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.

⁷⁰ U.S. Department of Energy—Energy Information Administration. *Natural Gas Navigator* 2020. Available at www.eia.gov/naturalgas/data.php.

⁶⁷ RS Means Company Inc., RS Means Residential Cost Data (2021). Available at <https://rsmeans.com/>.

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 NOPR TSD for details.

To estimate energy prices in future years, DOE multiplied the average and marginal regional energy prices by the projection of annual average price changes for each of the nine census divisions from the Reference case in AEO2022, which has an end year of 2050.⁷¹ 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.⁷² 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 NOPR analysis, DOE also developed water prices for consumers who rely on private well water systems for their water needs rather than relying on the public supply system. DOE considered several factors when developing consumer prices for water supplied by private wells. Initial costs to install a well include well siting; well drilling; pump purchase and installation; water testing; and sometimes a water treatment system. Ongoing costs include pump maintenance; pump fuel to lift water to the surface and to the point of use or storage; plus, any required maintenance

of the treatment system (water-softening chemicals, filters, *etc.*). To determine the current percentage of the U.S. population served by private wells, DOE used historical American Housing Survey (“AHS”) data from 1970 to 2019 to develop a projection for 2027, the effective year of potential new standards for RCWs.⁷³ DOE then weighted public utility water and wastewater prices and private well prices for each census region and derived weighted-average regional and national water price for residential consumers.

To estimate the future trend for water and wastewater prices, DOE used data on the historic trend in the national water price index (U.S. city average) from 1988 through 2021 provided by the Labor Department’s BLS.⁷⁴ DOE extrapolated the future trend based on the linear growth from 1988 to 2021. DOE used the extrapolated trend to forecast prices through 2050. To estimate price trend after 2050, DOE used a constant value derived from the average values from 2046 through 2050.

AHAM commented that DOE’s water prices should include rural well and septic tank users. (AHAM, No. 40 at pp. 29–31)

As described above, for this NOPR analysis, DOE developed water prices for rural well and septic tank users. DOE then weighted public utility water and wastewater prices and private well prices for each census region and derived weighted-average regional and national water price for residential consumers.

Chapter 8 and Appendix 8E of the NOPR TSD provides further details on the methodology and sources DOE used to develop consumer water prices.

5. Repair and Maintenance 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.

For RCWs, DOE determined repair cost associated with loading type and clothes washer capacity commonly found on an appliance repair website.⁷⁵

⁷³ The U.S. Census Bureau. The American Housing Survey. Years 1970–2019. Available at www.census.gov/programs-surveys/ahs.html (last accessed May 12, 2022).

⁷⁴ U.S. Department of Labor-Bureau of Labor Statistics, Consumer Price Indexes, Item: Water and sewerage maintenance, Series Id: CUSR0000SEHG01, U.S. city average, 2021. Washington, DC. Available at www.bls.gov/cpi/home.htm#data.

⁷⁵ 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.

DOE estimated the average repair cost for an RCW is about \$225, ranging from \$115 to \$275. For maintenance cost, DOE conducted 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 \$25, 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 NOPR analysis, DOE estimated that for repair costs, there is a cost difference between an ENERGY STAR and non-ENERGY STAR clothes washer of approximately \$44 for a front-loading and \$32 for a top-loading clothes washer, based on information aggregated from confidential manufacturer interviews. For maintenance costs, DOE assumed that there is no change with efficiency level for RCWs.

DOE requests comment and information on frequency of cleaning cycles run per number of cycles used to clean clothes and associated data as compared to the recommendations in the manufacturer’s use and care manuals.

6. Product Lifetime

Product lifetime is the age at which an appliance is retired from service. *Appliance* magazine, a trade publication, provides estimates of the low, high, and average years of an appliance’s lifetime.⁷⁶ The estimates, which are based on first-owner use of the product, represent the judgment of *Appliance* staff based on input obtained from various sources. The average lifetime estimate from *Appliance* magazine is 11 years.

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, and 2015 data.⁷⁷ DOE also used the U.S. Census’s biennial AHS from 1974–2019, which surveys all housing, noting the

⁷⁶ Appliance Magazine. *A Portrait of the U.S. Appliance Industry: Market Share, Life Expectancy & Replacement Market, and Saturation Levels*. 2014.

⁷⁷ U.S. Department of Energy—Energy Information Administration, Residential Energy Consumption Survey (“RECS”), Multiple Years (1990, 1993, 1997, 2001, 2005, 2009, and 2015). Available at www.eia.gov/consumption/residential/.

⁷¹ EIA. *Annual Energy Outlook 2022 with Projections to 2050*. Washington, DC. Available at www.eia.gov/forecasts/aeo/ (last accessed June 14, 2022).

⁷² Raftelis Financial Consultants, Inc. 2020 RFC/AWWA Water and Wastewater Rate Survey. 2021. Charlotte, NC, Kansas City, MO, and Pasadena, CA.

presence of a range of appliances.⁷⁸ As described in chapter 8 of the NOPR TSD, the analysis yielded an estimate of mean age for standard-capacity RCWs of approximately 13.7 years. It also yielded a survival function that DOE incorporated as a probability distribution in its LCC analysis. Because the RECS data does not indicate whether the clothes washer has a top-loading or front-loading configuration, DOE was not able to derive separate lifetime estimates for these two loading types. DOE did not receive any data or analysis to support separate lifetime for the different product classes.

DOE requests comment and information on RCW lifetime.

See chapter 8 of the NOPR TSD for further details on the method and sources DOE used to develop product lifetime.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to RCWs 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.⁷⁹ The LCC analysis estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the

restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's triennial Survey of Consumer Finances ("SCF") starting in 1995 and ending in 2019.⁸⁰ Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent. See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

AHAM and GEA suggested that DOE develop a more reasonable interest rate distribution for the low-income group that is closer to a credit card rate for this group. (AHAM, No. 40 at p. 27; GEA, No. 38 at p. 2)

DOE maintains that the interest rate associated with the specific source of funds (e.g., credit card) used to purchase a clothes washer (i.e., the marginal rate) is not the appropriate metric to measure the discount rate as defined for the LCC analysis. The marginal interest rate alone would only be the relevant discount rate if the consumer were restricted from re-balancing their debt and asset holdings (by redistributing debts and assets based on the relative interest rates available) over the entire time period modeled in the LCC analysis. The LCC is not analyzing a marginal decision; rather, it estimates net present value over the lifetime of the product, therefore the discount rate needs to reflect the opportunity cost of both the money flowing in (through operating cost savings) and out (through upfront cost expenditures) of the net present value calculation. In the context of the LCC analysis, the consumer is not

only discounting based on their opportunity cost of money spent today, they are also discounting the stream of future benefits. A consumer might pay for an appliance with cash, thereby forgoing investment of those funds into one of the interest earning assets to which they might have access.

Alternatively, a consumer might pay for the initial purchase by going into debt, subject to the cost of capital at the interest rate relevant for that purchase. However, a consumer will also receive a stream of future benefits in terms of annual operating cost savings that they could either put towards paying off that or other debts, or towards assets, depending on the restrictions they face in their debt payment requirements and the relative size of the interest rates on their debts and assets. All of these interest rates are relevant in the context of the LCC analysis, as they all reflect direct costs of borrowing, or opportunity costs of money either now or in the future. Additionally, while a clothes washer itself is not a readily tradable commodity, the money used to purchase it and the annual operating cost savings accruing to it over time flow from and to a household's pool of debt and assets, including mortgages, mutual funds, money market accounts, etc. Therefore, the weighted-average interest rate on debts and assets provides a reasonable estimate for a household's opportunity cost (and discount rate) relevant to future costs and savings. DOE maintains that the best proxy for this re-optimization of debt and asset holdings over the lifetime of the LCC analysis is to assume that the distribution of debts and assets in the future will be proportional to the distribution of debts and assets historically. Given the long time horizon modeled in the LCC, the application of a marginal rate alone would be inaccurate. DOE's methodology for deriving residential discount rates is in line with the weighted-average cost of capital used to estimate commercial discount rates. For these reasons, DOE is maintaining its existing approach to 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

⁷⁸ U.S. Census Bureau: Housing and Household Economic Statistics Division, *American Housing Survey*, Multiple Years (1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011, 2013, 2015, 2017, and 2019). Available at www.census.gov/programs-surveys/ahs/.

⁷⁹ 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.

⁸⁰ 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.

standard-size RCWs for 2027, DOE used shipments-weighted energy efficiency ratio (“SWEER”) for 2020 as a starting point, based on the 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 Table IV.32 and Table IV.33. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

TABLE IV.32—NO-NEW-STANDARDS CASE MARKET SHARE IN 2027: SEMI-AUTOMATIC AND TOP-LOADING RESIDENTIAL CLOTHES WASHERS

Efficiency level	Semi-automatic			Top-loading, ultra-compact			Top-loading, standard-size		
	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	1.60	0.17	21.0	3.79	0.29	100	3.50	0.38	61.0
1	2.12	0.27	71.0	.....	.....	.....	3.89	0.47	5.9
2	2.51	0.36	8.0	.....	.....	.....	4.27	0.57	27.4
3 .....	.....	.....	.....	.....	.....	.....	4.78	0.63	4.7
4 .....	.....	.....	.....	.....	.....	.....	5.37	0.67	1.0

TABLE IV.33—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 (%)
Baseline	4.41	0.53	0.0	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	44.1
3	5.53	0.75	14.5	5.73	0.77	40.1
4	5.97	0.80	1.0	5.97	0.85	8.2

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.

AHAM objected to DOE’s use of random assignment of RECS households to baseline and higher efficiency levels, which assumes that consumers are agnostic to energy costs. AHAM stated that it is very unlikely that consumers with very high potential LCC savings would not have already decided to purchase a more efficient washer (*i.e.*, in the no-new-standards case), and DOE’s assumption that these consumers are indifferent to operating costs appears contrary to common sense and experience in the retail field. AHAM stated that the most appropriate solution is to have a much more robust consumer choice theory. (AHAM, No. 40 at pp. 18–20)

While DOE acknowledges that economic factors may play a role when consumers decide on what type of clothes washer to install, assignment of clothes washer 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 further down. DOE maintains that the method of assignment is a reasonable approach and one that simulates behavior in the clothes washer market, where market failures result in purchasing decisions not being perfectly aligned with economic interests, more realistically than relying only on apparent cost-effectiveness criteria derived from the information in RECS. DOE further emphasizes that its approach does not assume that all purchasers of clothes washers 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.

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.⁸¹ There are also several behavioral factors that can influence the purchasing decisions of complicated multi-attribute products, such as clothes washers. 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.⁸² 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

⁸¹ 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 Feb. 15, 2022).

⁸² 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 Feb. 15, 2022).

loss aversion, sensitivity to information salience, and other forms of bounded rationality. Richard Thaler, who won the Nobel Prize in Economics in 2017 for his contributions to behavioral economics, and Cass 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.⁸³ These characteristics describe almost all purchasing situations of appliances and equipment, including RCWs. The installation of a new or replacement clothes washer is done very infrequently, as evidenced by the mean lifetime of 13.7 years. Additionally, it would take at least a few months for any impacts on operating costs to be fully apparent. Further, if the purchaser of the clothes washer is not the entity paying the energy costs (e.g., a 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 is the split-incentive or principal-agent problem. 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 clothes washer to install, whereas the renter is responsible for paying energy bills. In addition to the split-incentive or principal-agent problem, there are other market failures that are likely to affect the choice of clothes washer efficiency made by consumers. Lucas Davis and Gilbert Metcalf⁸⁴ conducted an experiment demonstrating that the nature of the information available to consumers from EnergyGuide labels posted on air conditioning equipment results in an inefficient allocation of energy efficiency across households with different usage levels. Their findings

indicate that households are likely to make decisions regarding the efficiency of the climate control equipment of their homes that are not economically optimal relative to how they utilize the equipment (i.e., their decision is based on imperfect information and, therefore, is not necessarily optimal).

In part because of the way information is presented, and in part because of the way consumers process information, there is also a market failure consisting of a systematic bias in the perception of equipment energy usage, which can affect consumer choices.

These market failures affect a sizeable share of the consumer population. A study by Houde⁸⁵ 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 clothes washer efficiency in the no-new-standards case solely according to energy and water use or economic considerations such as life-cycle cost or payback period, the resulting distribution of efficiencies within the household sample would not reflect any of the market failures or behavioral factors above. DOE thus concludes such a distribution would not be representative of the clothes washer market. Further, even if a specific household is not subject to the market failures above, the purchasing decision of clothes washer efficiency can be highly complex and influenced by several factors not captured by the information available in the RECS samples. These factors can lead to household owners choosing a clothes washer efficiency that deviates from the efficiency predicted using only energy and water use or economic considerations (as calculated using the information from RECS 2015). However, DOE intends to investigate this issue further, and it welcomes suggestions as to how it might improve its assignment of clothes washer efficiency in its analyses.

9. Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional

installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a “simple PBP” because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year’s energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year’s energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

10. Other Issues

Fraas cited a case study of DOE’s 2001 RCW standards.⁸⁶ Fraas stated that this case study identified several issues that would result in lower cost saving estimates than projected in DOE’s ex ante analyses. These included: (1) reduced product reliability and life; (2) additional operation and maintenance costs; and (3) overstatement of clothes washer usage relative to DOE’s ex ante analysis. Fraas added that the case study illustrated the sensitivity of DOE’s life cycle analysis to different usage and product life assumptions and showed that DOE could have improved its analysis by developing distributions for key components of its analysis. Finally, Fraas urged DOE to conduct a retrospective analysis of its existing standards as part of the rulemaking process, including collection of extensive data on usage, reliability, and life, to provide a basis for assessing

⁸³ Thaler, R.H., and Sunstein, C.R. (2008). *Nudge: Improving Decisions on Health, Wealth, and Happiness*. New Haven, CT: Yale University Press.

⁸⁴ 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 Feb. 15, 2022).

⁸⁵ 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 Feb. 15, 2022).

⁸⁶ The final rule establishing these standards was published on January 12, 2001. 66 FR 3313.

prospective energy conservation standards. (Fraas, No. 35 at pp. 1–2)

DOE has reviewed Fraas & Miller 2020 and identified several fundamental misunderstandings in the paper with respect to the 2001 RCW rulemaking and standard (with compliance dates of 2004 and 2007). Specifically, the paper takes as a premise that the standards finalized in 2001 forced consumers to adopt front-loading clothes washers. This is fundamentally incorrect. DOE established separate product classes and standards for front-loading and top-loading clothes washers. While the 2001 standard set the same efficiency level for both of these classes, DOE noted in the final rule that there were both top- and front-loading clothes washers in the market at all of the efficiency levels prescribed in the final rule and that all efficiency levels were technologically feasible for both top- and front-loading clothes washers. (January 12, 2021; 66 FR 3314, 3318.) Therefore, manufacturers were able to choose how to invest in meeting standards across top-loading and front-loading models. Top-loading clothes washers continue to be available for purchase today and consumers may choose them if they wish. While there have been changes to top-loading clothes washer market share over time, today they have a market share greater than 70%.

With regard to reduced product reliability, the paper attempts to establish a causal link between regulation and litigation that they claim is evidence of reduced product reliability. However, all litigation evidence presented in the paper would apply to both baseline (pre-standards) and more efficient front-loading clothes washers, and there is no causal connection to regulation. The paper ignores past and parallel trends in litigation in the market for both the same products, and other, similar products. Additionally, there is no counter-factual argument.

With regard to reduced product life, the paper questions the estimates used in DOE's lifetime analyses, but compares lifetime estimates spanning 23 years. DOE's lifetime estimates are always based on the best available data at the time, and were reviewed by stakeholders before publishing the final rule. In the follow-up rulemaking, culminating in the May 2012 Final Rule, DOE performed a statistical analysis of historical shipments data and RECS 2005, which resulted in a lifetime estimate consistent with DOE's prior lifetime estimate. 10 CFR 430.32. This lifetime methodology is peer-reviewed.

The argument with respect to additional operation and maintenance

costs also ignores product class differentiation. Baseline front-loading units would have the same considerations, and therefore the incremental repair rate and operation and maintenance costs of higher efficiency units are the relevant parameters for DOE's analyses; these are typically negligible.

With respect to the possible overstatement of clothes washer usage relative to DOE's ex ante analysis, DOE again notes that its assumptions are based on the latest available data at the time of the rulemaking, particularly RECS. For the 2012 rulemaking, the average number of loads per year in the analysis decreased, in line with RECS 2005 results compared to RECS 1993.⁸⁷ Consumer behavior can indeed evolve over time.

Regarding the point that DOE could have improved its analysis by developing distributions for key components of its analysis, DOE notes that in the current rulemaking, lifetime, usage, energy consumption, and discount rates, among other things, are all characterized by distributions.

With respect to the recommendation to conduct a retrospective analysis as part of this rulemaking, DOE acknowledges that parameters such as lifetime and product usage can change over time. In this rulemaking, DOE uses the best available data to develop new estimates of such parameters. To the extent that the estimates have changed over time, this is not evidence that DOE could have made a better assumption in the previous rulemakings, as it was relying on the best available data at that time, and the difference between estimates in two years would not be sufficient to make adjustments to estimates in future years.

For all of the previous reasons, DOE is not making any methodology changes to its analyses, but it updated inputs based on data availability including repair and maintenance costs, energy and water usage, product lifetime, and product efficiency distribution.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows.⁸⁸ 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 housings.

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 housings, DOE used projections of new housing starts coupled with RCWs' saturation data. In other words, to project the shipments for new housings 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 2020,⁸⁹ and adopted the projections from *AEO2022* for 2021–2050. DOE used the data contained in the 2015 RECS to characterize ownership of RCWs in households across various housing types, including multi-family housing.

DOE then aggregated the above two market segments for any given year during the analysis period (2027–2056) and divided total RCW shipments into its five product classes. For this NOPR, DOE estimated the market share between top-loading and front-loading clothes washers would remain at the current level based on the historical shipments data by washer loading type (2004–2021) provided by AHAM. (AHAM, No. 40, at p. 11) DOE estimated market share for top-loading and front-loading clothes washers would remain at 75 percent and 25 percent, respectively. DOE then disaggregated top-loading clothes washer market share into three product classes (*i.e.*, semi-automatic, ultra-compact, and standard-size) and front-loading into two product classes (*i.e.*, compact and standard-size). In addition, DOE assumed annual growth rate for semi-automatic and top-loading ultra-compact clothes washers

⁸⁷ Department of Energy—Energy Information Administration, Residential Energy Consumption Survey, 1993 and 2005. Available at www.eia.gov/consumption/residential/.

⁸⁸ 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.

⁸⁹ U.S. Census. Characteristics of New Housing. Available at www.census.gov/construction/chars/.

would be at 0.2 percent. Table IV.34

shows the estimated market share and shipments for each product class.

TABLE IV.34—MARKET SHARE AND SHIPMENTS BY PRODUCT CLASS IN 2027

Product class	Market share (%)	Shipments (million)
Semi-Automatic	1.6	0.16
Top-Loading, Ultra-Compact	0.5	0.05
Top-Loading, Standard-Size	72.9	7.54
Front-Loading, Compact	1.6	0.16
Front-Loading, Standard-Size	23.4	2.42
Total	100	10.35

DOE seeks comment on the approach and inputs used to develop no-new standards case shipments projection and market share for each product class.

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 .⁹⁰ 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 repair their product rather than replace it. Under this method, DOE does not assume that consumers completely forgo the use of the product. The model instead assumes about the length of time that the life of the product is extended. This market impact is thus effectively applied to the repair or replacement decision. The second-hand market for used appliances is a potential alternative to consumers purchasing a new unit or repairing a broken unit. An increase in the purchases of older, less-efficient second-hand units due to a

price increase resulting from a more stringent standard could potentially decrease projected energy savings. DOE assumed that purchases on the second-hand market would not change significantly due to the proposed standard level and did not include their impact on product shipments.

DOE requests data on the market size and typical selling price of units sold through the second-hand market for residential clothes washers.

ASAP *et al.* encouraged DOE to more thoroughly model market shifts under standards implementations. ASAP *et al.* commented that in the September 2021 Preliminary TSD, DOE's logistic regression model that captured the relationship between the market share of front- and top-loading clothes washers, their prices, and their energy usage indicates that the front-loading market share is negatively correlated with top-loading price and energy usage. ASAP *et al.* therefore commented that the model predicts that the front-loading market share will decrease if higher standards are implemented for both top- and front-loading clothes washers. However, ASAP *et al.* noted that the estimated average price difference between front-loading and top-loading clothes washers is \$323 at the baseline versus only \$186 at EL 4. ASAP *et al.* stated that it is plausible that increasing standards could move the market towards, rather than away from, front-loading clothes washers. ASAP *et al.* therefore suggested that DOE should analyze how estimated first costs for each product class may affect market share projections. (ASAP *et al.*, No. 37 at pp. 4–5)

The consumer choice model developed under the September 2021 Preliminary Analysis lacked historical retail pricing, sales data, and clothes washer energy use data necessary for DOE to project market share between front-loading and top-loading RCWs, directly using their first cost and sales data as suggested by ASAP *et al.* DOE explored a method, but the regression

statistic results indicate a low R-squared, which means the predicted model would not fit with the historical market share data. Recent historical shipments data presented by AHAM (AHAM, No. 40, at p. 11) indicate that the proportion of front-loading clothes washers compared to total clothes washer shipments appears to have leveled off. Therefore, for this NOPR analysis, DOE used a frozen scenario for market shifting (*e.g.*, no market shifting) under the standards case.

For details on the shipments analysis, see chapter 9 of the NOPR TSD.

H. National Impact Analysis

The NIA assesses the national energy savings (NES), national water savings (NWS), and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels. (“Consumer” in this context refers to consumers of the product being regulated.) DOE calculates the NES, NWS, and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy and water consumption and total installed cost data from the energy and water use and LCC analyses. For the present analysis, DOE projected the energy and water savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of RCWs sold from 2027 through 2056.

DOE evaluates the impacts of 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

⁹⁰ Fujita, S., Estimating Price Elasticity using Market-Level Appliance Data. LBNL-188289 (August 2015). Available at: <https://publications.lbl.gov/sites/default/files/lbnl-188289.pdf>.

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 and water savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values

(as opposed to probability distributions) as inputs.

Table IV.35 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.35—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2027.
Efficiency Trends	<i>No-new-standards case</i> : 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. <i>Standards cases</i> : "Roll up" equipment to meet potential efficiency level.
Annual Energy and Water Consumption per Unit.	Annual weighted-average values are a function of energy and water use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future product prices based on historical data.
Annual Energy and Water Cost per Unit.	Annual weighted-average values as a function of the annual energy and water consumption per unit and energy and water prices.
Repair and Maintenance Cost per Unit.	Annual values change between non-ENERGY STAR and ENERGY STAR efficiency levels.
Energy and Water Price Trends	<i>AEO2022</i> projections (to 2050) and constant value based on average between 2046–2050 thereafter. Historical PPI extrapolated projection (to 2050) and constant value based on average between 2046–2050 thereafter.
Energy Site-to-Primary and FFC Conversion.	A time-series conversion factor based on <i>AEO2022</i> .
Discount Rate	3 percent and 7 percent.
Present Year	2022.

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 DOE's 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 and 0.1 percent for top-loading standard-size and front-loading (compact and standard-size) clothes washers, 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). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would "roll up" to meet the new standard level, and the market share of

products above the standard would remain unchanged.

2. National Energy 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 (or 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 *AEO2022*. Cumulative energy and water savings are the sum of the NES and NWS for each year over the timeframe of the analysis.

Use of higher-efficiency products is sometimes associated with a direct rebound effect, which refers to an

increase in utilization of the product due to the increase in efficiency. As described in section IV.E.2, DOE did not find any data on the rebound effect specific to RCWs and did not apply a rebound effect.

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 NAS, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System ("NEMS") is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector⁹¹ that EIA uses to

⁹¹ 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/outlooks/aeo/nems/

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 NOPR TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy and water costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.1 of this document, DOE developed 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 14.4 percent relative to 2021. DOE's projection of product prices is described in appendix 10C of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for 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 1980–2021 and (2) a low price decline case based on PPI data for the period 1948–1979. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the NOPR 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 *AEO2022*, 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 2021. To estimate price trends after 2050, DOE used a constant value derived from the average values from 2046 through 2050. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2022* 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 NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (“OMB”) to Federal agencies on the development of regulatory analysis.⁹² 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 NOPR, DOE analyzed the impacts of the considered standard levels on two subgroups: (1) low-income households and (2) senior-only households. The analysis used subsets of the 2015 RECS sample composed of households that meet the criteria for the two subgroups. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. The sections below discuss the individual subgroups, and additional details are found in chapter 11 of the NOPR 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.

The CA IOUs recommended that DOE consider adjustments to its consumer subgroup analysis by creating a low-income renter subgroup. The CA IOUs commented that it is more likely that the incremental clothes washer purchase costs to the average low-income household would be paid by a landlord and passed along to the low-income household across multiple months, such that the benefits of lower energy and water costs would offset the incremental cost increases of higher efficiency products. (CA IOUs, No. 43 at pp. 1–2)

NYSERDA recommended that DOE conduct additional analysis on the implications to renters as part of its low-income consumer subgroup assessment. NYSERDA noted that within low-income households, there are important distinctions between renters and owners, and renters often bearing the operational costs of energy and water with limited input on the choice of products. (NYSERDA, No. 36 at p. 2)

For this NOPR 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 2015 RECS includes data on whether a household pays for the energy bill, allowing DOE to categorize households in the analysis narrowly,⁹³ excluding any costs or benefits that are accrued by either a landlord or subsidized housing agency. This allows DOE to determine whether low-income households are disproportionately affected by an amended energy conservation standard in a more accurate manner. Table IV.36 shows the distribution of low-income

[documentation/archive/pdf/0581\(2009\).pdf](#). (last accessed June 12, 2022).

⁹² United States Office of Management and Budget. *Circular A–4: Regulatory Analysis*. September 17, 2003. Section E. Available at [obamawhitehouse.archives.gov/omb/circulars_a004_a-4/](#) (last accessed June 12, 2022).

⁹³ The energy bill includes fuel type of electricity, natural gas, or propane consumed by a household.

household clothes washer users with respect to whether they rent or own and whether they pay the energy bill.

TABLE IV—36 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) **	37	28	50	41	Full/Partial savings	None.***
Renters (Do Not Pay for Energy Bill) **.	5	4	11	14	None	None.***
Owners	58	69	39	46	Full/Partial savings	Full.

* RECS 2015 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 2015 does not distinguish homes in subsidized or public housing.

** RECS 2015 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.

AHAM commented that increased efficiency standards would eliminate the lowest priced top-loading RCWs, which would have a disproportionate, negative impact on low-income households. AHAM added that, while low-income consumers would receive payback over time due to savings on utility bills, these consumers are unlikely to have the extra funds to pay for a more efficient, but more expensive RCW. (AHAM, No. 40 at pp. 12–13)

Whirlpool expressed concern about the impacts of amended standards on low-income consumers and believe that amended standards for clothes washers could have potentially devastating impacts on racial and economic equity. Whirlpool commented that any increase to purchase cost driven by amended standards may be difficult or impossible for many low-income households to accept and may further widen the equity gap rather than help close it. (Whirlpool, No. 39 at pp. 16–17)

As described in section V.B.1 of this document, the percent of low-income RCW consumers experiencing a net cost at the proposed standard level (TSL 4) is smaller (13 percent for top-loading standard-size washers) than in the full LCC sample (25 percent for top-loading standard-size washers). The main reason is that a high portion of low-income household renters would not have to pay the total cost of a higher-efficiency washer because renters do not select nor pay for the clothes washer itself (CA IOUs, No.43 at pp. 1–2).

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 only 8 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 the TSL 4 is greater (35 percent for top-loading standard-size washers) than in the full LCC sample (25 percent for top-loading standard-size washers). The simple payback period for senior-only households at TSL 4 is 2 years longer than in the full LCC sample.

For households who would be negatively impacted by amended energy conservation standards, a potential rebate program to reduce the total installed costs would be effective in lowering the percentage of consumers with a net cost and reducing simple payback period. DOE is aware of 80 rebate programs currently available for residential clothes washers meeting ENERGY STAR requirements initiated by 63 organizations in various States as described in chapter 17 of the NOPR TSD.⁹⁴ DOE is seeking comment about

⁹⁴ As of June, 2022, 80 rebate programs were available for residential clothes washers meeting ENERGY STAR requirements: www.energystar.gov/rebate-finder?scrollTo=363.6363525390625&sort_by=utility&sort_direction=asc&page_number=0&lastpage=0&zip_code_filter=&search_text=&product_clean_filter=Clothes+Washers&product_clean_

how amended energy conservation standards may impact the low-income and senior-only consumer economics being presented and considered in this proposed rulemaking.

DOE is seeking comment about definable subpopulations in addition to low-income and senior-only households and the associated data required to differentiate how such subpopulation use clothes washers.

Chapter 11 in the NOPR 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

isopen=0&product_types=Select+a+Product+Category.

impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (“GRIM”), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various standards cases (*i.e.*, TSLs). To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard’s impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the 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-Ks from the SEC,⁹⁵ corporate annual reports, the U.S. Census Bureau’s *Annual Survey of*

Manufactures (“ASM”),⁹⁶ and reports from Dun & Bradstreet.⁹⁷

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. See section IV.J.3 of this document for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers (“LVMs”), niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE

identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of this document, “Review under the Regulatory Flexibility Act” and in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2022 (the base year of the analysis) and continuing to 2056. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of 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 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 and shipments analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Manufacturer Production Costs

Manufacturing more efficient 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.

⁹⁵ U.S. Securities and Exchange Commission, *Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system*. Available at: www.sec.gov/edgar/search/ (Last accessed July 1, 2022).

⁹⁶ U.S. Census Bureau, *Annual Survey of Manufactures*. “Summary Statistics for Industry Groups and Industries in the U.S (2020).” Available at: www.census.gov/data/tables/time-series/econ/asm/2018-2020-asm.html (Last accessed July 15, 2022).

⁹⁷ The Dun & Bradstreet Hoovers login is available at: app.dnbhoovers.com (Last accessed July 15, 2022).

DOE conducted this analysis using the physical teardown approach. The resulting bill of materials provides the basis for the MPC estimates. In this proposed 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 chapter 5 of the NOPR TSD or section IV.C of this document.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA’s annual shipment projections derived from the shipments analysis from 2022 (the base year) to 2056 (the end year of the analysis period). See chapter 9 of the NOPR TSD for additional details or section IV.G of this document.

c. Product and Capital Conversion Costs

Amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) capital conversion costs; and (2) product conversion costs. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards.

DOE relied on 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) 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 was 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 acknowledges that manufacturers may follow different design paths to reach the various efficiency levels analyzed. An individual manufacturer’s investments depend on a range of factors, including the company’s current product offerings and product platforms, existing production facilities and infrastructure, and make vs. buy decisions for components. DOE’s conversion cost methodology incorporated feedback from all manufacturers that took part in interviews and extrapolated industry values. While industry average values may not represent any single manufacturer, DOE’s modeling provides reasonable estimates of industry-level investments.

DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the NOPR TSD.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.*, labor, materials, and overhead estimated in DOE’s MPCs)

and all non-production costs (*i.e.*, SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying the 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 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.⁹⁸ 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. The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after the standard takes effect.

⁹⁸ The gross margin percentage of 18 percent is based on a manufacturer markup of 1.22.

A comparison of industry financial impacts under the two scenarios is presented in section V.B.2.a of this document.

3. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 82 percent of domestic RCW industry shipments. Participants included domestic-based and foreign-based original equipment manufacturers (“OEMs”) with a range of different product offerings and market shares.

In interviews, DOE asked manufacturers to describe their major concerns regarding potential increases in energy conservation standards for RCWs. The following section highlights manufacturer concerns that helped inform the projected potential impacts of an amended standard on the industry. Manufacturer interviews are conducted under non-disclosure agreements (“NDAs”), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE’s responses throughout the rest of this document.

a. Product Classes

In interviews, manufacturers had differing views on the appropriate RCW product class structure. Generally, manufacturers specializing in standard-size front-loading clothes washers recommended that DOE combine product classes and remove the product class delineation based on load configuration. These manufacturers emphasized that front-loading clothes washers are more efficient than top-loading counterparts. These manufacturers noted that even energy-conscious consumers often just look for the ENERGY STAR certification and are unaware of the energy usage differences between top-loading and front-loading models.

Several manufacturers recommended an array of updates to the product class structure as it relates to the classification of standard-size versus compact-size products. Some manufacturers suggested differentiating product classes based on cabinet width instead of tub capacity. These manufacturers noted that consumers often purchase compact front-loading RCWs due to size constraints at the installation location. Other manufacturers encouraged DOE to align the capacity cutoff for top-loading compact clothes washers with the capacity cutoff for front-loading compact clothes washers analyzed in the September 2021 Preliminary Analysis (*i.e.*, 3.0 ft³). 86 FR 53886.

Some manufacturers suggested splitting up the standard-size product classes by varying cabinet-size (or capacity) thresholds. One manufacturer noted that entry-level products are typically on the smaller side, with capacities under 4.0 ft³. These smaller standard-size products are often less expensive than larger capacity RCW models. Additionally, the technology options may vary based on capacity. For example, this manufacturer asserted that larger capacity models can better handle increased spin speeds and have an inherent advantage for efficiency ratings due to the larger weighted-average load-size compared to smaller capacity models.

b. Ability To Serve Certain Consumer Segments

In interviews, manufacturers emphasized that consumer preferences vary and as a result, there are a range of RCW models available that appeal to different consumer segments. Currently, manufacturers balance achieving energy and water efficiency metrics with other considerations, such as cycle time, noise levels, fabric care, cleaning performance, and upfront cost. Multiple manufacturers expressed concerns about their ability to meet some consumer requirements under amended standards. For instance, several manufacturers stated that they would need to increase cycle times at certain efficiencies to recover cleaning performance at reduced water levels. These manufacturers noted that consumers often expect wash cycle times to align with dryer cycle times. Other manufacturers expressed concerns about diminished fabric care and heightened noise under levels that require notably faster spin speeds. Some manufacturers stated that it would require significant engineering time and capital investment to develop a range of platforms that meet more stringent energy standards as well as a range of consumer performance requirements. A few manufacturers recommended DOE explore instituting a cleaning performance metric, like the concept proposed for dishwashers in a NOPR published on December 22, 2021. 86 FR 72738.

Some manufacturers stated that a large segment of “traditionalist” consumers prefer “traditional” top-loading RCWs with specific characteristics and the manufacturers asserted that more stringent standards would threaten the viability of these “traditional” top-loading clothes washers that met requirements of this consumer segment. These manufacturers described “traditionalist”

consumers as preferring top-loading clothes washers with agitators, visible water levels, and flexible (*i.e.*, manual) fill options. Specifically, manufacturers stated that an agitator design would not be feasible at or above the current ENERGY STAR level (EL 2). Some manufacturers asserted, based on their product research and reported shifts in consumer demand for agitator washers, that some “traditionalist” consumers would be dissatisfied with top-loading designs that lacked the agitator and instead used a wash plate. One manufacturer noted that they recently introduced RCWs with agitators due to consumer preferences for such features.

Several manufacturers also noted that amending standards would raise the cost of baseline RCWs, which would disproportionately impact low-income consumers since they typically purchase entry-level, “traditional” top-loading clothes washers. These manufacturers raised concerns about their future ability to offer low-cost RCWs and serve the low-income consumer market under amended standards.

c. Supply Chain Constraints

In interviews, some manufacturers expressed concerns about potential supply chain constraints. Those manufacturers noted concerns about the ongoing supply constraints for microprocessors and electronics. Any shift towards direct drive motors would require that industry source more advanced microprocessors, which are already difficult to secure. Some manufacturers were also uncertain about industry’s ability to source enough direct drive motors—particularly for standard-size top-loading clothes washers—to meet market demand at and above the current ENERGY STAR level (EL 2). Manufacturers asserted that if these supply constraints continue through the end of the conversion period, industry could face production capacity constraints.

4. Discussion of MIA Comments

In response to the September 2021 Preliminary Analysis, AHAM urged DOE to consider alternative approaches to cumulative regulatory burden. AHAM encouraged DOE to incorporate the financial results of the cumulative regulatory burden analysis into the MIA, stating that this could be done by adding the combined cost of complying with multiple regulations into the product conversion costs in the GRIM. (AHAM, No. 40 at p. 7) AHAM noted other regulations impact RCW manufacturers such as consumer clothes dryers, commercial clothes washers,

consumer refrigerator/freezers, miscellaneous refrigeration products, cooking products, dishwashers, room air conditioners, dehumidifiers, and portable air conditioners rulemakings. (AHAM, No. 40 at p. 8) Additionally, AHAM requested that DOE include the cost of monitoring test procedure and energy conservation standard rulemakings in its rulemaking analyses. (*Id.*)

If DOE were to combine the conversion costs from multiple regulations, as requested, it would be appropriate to match the combined conversion costs against combined revenues of the regulated products. DOE is concerned that combined results would 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. Conversion costs would be spread over a larger revenue base and result in less severe INPV impacts, when evaluated on a percent change basis.

To consider to costs of monitoring test procedure and energy conservation standard rulemakings, DOE requests AHAM provide the costs of monitoring, which would be independent from the conversion costs required to adapt product designs and manufacturing facilities to an amended standard, for DOE to determine whether these costs would materially affect the analysis. In particular, a summary of the job titles and annual hours per job title at a prototypical company would allow DOE to construct a detailed analysis of AHAM's monitoring costs.

AHAM requested DOE plan its rulemaking process such that the compliance dates for residential clothes washers and clothes dryers are identical or very nearly identical. AHAM further explained that this would allow manufacturers to design these products simultaneously to meet amended standards and so that there is less confusion for manufacturers, retailers, and consumers as products would need to be re-floored leading up to and on the compliance date of any amended energy conservation standards. (AHAM, No. 40 at pp. 7–8) Whirlpool also stated that if DOE decides to amend standards for both clothes washers and clothes dryers, then compliance dates should be aligned to allow for manufacturers to invest in clothes washers and clothes dryers as a pair, which prevents unnecessary cost, confusion, and burden for manufacturers and retailers. (Whirlpool, No. 39 at p. 20) Whirlpool added that it believes DOE has the statutory authority to align these compliance dates. (*Id.*)

Pursuant to a consent decree entered on September 20, 2022, DOE has agreed to sign and post on DOE's publicly accessible website a rulemaking document for RCWs and consumer clothes dryers by February 29, 2024, that, when effective, would be DOE's final agency action for standards for these products.⁹⁹ As such, DOE expects that, if these two rulemakings result in amended energy conservation standards, the compliance dates would be similar.

Whirlpool stated that more stringent standards would disproportionately harm the company due to its broad lineup of RCWs that includes broad offerings at entry-level price points. Whirlpool noted that the company would need to devote a high level of engineering resources to incorporate design options such as stainless-steel wash baskets, wash plates, direct drive motors, and product structural changes. Whirlpool added that moving from traditional agitators to high-efficiency agitators or wash plates would lead to increased costs associated with redesigning models and retooling factories. In contrast, Whirlpool emphasized that many competitors would not need to make additional investments to meet amended standards since they cater to a more targeted consumer segment. (Whirlpool, No. 39 at p. 18)

DOE uses the GRIM, as described in section IV.J.2, to determine the quantitative impacts on the RCW industry as a whole. Impacts on individual manufacturers may vary from industry averages due to a wide range of company-specific factors including, but not limited to, differences in efficiency of current product offerings, production volumes, and legacy investments in manufacturing plants. DOE recognizes that the industry impacts do not apply evenly across manufacturers. However, as many of the GRIM inputs (*e.g.*, industry financials) account for U.S. market share weights, the GRIM is most reflective of large manufacturers, like Whirlpool. Additionally, DOE's modeling incorporates estimate conversion costs associated with the product changes, such as stainless-steel wash baskets, wash plates, direct drive motors, and product structural enhancements, identified by Whirlpool.

Whirlpool expressed concern that direct drive and BPM motors are more expensive than PSC motors. (Whirlpool, No. 39 at p. 6) DOE incorporates the

higher cost of direct drive and BPM motors in its engineering analysis, as discussed in section IV.C.4 of this document.

Whirlpool noted concerns about being able to secure an adequate domestic supply of direct drive motors, if DOE amends standard, since direct drive motors typically come from foreign suppliers. (Whirlpool, No. 39 at p. 6) Samsung commented that direct drive motors have matured over the years and have become highly cost competitive. (Samsung, No. 41 at pp. 2–3) More stringent standards would likely necessitate adoption of more efficient technologies, such as direct drive motors. DOE notes that amended standards, if adopted, could provide regulatory certainty for manufacturers and suppliers to establish additional capacity in the supply chain.

DOE seeks comment on the availability of direct drive motors in quantities required by industry if DOE were to adopt amended standards.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO₂, NO_x, SO₂, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH₄ and N₂O, as well as the reductions to emissions of other gases due to “upstream” activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO₂, NO_x, SO₂, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO*, including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the NOPR TSD. The analysis presented in this notice uses projections from *AEO2022*. Power sector emissions of CH₄ and N₂O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the EPA.¹⁰⁰

The on-site operation of RCWs requires combustion of fossil fuels and results in emissions of CO₂, NO_x, SO₂

⁹⁹ *Natural Resources Defense Council, Inc., et al. v Granholm, et al.*, No. 1:20-cv-09127 (S.D.N.Y.), and *State of New York, et al. v Granholm, et al.* No. 1:20-cv-09362 (S.D.N.Y.).

¹⁰⁰ Available at www.epa.gov/sites/production/files/2021-04/documents/emission-factors-apr2021.pdf (last accessed June 12, 2022).

CH₄, and N₂O where these products are used. Site emissions of these gases were estimated using Emission Factors for Greenhouse Gas Inventories and, for NO_x and SO₂ emissions intensity factors from an EPA publication.¹⁰¹

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and “fugitive” emissions (direct leakage to the atmosphere) of CH₄ and CO₂, are estimated based on the methodology described in chapter 15 of the NOPR TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

1. Air Quality Regulations Incorporated in DOE’s Analysis

DOE’s no-new-standards case for the electric power sector reflects the *AEO*, which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2022* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO2022*, including the emissions control programs discussed in the following paragraphs.¹⁰²

SO₂ emissions from affected electric generating units (“EGUs”) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO₂ for affected EGUs in the 48 contiguous States and the District of Columbia (D.C.). (42 U.S.C. 7651 *et seq.*) SO₂ emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (“CSAPR”). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO₂ emissions, and went into effect as of January 1, 2015.¹⁰³

AEO2022 incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016).

Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO₂ emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO₂ emissions by another regulated EGU.

However, beginning in 2016, SO₂ emissions began to fall as a result of the Mercury and Air Toxics Standards (“MATS”) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (“HAP”), and also established a standard for SO₂ (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO₂ emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO₂ emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO₂ emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO₂ emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation would generally reduce SO₂ emissions. DOE estimated SO₂ emissions reduction using emissions factors based on *AEO2022*.

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. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_x emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NO_x emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_x emissions in States covered by CSAPR. Energy conservation standards would be expected to reduce NO_x emissions in the States not covered by CSAPR. DOE used *AEO2022* 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 *AEO2022*, which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO₂, CH₄, N₂O, NO_x, and SO₂ that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped 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 NOPR.

On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government’s emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana v. Biden*, No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit’s order, the preliminary injunction is no longer in effect, pending resolution of the federal government’s appeal of that injunction

¹⁰¹ U.S. Environmental Protection Agency. External Combustion Sources. In *Compilation of Air Pollutant Emission Factors*. AP–42. Fifth Edition. Volume I: Stationary Point and Area Sources. Chapter 1. Available at www.epa.gov/ttn/chief/ap42/index.html (Last accessed June 12, 2022).

¹⁰² For further information, see the Assumptions to *AEO2022* 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 12, 2022).

¹⁰³ CSAPR requires states to address annual emissions of SO₂ and NO_x, precursors to the formation of fine particulate matter (PM_{2.5})

pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards (“NAAQS”). CSAPR also requires certain states to address the ozone season (May–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).

or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from “adopting, employing, treating as binding, or relying upon” the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law. DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO₂, CH₄, and N₂O by using a measure of the social cost (“SC”) of each pollutant (*e.g.*, SC–CO₂). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive orders, and DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 Interim Estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases or by another means, did not affect the rule ultimately proposed by DOE.

DOE estimated the global social benefits of CO₂, CH₄, and N₂O reductions (*i.e.*, SC–GHGs) using the estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, published in February 2021 by the IWG (“February 2021 SC–GHG TSD”). The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value

of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO₂, N₂O and CH₄ 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 until revised estimates have been developed reflecting the latest, peer-reviewed science.

The SC–GHGs estimates presented here were developed over many years, using transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, 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 (*i.e.*, SC–CO₂) values used across agencies. The IWG published SC–CO₂ 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 CO₂ emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO₂ 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 (*i.e.*, SC–CH₄) and nitrous oxide (*i.e.*, SC–N₂O) using methodologies that are consistent with the methodology underlying the SC–CO₂ estimates. The modeling approach that extends the IWG SC–CO₂ methodology to non-CO₂ GHGs has undergone multiple stages of peer review. The SC–CH₄ and SC–N₂O estimates were developed by Marten *et*

*al.*¹⁰⁴ 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–CO₂ estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO₂ 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–CO₂ estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies, 2017).¹⁰⁵ 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–CO₂ estimates used in regulatory analyses are consistent with the guidance contained in OMB’s Circular A–4, “including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates” (E.O. 13783, Section 5(c)). Benefit-cost analyses following E.O. 13783 used SC–GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government’s estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC–GHG

¹⁰⁴ Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH₄ and N₂O mitigation benefits consistent with the U.S. Government’s SC–CO₂ estimates. *Climate Policy*. 2015. 15(2): pp. 272–298.

¹⁰⁵ 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.

estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC-GHG estimates published in February 2021 are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC-GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature. The February 2021 SC-GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O. 13990. In particular, the IWG found that the SC-GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC-GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC-GHG. Examples of 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 proposed rule DOE centers attention on

a global measure of SC-GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 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 (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context,¹⁰⁶ and recommended that

¹⁰⁶ Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866*. 2010. United States Government. (Last accessed April 15, 2022.) www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf; Interagency Working Group on Social Cost of Carbon. *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*. 2013. (Last accessed April 15, 2022.) www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact; 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. (Last accessed January 18, 2022.) www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf; 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. (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- 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

www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf.

recommendations on how SC-GHG estimates can “be combined in RIAs with other cost and benefits estimates that may use different discount rates.” The National Academies reviewed several options, including “presenting all discount rate combinations of other costs and benefits with [SC-GHG] estimates.”

As a member of the IWG involved in the development of the February 2021 SC-GHG TSD, DOE agrees with 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 use 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.¹⁰⁷ Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their “damage functions”—i.e., the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the integrated assessment models, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of

damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC-CO₂ estimates. However, as discussed in the February 2021 SC-GHG TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC-GHG estimates used in this proposed rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE’s derivations of the SC-CO₂, SC-N₂O, and SC-CH₄ values used for this NOPR are discussed in the following sections, and the results of DOE’s analyses estimating the benefits of the reductions in emissions of these pollutants are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC-CO₂ values used for this NOPR were based on the values presented for IWG’s February 2021 SC-GHG TSD. Table IV.37 shows the updated sets of SC-CO₂ estimates from the IWG’s February 2021 SC-GHG TSD in 5-year increments from 2020 to 2050. The full set of annual values that DOE used is presented in appendix 14A of the NOPR TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate include all four sets of SC-CO₂ values, as recommended by the IWG.¹⁰⁸

TABLE IV.37—ANNUAL SC-CO₂ VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050 (2020\$ PER METRIC TON CO₂)

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

¹⁰⁷ Interagency Working Group on Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government.

Available at www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/.

¹⁰⁸ For example, the February 2021 SC-GHG TSD discusses how the understanding of discounting approaches suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

For 2051 to 2070, DOE used SC-CO₂ estimates published by EPA, adjusted to 2020\$.¹⁰⁹ These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG. DOE expects additional climate benefits to accrue for any longer-life RCWs after 2070, but a lack of available SC-CO₂ estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

DOE multiplied the CO₂ emissions reduction estimated for each year by the SC-CO₂ value for that year in each of the four cases. DOE adjusted the values to 2021\$ 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-CO₂ values in each case.

AHAM cautioned against 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 to determine 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 TSLs DOE selects as a new or amended standard. (AHAM, No. 40 at p. 32)

As stated in section III.F.1.f of this document, DOE maintains that environmental and public health benefits associated with the more efficient use of energy, including those connected to global climate change, are important to take into account when considering the need for national energy conservation, which is one of the factors that EPCA requires DOE to evaluate in determining whether a potential energy conservation standard is economically justified. 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 monetized emissions reductions in its evaluation of potential standard levels. As previously stated, however, DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases.

b. Social Cost of Methane and Nitrous Oxide

The SC-CH₄ and SC-N₂O values used for this NOPR were based on the values developed for the February 2021 SC-GHG TSD. Table IV.38 shows the updated sets of SC-CH₄ and SC-N₂O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the NOPR TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC-CH₄ and SC-N₂O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC-CO₂.

TABLE IV.38—ANNUAL SC-CH₄ AND SC-N₂O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050 (2020\$ PER METRIC TON)

Year	SC-CH ₄				SC-N ₂ O			
	Discount Rate and Statistic				Discount Rate and Statistic			
	5%	3%	2.5%	3%	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile				Average
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 CH₄ and N₂O emissions reduction estimated for each year by the SC-CH₄ and SC-N₂O estimates for that year in each of the cases. DOE adjusted the values to 2021\$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC-CH₄ and SC-N₂O estimates in each case.

2. Monetization of Other Emissions Impacts

For the NOPR, DOE estimated the monetized value of NO_x and SO₂ emissions reductions from electricity generation using the latest benefit per ton estimates for that sector from the EPA’s Benefits Mapping and Analysis Program.¹¹⁰ DOE used EPA’s values for PM_{2.5}-related benefits associated with NO_x and SO₂ and for ozone-related benefits associated with NO_x for 2025, 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation

to define values for the years not given in the 2025 to 2040 period; for years beyond 2040 the values are held constant. DOE derived values specific to the sector for RCWs using a method described in appendix 14B of the NOPR TSD.

DOE also estimated the monetized value of NO_x and SO₂ 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

¹⁰⁹ See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis*, Washington, DC, December 2021. Available at: www.epa.gov/system/

[files/documents/2021-12/420r21028.pdf](https://files.documents/2021-12/420r21028.pdf) (last accessed January 13, 2022).

¹¹⁰ *Estimating the Benefit per Ton of Reducing PM_{2.5} Precursors from 21 Sectors*. www.epa.gov/

benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.

commercial buildings, the sector called “area sources” would be a reasonable proxy for residential and commercial buildings.¹¹¹ The EPA document provides high and low estimates for 2025 and 2030 at 3- and 7-percent discount rates.¹¹² 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 AEO2022. 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 AEO2022 Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are

any changes in the number of 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 Labor Department’s Bureau of Labor Statistics (“BLS”). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.¹¹³ There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.*, the utility sector) to more labor-intensive sectors (*e.g.*, the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an

input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (“ImSET”).¹¹⁴ 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 NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE’s analyses with respect to the considered energy conservation standards for 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 proposing to adopt in this NOPR. Additional details regarding DOE’s analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential amended standards for products and equipment 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 market cross elasticity from consumer purchasing decisions that may change when different standard levels are set.

In the analysis conducted for this NOPR, DOE analyzed the benefits and burdens of five TSLs for RCWs. DOE developed TSLs that combine efficiency

¹¹¹ “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.

¹¹² “Area sources” are a category in the 2018 document from EPA, but are not used in the 2021 document cited above. Available at: www.epa.gov/sites/default/files/2018-02/documents/sourceapportionmentbpttsd_2018.pdf.

¹¹³ See U.S. Department of Commerce–Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, 1997, U.S. Government Printing Office: Washington, DC. Available at apps.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf (Last accessed June 22, 2022).

¹¹⁴ Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User Guide*. 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

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 NOPR TSD.

Table V.1 through Table V.3 present the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy

conservation standards for RCWs. TSL 5 represents the max-tech energy and water efficiency for all product classes. TSL 4 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. TSL 3

represents the current ENERGY STAR efficiency level for all product classes that are eligible for the program, and a gap fill level for the semi-automatic product class. TSL 2 represents the non-max-tech efficiency levels providing the highest LCC savings. TSL 1 represents EL 1 across all product classes.

TABLE V.1—TRIAL STANDARD LEVELS FOR SEMI-AUTOMATIC, RESIDENTIAL CLOTHES WASHERS

TSL	Semi-automatic		
	Efficiency level	EER (lb/kWh/cycle)	WER (lb/gal/cycle)
1–4	1	2.12	0.27
5	2	2.51	0.36

TABLE V.2—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	1	3.89	0.47
3	Baseline	3.79	0.29	2	4.27	0.57
4	Baseline	3.79	0.29	3	4.78	0.63
5	Baseline	3.79	0.29	4	5.37	0.67

TABLE V.3—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	1	4.80	0.62	2	5.52	0.77
3	1	4.80	0.62	2	5.52	0.77
4	2	5.02	0.71	3	5.73	0.77
5	4	5.97	0.80	4	5.97	0.85

While not all efficiency levels were included in the TSLs, DOE considered all efficiency levels as part of its analysis.¹¹⁵

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 NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.4 through Table V.13 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple

payback is measured relative to the baseline product. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

¹¹⁵ Efficiency levels that were analyzed for this NOPR are discussed in section IV.C.1 of this

document. Results by efficiency level are presented in chapters 8, 10, and 12 of the NOPR TSD.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR SEMI-AUTOMATIC RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Average costs (2021\$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	\$553	\$136	\$1,532	\$2,085	.....	13.7
1–4	1	561	107	1,195	1,756	0.3	13.7
5	2	568	93	1,044	1,612	0.4	13.7

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR SEMI-AUTOMATIC RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021\$)	Percent of consumers that experience net cost
1–4	1	329	0
5	2	219	0

* The savings represent the average LCC for affected consumers.

TABLE V.6—AVERAGE LCC AND PBP RESULTS FOR TOP-LOADING, ULTRA-COMPACT RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Average costs (2021\$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1–5	Baseline	\$904	\$85	\$958	\$1,862	.....	13.7

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR TOP-LOADING, ULTRA-COMPACT RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021\$)	Percent of consumers that experience net cost
1–5	Baseline	\$0.00	0%

* The savings represent the average LCC for affected consumers.

TABLE V.8—AVERAGE LCC AND PBP RESULTS FOR TOP-LOADING, STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Average costs (2021\$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	\$706	\$183	\$2,080	\$2,786	.....	13.7
1, 2	1	795	164	1,853	2,649	4.6	13.7
3	2	881	157	1,779	2,660	6.8	13.7
4	3	891	152	1,717	2,608	5.9	13.7
5	4	896	149	1,682	2,578	5.5	13.7

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.9—AVERAGE LCC AND PBP RESULTS FOR TOP-LOADING, STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021\$)	Percent of consumers that experience net cost
1, 2	1	\$138	14
3	2	115	28
4	3	134	25
5	4	157	23

* The savings represent the average LCC for affected consumers.

TABLE V.10—AVERAGE LCC AND PBP RESULTS FOR FRONT-LOADING, COMPACT RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Average costs (2021\$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	\$809	\$100	\$1,119	\$1,929	.....	13.7
1–3	1	861	93	1,046	1,907	0.0	13.7
4	2	909	89	992	1,901	9.1	13.7
5	4	944	81	901	1,845	7.1	13.7

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.11—AVERAGE LCC AND PBP RESULTS FOR FRONT-LOADING, COMPACT RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021\$)	Percent of consumers that experience net cost
1–3	1	\$0.0	0
4	2	7	24
5	4	56	29

* The savings represent the average LCC for affected consumers.

TABLE V.12—AVERAGE LCC AND PBP RESULTS FOR FRONT-LOADING, STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Average costs (2021\$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	\$1,195	\$146	\$1,664	\$2,859	.....	13.7
1	1	1,213	140	1,589	2,802	2.8	13.7
2, 3	2	1,226	133	1,513	2,740	2.4	13.7
4	3	1,244	131	1,488	2,732	3.2	13.7
5	4	1,265	126	1,424	2,689	3.4	13.7

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.13—AVERAGE LCC AND PBP RESULTS FOR FRONT-LOADING, STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021\$)	Percent of consumers that experience net cost
1	1	\$57	0
2, 3	2	78	0
4	3	19	24

TABLE V.13—AVERAGE LCC AND PBP RESULTS FOR FRONT-LOADING, STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS—Continued

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021\$)	Percent of consumers that experience net cost
5	4	55	18

* The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households and senior-only households. Table V.14 through Table V.18 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. The percent of low-income RCW consumers experiencing a net cost is smaller than the full LCC sample in all cases, largely due to the proportion of renter

households. The percent of senior-only households experiencing a net cost is higher than the full LCC sample, largely due to the lower washer usage frequency. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.14—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; SEMI-AUTOMATIC RESIDENTIAL CLOTHES WASHERS

	Low-income households	Senior-only households	All households
Average LCC Savings (2021\$)			
TSL 1–4	389	265	329
TSL 5	258	174	219
Payback Period (years)			
TSL 1–4	0.1	0.4	0.3
TSL 5	0.2	0.5	0.4
Consumers with Net Benefit (%)			
TSL 1–4	18	21	21
TSL 5	80	92	92
Consumers with Net Cost (%)			
TSL 1–4	0	0	0
TSL 5	0	0	0

TABLE V.15—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; TOP-LOADING, ULTRA-COMPACT RESIDENTIAL CLOTHES WASHERS

	Low-income households	Senior-only households	All households
Average LCC Savings (2021\$)			
TSL 1–5	\$0	\$0	\$0
Payback Period (years)			
TSL 1–5 .....	.....	.....	.....
Consumers with Net Benefit (%)			
TSL 1–5	0%	0%	0%
Consumers with Net Cost (%)			
TSL 1–5	0%	0%	0%

TABLE V.16—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	All households
Average LCC Savings (2021\$)			
TSL 1, 2	\$175	\$77	\$138
TSL 3	186	37	115
TSL 4	189	62	134
TSL 5	214	81	157
Payback Period (years)			
TSL 1, 2	2.7	6.3	4.6
TSL 3	4.0	9.4	6.8
TSL 4	3.5	8.1	5.9
TSL 5	3.2	7.6	5.5
Consumers with Net Benefit (%)			
TSL 1, 2	47	39	46
TSL 3	45	29	39
TSL 4	72	59	69
TSL 5	78	66	76
Consumers with Net Cost (%)			
TSL 1, 2	8	22	14
TSL 3	15	38	28
TSL 4	13	35	25
TSL 5	13	33	23

TABLE V.17—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; FRONT-LOADING, COMPACT RESIDENTIAL CLOTHES WASHERS

	Low-income households	Senior-only households	All households
Average LCC Savings (2021\$)			
TSL 1–3	\$0	\$0	\$0
TSL 4	27	3	7
TSL 5	73	44	56
Payback Period (years)			
TSL 1–3	0.0	0.0	0.0
TSL 4	6.7	9.9	9.1
TSL 5	5.2	7.8	7.1
Consumers with Net Benefit (%)			
TSL 1–3	0	0	0
TSL 4	21	14	15
TSL 5	65	67	70
Consumers with Net Cost (%)			
TSL 1–3	0	0	0
TSL 4	10	25	24
TSL 5	14	32	29

TABLE V.18—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	All households
Average LCC Savings (2021\$)			
TSL 1	\$56	\$39	\$57
TSL 2, 3	80	52	78
TSL 4	25	8	19

TABLE V.18—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	All households
TSL 5	63	32	55
Payback Period (years)			
TSL 1	2.0	3.8	2.8
TSL 2, 3	1.7	3.3	2.4
TSL 4	2.3	4.3	3.2
TSL 5	2.4	4.5	3.4
Consumers with Net Benefit (%)			
TSL 1	1	2	2
TSL 2, 3	6	7	7
TSL 4	29	22	28
TSL 5	65	63	74
Consumers with Net Cost (%)			
TSL 1	0	0	0
TSL 2, 3	1	1	0
TSL 4	19	31	24
TSL 5	20	29	18

c. Rebuttable Presumption Payback

As discussed in section III.F.2 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete

values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for RCWs. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.19 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 the NOPR

are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.19—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Product class	Trial standard level				
	1	2	3	4	5
	(years)				
Semi-Automatic	0.2	0.2	0.2	0.2	0.3
Top-Loading, Ultra-Compact*	n.a.	n.a.	n.a.	n.a.	n.a.
Top-Loading, Standard-Size	4.2	4.2	6.2	5.3	4.8
Front-Loading, Compact	6.5	6.5	6.5	7.5	6.0
Front-Loading, Standard-Size	2.8	2.5	2.5	3.3	3.4

* 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 following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail. See section V.B.1 of this document for

a discussion of the potential impacts on consumers.

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.¹¹⁶ 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 (2022–2056). The “change in INPV” results refer to the difference in industry value between the no-new-standards case and standards case at each TSL. To provide perspective on the short-run cash flow impact, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the

cash flow generated by the industry in the no-new-standards case.

Conversion costs are one-time investments for manufacturers to bring their manufacturing facilities and product designs into compliance with potential amended standards. As described in section IV.J.2.c of this document, conversion cost investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion costs can have a significant impact on the short-term cash flow on the industry and generally result in lower free cash flow in the period between the publication of the final rule and the compliance date of potential amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

TABLE V.20—MANUFACTURER IMPACT ANALYSIS RESULTS FOR RESIDENTIAL CLOTHES WASHERS

	Unit	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
INPV	2021\$ millions	1,738.3	1,680.4 to 1,746.4 ...	1,636.5 to 1,702.9 ...	1,490.3 to 1,631.0 ...	1,208.1 to 1,376.7 ...	798.7 to 985.9
Change in INPV *.	% .....	.....	(3.3) to 0.5	(5.9) to (2.0)	(14.3) to (6.2)	(30.5) to (20.8)	(54.1) to (43.3)
Free Cash Flow (2026) *.	2021\$ millions	139.9	117.5	90.8	13.7	(150.0)	(396.7)
Change in Free Cash Flow (2026) *.	% .....	.....	(16.0)	(35.1)	(90.2)	(207.3)	(383.7)
Conversion Costs.	2021\$ millions	.....	56.5	118.7	302.2	690.8	1,253.8

* Parentheses denote negative (–) values.

The majority of the INPV impacts are associated with standard-size product classes because standard-size top-loading and front-loading RCWs comprise approximately 96 percent of the total RCW domestic shipments. More specifically, the majority of the INPV impacts are associated with top-loading clothes washers 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 clothes washers account for approximately 76 percent of current standard-size RCW shipments. DOE’s shipments analysis estimates approximately 69 percent of top-loading shipments are 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 4 and TSL 5 would require notable capital investments. In particular, standard-size top-loading units with capacities of less

than 4.7 ft³ would require significant redesign associated with increasing tub capacity to meet these higher efficiencies. In contrast, only 3 percent of current front-loading shipments are at the baseline efficiency level and DOE’s engineering analysis suggests that increases in tub capacity would not be required for front-loading clothes washer models to reach max-tech. Thus, as DOE considers increasingly stringent TSLs, the standard-size top-loading product class tends to drive industry investments and negative INPV impacts. See chapter 5 of the NOPR 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 –3.3 to 0.5 percent. At this level, free cash flow is estimated to decrease by 16.0 percent compared to the no-new-standards case value of \$139.9 million in the year 2026, the year before the standards year. DOE’s shipments analysis estimates

approximately 48 percent of current shipments meet this level.

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 clothes washers. DOE’s shipments analysis estimates approximately 31 percent of current standard-size top-loading clothes washers meet this level (EL 1). In contrast, nearly all the front-loading standard-size clothes washers 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 \$30.1 million and product conversion costs of \$26.3

¹¹⁶ The gross margin percentage of 18 percent is based on a manufacturer markup of 1.22.

million. Conversion costs total \$56.5 million.

At TSL 1, the shipment-weighted average MPC for all RCWs is expected to increase by 6.9 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 slight increase in cashflow slightly outweighs the \$56.5 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 compliance year. This reduction in the manufacturer markup and the \$56.5 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit scenario.

At TSL 2, the standard represents the non-max-tech efficiency levels providing the highest LCC savings for all product classes. The change in INPV is expected to range from -5.9 to -2.0 percent. At this level, free cash flow is estimated to decrease by 35.1 percent compared to the no-new-standards case value of \$139.9 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 47 percent of current shipments meet this level.

For standard-size front-loading clothes washers, TSL 2 corresponds to EL 2. For the remaining product classes, TSL 2 corresponds to the same efficiencies required at TSL 1 (EL 1). The increase in conversion costs from the prior TSL are entirely due to the efficiency level requirements for standard-size front-loading clothes washers. DOE's shipments analysis estimates approximately 91 percent of current standard-size front-loading clothes washer shipments meet or exceed TSL 2 efficiencies. Of the seven OEMs with standard-size front-loading clothes washer models, there is one OEM that does not currently offer a product that meets TSL 2 efficiencies. DOE assumed that this manufacturer would redesign and re-tool to meet TSL 2 in its estimate of conversion costs. That manufacturer accounts for the majority of the increase in conversion costs. DOE estimates capital conversion costs of \$81.1 million and product conversion costs of \$37.6 million. Conversion costs total \$118.7 million.

At TSL 2, the shipment-weighted average MPC for all RCWs is expected to increase by 6.9 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 slight increase in cashflow is outweighed by the \$118.7 million in conversion costs, causing a slightly negative change in INPV at TSL 2 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the \$118.7 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 2 under the preservation of operating profit scenario.

At TSL 3, the standard represents the current ENERGY STAR efficiency level for all product classes that are eligible for the program, and a gap fill level for the semi-automatic product class. The change in INPV is expected to range from -14.3 to -6.2 percent. At this level, free cash flow is estimated to decrease by 90.2 percent compared to the no-new-standards case value of \$139.9 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 45 percent of current shipments meet this level.

For standard-size top-loading clothes washers, TSL 3 corresponds to EL 2. For the remaining product classes, the efficiencies required at TSL 3 are the same as TSL 2. Approximately 29 percent of current standard-size top-loading clothes washer shipments meet the efficiencies required by TSL 3. However, most manufacturers with standard-size top-loading models offer products at or above the efficiencies required at this level. Of the nine OEMs with standard-size top-loading products, six OEMs offer models that meet the efficiencies required.

To meet TSL 3, DOE expects manufacturers would incorporate wash plate designs, direct drive motors, and hardware features enabling spin speed increases into standard-size top-loading RCWs. Beyond these design options, some manufacturers may need to increase the tub capacities of certain standard-size top-loading clothes washers (*i.e.*, models with capacities of less than 4.4 ft³). Increasing clothes washer capacity could require a new cabinet, tub, and drum designs, which would necessitate costly investments in manufacturing equipment and tooling. 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 prior TSLs as more display units would need to be replaced. The increase in conversion costs at TSL 3 are entirely due to the increased stringency for

standard-size top-loading clothes washers. DOE estimates capital conversion costs of \$216.4 million and product conversion of costs of \$85.7 million. Conversion costs total \$302.2 million.

At TSL 3, the shipment-weighted average MPC for all RCWs is expected to increase by 14.1 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 \$302.2 million in conversion costs, causing a slightly negative change in INPV at TSL 3 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the \$302.2 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 3 under the preservation of operating profit scenario.

At TSL 4, the standard 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 -30.5 to -20.8 percent. At this level, free cash flow is estimated to decrease by 207.3 percent compared to the no-new-standards case value of \$139.9 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 14 percent of current shipments meet this level.

For standard-size top-loading and standard-size front-loading clothes washers, TSL 4 corresponds to EL 3. For compact-size front-loading clothes washers, TSL 4 corresponds to EL 2. For semi-automatic clothes washers, TSL 4 corresponds to the same efficiency level as TSL 3 (EL 1). At this level, the increase in conversion costs is driven by the standard-size top-loading clothes washers product class. Currently, approximately 2 percent of standard-size top-loading shipments meet TSL 4 efficiencies. Of the nine OEMs with top-loading standard-size products, only two offer models that meet the efficiencies required at TSL 4. The remaining seven OEMs would need to redesign all their existing standard-size top-loading platforms to meet this level.

To meet TSL 4, top-loading clothes washer 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 clothes washers (*i.e.*, those models with capacities less than 4.7 ft³) may need an increase in tub capacity. Increasing clothes washer 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 \$507.9 million and product conversion of costs of \$200.8 million. Conversion costs total \$708.6 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 15.6 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 \$690.8 million in conversion costs, causing a notable 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 \$690.8 million in conversion costs incurred by manufacturers cause a significant negative change in INPV at TSL 4 under the preservation of operating profit scenario.

At TSL 5, the standard represents the max-tech energy and water efficiencies for all product classes. The change in INPV is expected to range from –54.1 to –43.3 percent. At this level, free cash flow is estimated to decrease by 383.7 percent compared to the no-new-standards case value of \$139.9 million in the year 2026, the year before the standards year. DOE's shipments analysis estimates approximately 3 percent of current shipments meet this level.

As previously discussed, the max-tech efficiencies required for standard-size clothes washers drive the increase in conversion costs from the prior TSLs. Currently, less than 1 percent of standard-size top-loading clothes washer shipments and approximately 9 percent of standard-size front-loading clothes washer shipments meet max-tech levels. Out of the nine standard-

size top-loading OEMs, only one offers models that meet the efficiencies required by TSL 5. Out of the seven standard-size front-loading OEMs, only two offer models that meet the efficiencies required by TSL 5. Max-tech would require most manufacturers to significantly redesign their clothes washer platforms. DOE expects most standard-size clothes washer manufacturers would need to further increase spin speeds as compared to prior TSLs. An increasing portion of top-loading standard-size clothes washers (*i.e.*, models with capacities of less than 5.0 ft³) may need to increase tub capacity to achieve the RMCs required at this level. 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 4 since few models exist at the higher levels. At TSL 5, reaching max-tech efficiency levels is a billion-dollar investment for industry. DOE estimates capital conversion costs of \$1,013.3 million and product conversion of costs of \$240.5 million. Conversion costs total \$1,253.8 million.

At TSL 5, 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 5, the shipment-weighted average MPC for all RCWs is expected to increase by 17.1 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 \$1,253.8 million in conversion costs, causing a significant negative change in INPV at TSL 5 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the \$1,253.8 million in conversion costs incurred by manufacturers cause a significant negative change in INPV at TSL 5 under the preservation of operating profit scenario.

DOE seeks comments, information, and data on the capital conversion costs

and product conversion costs estimated for each TSL.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the RCW industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. DOE calculated these values using statistical data from the 2020 ASM,¹¹⁷ BLS employee compensation data,¹¹⁸ results of the engineering analysis, and manufacturer interviews.

Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the total MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to total production employment levels by dividing production labor expenditures by the average fully burdened wage multiplied by the average number of hours worked per year per production worker. To do this, DOE relied on the ASM inputs: Production Workers Annual Wages, Production Workers Annual Hours, Production Workers for Pay Period, and Number of Employees. DOE also relied on the BLS employee compensation data to determine the fully burdened wage ratio. The fully burdened wage ratio factors in paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits.

The number of production employees is then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered product. This value is derived from manufacturer interviews, product database analysis, and publicly available information. DOE estimates that 92 percent of RCWs are produced domestically.

¹¹⁷ U.S. Census Bureau, *Annual Survey of Manufactures*. "Summary Statistics for Industry Groups and Industries in the U.S. (2020)." Available at: www.census.gov/data/tables/time-series/econ/asm/2018-2020-asm.html (Last accessed July 15, 2022).

¹¹⁸ U.S. Bureau of Labor Statistics. "Employer Costs for Employee Compensation." June 16, 2022. Available at: www.bls.gov/news.release/pdf/ecec.pdf (Last accessed July 27, 2022).

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 proposed rulemaking.

Non-production workers account for the remainder of the direct employment figure. The non-production employees estimate covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, and management. Using the amount of domestic production workers calculated previously, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio

remains constant between the no-new-standards case and standards cases.

Using the GRIM, DOE estimates in the absence of new energy conservation standards there would be 9,222 domestic workers for RCWs in 2027. Table V.21 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.21.

TABLE V.21—DOMESTIC DIRECT EMPLOYMENT IMPACTS FOR RESIDENTIAL CLOTHES WASHER MANUFACTURERS IN 2027

	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Direct Employment (Production Workers + Non-Production Workers).	9,222	10,511	10,504	11,710	11,973	11,939
Potential Changes in Direct Employment Workers*.	.....	(8,121) to 1,289 ..	(8,121) to 1,282 ..	(8,121) to 2,488 ..	(8,121) to 2,751 ..	(8,121) to 2,717

* DOE presents a range of potential direct employment impacts. Numbers in parentheses indicate negative numbers.

The direct employment impacts shown in Table V.21 represent the potential domestic employment changes that could result following the compliance date for the RCWs covered in this proposal. 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.

Additional detail on the analysis of direct employment can be found in chapter 12 of the NOPR TSD. Additionally, the employment impacts

discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

As discussed in section V.B.2.a of this document, 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 4 and TSL 5, 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 standard-size top-loading clothes washers, manufacturers would also need 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 CCD model listings, DOE's engineering analysis indicates that tub capacity would need to increase to 4.4 ft³ at TSL 3, 4.7 ft³ at TSL 4, and 5.0

ft³ at TSL 5 for the top-loading standard-size product class.¹¹⁹ In interviews, some manufacturers expressed concerns—particularly at max-tech—that the 3-year period between the announcement of the 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 (*i.e.*, TSL 1, TSL 2, and TSL 3) most manufacturers could likely maintain manufacturing capacity levels and continue to meet market demand under amended energy conservation standards.

DOE seeks comment on whether manufacturers expect manufacturing capacity constraints due to production facility updates would limit product availability to consumers in the timeframe of the amended standard compliance date (2027).

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

¹¹⁹ Based on the increase in cost associated with implementing a larger capacity tub, DOE expects that if a higher efficiency level were possible to achieve without an increase in capacity, such products would be available on the market.

structure that differs substantially from the industry average could be affected disproportionately. DOE investigated small businesses as a manufacturer subgroup that could be disproportionately impacted by energy conservation standards and could merit additional analysis. DOE did not identify any other adversely impacted manufacturer subgroups for this proposed rulemaking based on the results of the industry characterization.

DOE analyzes the impacts on small businesses in a separate analysis in section VI.B of this document as part of the Regulatory Flexibility Analysis. 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.”¹²⁰ 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 the Regulatory Flexibility Analysis in section VI.B of this document and chapter 12 of the NOPR TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy

conservation standards, other regulations can significantly affect manufacturers’ financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE examines Federal, product-specific regulations that could affect RCW manufacturers that take effect approximately three years before or after the 2027 compliance date.

In response to the September 2021 Preliminary Analysis, stakeholders commented on the cumulative regulatory burden analysis. See section IV.J.3.c for a summary of stakeholder comments and DOE’s initial responses.

TABLE V.22—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 from today's rule **	Approx. standards year	Industry conversion costs (millions \$)	Industry conversion costs/ product revenue *** (%)
Portable Air Conditioners, 85 FR 1378 (January 10, 2020)	11	2	2025	\$320.9 (2015\$)	6.7
Room Air Conditioners †, 87 FR 20608 (April 7, 2022)	8	4	2026	\$22.8 (2020\$)	0.5
Consumer Furnaces †, 87 FR 40590 (July 7, 2022)	15	1	2029	\$150.6 (2020\$)	1.4
Commercial Water Heating Equipment †, 87 FR 30610 (May 19, 2022)	14	1	2026	\$34.6 (2020\$)	4.7
Consumer Clothes Dryers †, 87 FR 51734 (August 23, 2022)	15	12	2027	\$149.7 (2020\$)	1.8
Microwave Ovens †, 87 FR 52282 (August 24, 2022)	18	9	2026	\$46.1 (2021\$)	0.7
Consumer Conventional Cooking Products †, 88 FR 6818 (February 1, 2023)	34	9	2027	\$183.4 (2021\$)	1.2
Consumer Refrigerators, Refrigerator-Freezers, and Freezers †‡	49	12	2027	\$1,323.6 (2021\$)	3.8

* This column presents the total number of OEMs identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of OEMs producing RCWs that are also listed as OEMs in the identified energy conservation standard contributing to cumulative regulatory burden.

*** This column presents industry conversion costs as a percentage of product revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the final rule. The conversion period typically ranges from 3 to 5 years, depending on the energy conservation standard.

† These rulemakings are in the proposed rule stage and all values are subject to change until finalized.

‡ At the time of issuance of this RCW proposed rule, this rulemaking has been issued and is pending publication in the **Federal Register**. Once published, the consumer refrigerators, refrigerator-freezers, and freezers proposed rule will be available at: www.regulations.gov/docket/EERE-2017-BT-STD-0003.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of RCWs associated with multiple DOE standards

or product-specific regulatory actions of other Federal agencies.

3. National Impact Analysis

This section presents DOE’s estimates of the national energy and water savings

¹²⁰ U.S. Small Business Administration. “Table of Small Business Size Standards.” (Effective July 14,

2022). Available at: www.sba.gov/document/

support-table-size-standards (Last accessed August 16, 2022).

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). Table V.23 and Table V.24 present DOE's projections of the national energy and water savings for each TSL considered for RCWs, respectively. The savings were calculated using the approach described in section IV.H of this document.

TABLE V.23—CUMULATIVE NATIONAL ENERGY SAVINGS FOR RESIDENTIAL CLOTHES WASHERS; 30 YEARS OF SHIPMENTS [2027–2056]

	Trial standard level				
	1	2	3	4	5
	(quads)				
Primary energy	0.59	0.59	0.70	1.39	2.15
FFC energy	0.61	0.62	0.74	1.45	2.27

TABLE V.24—CUMULATIVE NATIONAL WATER SAVINGS FOR RESIDENTIAL CLOTHES WASHERS; 30 YEARS OF SHIPMENTS [2027–2056]

	Trial standard level				
	1	2	3	4	5
	(trillion gallons)				
Water Savings	1.26	1.27	2.07	2.53	2.94

OMB Circular A–4¹²¹ 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 proposed 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.¹²² 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 Table V.25 and Table V.26. The impacts are counted over the lifetime of RCWs purchased in 2027–2035.

TABLE V.25—CUMULATIVE NATIONAL ENERGY SAVINGS FOR RESIDENTIAL CLOTHES WASHERS; 9 YEARS OF SHIPMENTS [2027–2035]

	Trial standard level				
	1	2	3	4	5
	(quads)				
Primary energy	0.24	0.25	0.29	0.50	0.72
FFC energy	0.26	0.26	0.31	0.53	0.75

¹²¹ U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis*. September 17, 2003. [obamawhitehouse.archives.gov/omb/circulars_a004_a-4/](https://www.archives.gov/omb/circulars/a004/a-4/) (Last accessed June 12, 2022).

¹²² Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after

any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year

period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

TABLE V.26—CUMULATIVE NATIONAL WATER SAVINGS FOR RESIDENTIAL CLOTHES WASHERS; 9 YEARS OF SHIPMENTS [2027–2035]

	Trial standard level				
	1	2	3	4	5
	(trillion gallons)				
Water Savings	0.51	0.52	0.79	0.93	1.04

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,¹²³ DOE calculated NPV using both a 7-percent and a 3-

percent real discount rate. Table V.27 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2027–2056.

TABLE V.27—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	5
	(billion 2021\$)				
3 percent	8.39	8.50	8.13	14.52	20.77
7 percent	3.36	3.41	2.48	5.14	7.68

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.28. The impacts are counted over the lifetime of

products purchased in 2027–2035. As mentioned previously, such results are presented for informational purposes only and are not indicative of any

change in DOE's analytical methodology or decision criteria.

TABLE V.28—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	5
	(billion 2021\$)				
3 percent	3.90	3.97	3.68	6.13	8.35
7 percent	1.93	1.96	1.39	2.74	3.95

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 lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the NOPR TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline

case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

It is estimated that that amended energy conservation standards for RCWs would 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), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other,

¹²³ 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 June 12, 2022).

unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed, in establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV))

a. Performance Characteristics

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)) Currently, DOE's test procedure addresses the energy and water efficiency of clothes washers, and DOE's clothes washer test procedures do not prescribe a method for testing clothes washer cleaning performance or other consumer-relevant attributes of performance.

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. 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 trade-off with one or more other aspects of performance, such as cleaning performance, depending on which performance characteristics are prioritized by the manufacturer. DOE expects, however, that consumers maintain the same expectations of cleaning performance regardless of the efficiency of the clothes washer. 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.

Whirlpool commented that amended standards would result in an increase in purchase price and perceptible differences in product performance including cycle time, vibration and noise, fabric care, cleaning and rinse performance, and detergent effectiveness. (Whirlpool, No. 39 at pp. 8–9) Whirlpool commented that it does not recommend that DOE develop a performance requirement, like that under consideration for dishwashers currently, but rather referenced the EPCA requirement that DOE consider performance and the impacts to consumer utility as one of the seven statutory factors for considering whether a standard is justified. (*Id.*) Whirlpool recommended that DOE conclude that amended standards are not justified due to the potential to lessen utility and performance of clothes washers, particularly for top-loading standard-size clothes washers. (*Id.*)

Regarding cycle time specifically, Whirlpool commented that amended standards could require an increase in cycle time. (Whirlpool, No. 39 at p. 9) Specifically, Whirlpool explained that the wash phase of the cycle may need to be longer in order to compensate for decreased water temperatures and reduced load motion due to increased pauses to allow for motor cooling; the spin phase would need to be longer to reduce RMC; and that as spin speeds increase, cycle time could be increased due to a greater risk of out-of-balance conditions, which require more sensing and re-balancing to address. Whirlpool also commented that appendix J would require spinning at maximum speed for both small and large load sizes and noted that smaller loads do not extract moisture as well as larger loads, and therefore would require even more spin time. (*Id.*) Whirlpool also asserted that because increased spin time may lead to greater electrical energy use by the clothes washers, the annual energy consumption reported on the EnergyGuide label may show an increase in energy use for new higher-efficiency models, which would be counterintuitive for consumers. (*Id.*)

Regarding vibration and noise specifically, Whirlpool commented that it would expect higher overall noise and vibration levels as a result of increased spin speeds and spin times. (Whirlpool, No. 39 at p. 10) In addition, the drivetrain may produce louder sounds due to the additional motor torque required to move a load with lower

water levels. (*Id.*) Whirlpool also commented that the higher risk of out-of-balance conditions from faster spin speeds may also contribute to higher noise and vibration levels. (*Id.*)

Whirlpool recommended that DOE account for any additional product cost required to keep sound and vibration levels where they are currently to prevent consumer dissatisfaction at higher efficiency levels. (*Id.*)

Regarding fabric care specifically, Whirlpool commented if wash time is lengthened in order to compensate for reduced water temperatures, the additional agitation on the clothes may lead to increased fabric wear and damage. (Whirlpool, No. 39 at pp. 10–11) Whirlpool also commented that faster spinning would increase the degree of wrinkling in a load and that clothes may become more tangled. (*Id.*)

Regarding cleaning and rinsing performance specifically, Whirlpool commented that amended standards could result in biofilm accumulations on internal wash unit surfaces, white residues, difficulty removing detergent and particulates, redeposition, yellowing of clothes, and reduced stain removal, especially for oily or fatty soils. (Whirlpool, No. 39 at p. 11) Whirlpool added that some of these issues (*e.g.*, reduced stain removal) may be immediately apparent to consumers, whereas others (*e.g.*, biofilm accumulation) may become noticeable over time. (*Id.*) Whirlpool commented that a correlation exists between lower water temperatures and degraded cleaning performance. (*Id.*) Whirlpool added that oily or fatty solids are soluble around 85 °F, that detergents can do only some of the work removing oily or fatty soils at temperatures below 85 °F, and that natural skin oils will be harder to remove under lower temperatures. (*Id.*) Whirlpool also commented that rinse performance could suffer as a result of the need to make trade-offs in allocating the available water between the wash and rinse phases. Whirlpool commented that reduced water during the rinse phase makes it harder to effectively remove detergent and particulates from the wash load and increases re-deposition. (*Id.*)

Whirlpool commented that overall load motion, the degree to which the load moves in the wash bath and the amount of free water visible to the consumer, may be sacrificed as clothes washers move to faster spin and lower torque powertrains. (Whirlpool, No. 39 at p. 12) Whirlpool further commented that, according to its initial testing, a reduction in load motion of over 50 percent could result from the new

powertrains needed for amended standards due to the lower available torque from the motor and reduced water levels needed to meet more stringent water efficiency requirements. (*Id.*)

Whirlpool commented in summary that cleaning in a clothes washer is a holistic experience that encompasses a consumer's expectation of product appearance, cleanliness of the clothes washer itself, water level, water temperatures, load motion, cycle time, and cleaning performance, including stain and soil removal, particulate removal, odor removal, and detergent rinsing. (Whirlpool, No. 39 at p. 12) Whirlpool added that if consumer expectations are not met at any point, they will likely have a negative perception of product performance and often voice complaints about it in the form of a negative review or call to the manufacturer. (*Id.*)

AHAM commented that DOE's proposed changes to the test procedure alone, and when coupled with amended energy conservation standards, are likely to drive product performance impacts. (AHAM, No. 40 at p. 9) AHAM further commented that increasing spin speed and spin time could cause increased vibration and noise, negatively impact fabric care due to tangling and wrinkling, and increase cycle time. (AHAM, No. 40 at pp. 9–10)

AHAM recommended that instead of adding a performance minimum to the test procedure, DOE should avoid changes that could impact clothes washer performance, and account for the potential impact of these changes in DOE's amended standards analysis, as required by EPCA. (AHAM, No. 40 at p. 10) AHAM also noted that conducting a performance test may not capture all the potential impacts that standards may have on clothes washer performance. (*Id.*) AHAM recommended that DOE further investigate these potential impacts during manufacturer interviews. (*Id.*)

AHAM commented that efficiency standards that require increased cycle times beyond an acceptable length would negatively impact consumers and could result in cycle times that are not synchronized with clothes dryer cycle times. (AHAM, No. 40 at p. 10) AHAM recommended against introducing a maximum cycle length requirement; instead, AHAM recommended that any potential impact of cycle time should be avoided and accounted for in DOE's amended standards, as required by EPCA. (*Id.*)

In addition to considering the comments summarized in this section, DOE also discussed performance

characteristics in detail as part of its confidential interviews with manufacturers. DOE has considered potential impacts to the various attributes of product performance as part of its consideration of amended standards, as discussed further in section V.C.1 of this document.

DOE is aware of high-efficiency clothes washers that achieve equal or better cleaning performance than lower-efficiency clothes washers in third-party performance reviews. For example, DOE has consulted performance ratings published by Consumer Reports,¹²⁴ which DOE recognizes is one popular resource for consumers seeking independent reviews of consumer products. According to information provided on their 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;¹²⁵ nevertheless, its test results provide an objective measure of the performance capabilities for products currently on the market.

For top-loading standard-size RCWs, Consumer Reports ratings indicate that models rated at or above TSL 4 achieve equal or better cleaning performance than models with lower efficiency ratings. Specifically, among 4 tested top-loading standard-size models with an IMEF/IWF rating¹²⁶ at or above TSL 4, all of them receive a relative "washing performance" rating of 5 out of 5. Among 70 tested top-loading standard-size models with an IMEF/IWF rating below TSL 4, 11 models (16 percent) receive a relative rating of 5 out of 5, and 26 models (37 percent) receive a relative rating of 4 out of 5—for a total of only 53 percent of units receiving a score of 4 or 5 out of 5. These ratings suggest that top-loading standard-size RCWs with efficiency ratings at or above TSL 4 can achieve equal or better overall cleaning performance scores than models with lower efficiency ratings.

For front-loading standard-size RCWs, Consumer Reports ratings indicate no significant differences between models rated at or above TSL 4 and models with

lower efficiency ratings. Specifically, among 27 tested front-loading standard-size models with an IMEF/IWF rating at or above TSL 4, 20 models (74 percent) receive a relative rating of 5 out of 5, and 6 models (22 percent) receive a relative rating of 4 out of 5—for a total of only 96 percent of units receiving a score of 4 or 5 out of 5. Among 20 tested front-loading standard-size models with an IMEF/IWF rating below TSL 4, 18 models (90 percent) receive a relative rating of 5 out of 5, and 2 models (10 percent) receive a relative rating of 4 out of 5—for a total of 100 percent of units receiving a score of 4 or 5 out of 5. These ratings suggest that front-loading standard-size RCWs with efficiency ratings at or above TSL 4 can achieve roughly equivalent overall cleaning performance scores compared to models with lower efficiency ratings.

DOE seeks 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. DOE also seeks comment on how relative cleaning performance results would vary if tested under test conditions consistent with the DOE appendix J test procedure.

In addition to considering the Consumer Reports ratings, 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. The detailed results of DOE's testing are provided in the performance characteristics test report, which is 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"). 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). For each clothes washer in its test sample, DOE tested the Hot Wash/Cold Rinse

¹²⁴ Consumer Reports ratings of clothes washers available at www.consumerreports.org/appliances/washing-machines/. Last accessed September 23, 2022.

¹²⁵ The 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.

¹²⁶ Although the efficiency levels are defined based on EER and WER, manufacturer ratings use IMEF and IWF.

(“Hot”) temperature selection¹²⁷ in the Normal cycle¹²⁸ using the large load size¹²⁹ specified in appendix J, as well as using the inlet water temperatures and ambient conditions specified in appendix J. DOE specifically analyzed the Hot cycle with the large load size because (1) 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). DOE 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. 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 clothes washers.

DOE requests 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.

More specifically, DOE performed the Soil/Stain Removal test specified in section 6 of AHAM HLW-2-2020 to measure relative cleaning performance among the test sample units. AHAM HLW-2-2020 states that the purpose of the Soil/Stain Removal test is to evaluate the performance of household clothes washers in removing representative soils and stains from fabric. DOE also performed the Mechanical Action test specified in section 7 of AHAM HLW-2-2020 to measure relative fabric wear and tear among the test sample units. AHAM HLW-2-2020 states that the purpose of the Mechanical Action test is to measure the mechanical action applied by the clothes washer to the textiles. AHAM

HLW-2-2020 states that this test may be performed in conjunction with the Soil/Stain Removal test; therefore, DOE conducted both tests simultaneously on each test run. AHAM HLW-2-2020 specifies running three replications of the test method on each tested unit, with the results of the three replications averaged.

DOE requests 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.

The performance characteristics test report provides detailed test results in table and graphical format. The discussion throughout the remainder of this section summarizes the key conclusions from the test results.

With regard to hot wash temperatures, manufacturer comments (as summarized previously in this section) suggested that decreasing water temperature to achieve higher efficiency could decrease cleaning performance by making it harder to remove fatty soils, which are soluble around 85 °F. (See Whirlpool, No. 39 at p. 11) 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 clothes washer in the test sample. For front-loading standard-size RCWs, DOE’s test data show no identifiable correlation between efficiency and the hottest available wash temperature in the Normal cycle. At the proposed standard level (*i.e.*, 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 ranges 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 range from around 80 °F to around 155 °F. Notably, at EL 3, multiple models from multiple manufacturers provide wash temperatures higher than the 85 °F threshold and would be able to dissolve and clean fatty soils.

For top-loading standard-size RCWs, DOE’s test data show that for units at EL 2 and below, the hottest available wash temperature in the Normal cycle ranges from around 70 °F to around 110 °F. At EL 3 (considering units both slightly higher and slightly lower than EL 3), the hottest available wash temperature in the Normal cycle ranges from around 80 °F to around 100 °F. Several models

from multiple manufacturers are available with temperatures higher than the 85 °F threshold and would be able to dissolve and clean fatty soils.

Based on this data, DOE tentatively concludes that the proposed standard level (*i.e.*, 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.

DOE requests comment on its wash temperature data presented in the performance characteristics test report and on its tentative conclusions derived from this data. DOE requests any additional data DOE should consider about wash temperatures at the proposed standard level, as DOE’s data leads to the tentative conclusion that fatty soils would be able to be dissolved at this efficiency level.

With regard to stain removal, manufacturer comments (as summarized previously in this section) suggested that more stringent standards could result in reduced stain removal, especially for oily or fatty stains. (See Whirlpool, No. 39 at p. 11) 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. 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.¹³⁰ For front-loading standard-size RCWs, DOE’s test data show no observable correlation between efficiency and the total cleaning score as measured by the AHAM test method. 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). At lower efficiency levels, total cleaning scores ranged from around 90 to around 96.

For top-loading standard-size RCWs, DOE’s test data show that for units at EL 2 and below, total cleaning scores range from around 90 to around 98. 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. DOE’s total cleaning

¹²⁷ 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.

¹²⁸ 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.

¹²⁹ Table 5.1 of appendix J defines the small and large load sizes to be tested according to the clothes washer’s measured capacity.

¹³⁰ 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.

scores at EL 3 for stain removal also include 90, which indicates that manufacturers can produce clothes washers at EL 3 while maintaining a level of stain removal that is market-representative. DOE also looked at the implementation of prioritizing hardware design options over reduced wash temperatures. When hardware design options are implemented, DOE's analysis suggests 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.

DOE requests comment on its stain removal data presented in the performance characteristics test report and on its conclusions derived from this data. In particular, DOE requests 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. DOE additionally requests 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.

With regard to wear and tear, manufacturer comments (as summarized previously in this section) suggested that if wash time is lengthened to compensate for reduced water temperatures, the additional agitation on the clothes may lead to increased fabric wear and damage. (See Whirlpool, No. 39 at pp. 10–11; AHAM, No. 40 at pp. 9–10) 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 stain removal test as described. For top-loading standard-size RCWs, DOE's test data show 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. 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. At lower efficiency levels, mechanical action scores ranged from around 190 to around 230. The data suggests 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 traditional agitators at the lower efficiency levels.

For front-loading standard-size RCWs, DOE's test data show that for units at or below EL 2, mechanical action scores range from around 135 to around 180. At EL 3 (considering units both slightly higher and slightly lower than EL 3), mechanical action scores range from around 160 to around 210. Although some units at EL 3 have higher (*i.e.*, worse) mechanical action scores than the lower-efficiency units, the low end of the range is less than (*i.e.*, better than) some of the baseline-rated units. DOE is not aware of any industry-accepted threshold for acceptable mechanical action performance, and there is no significant clustering of DOE's data to suggest any particular market-representative threshold.

Based on this data, DOE tentatively concludes that the proposed standard level (*i.e.*, TSL 4) would not preclude the ability to provide mechanical action scores comparable to the scores for units at lower efficiency levels.

DOE requests comment on its mechanical action data presented in the performance characteristics test report and on its conclusions derived from this data. In particular, DOE requests 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. DOE also requests 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.

With regard to cycle time, manufacturer comments (as summarized previously in this section) suggested that more stringent standards could require an increase in cycle time. (See Whirlpool, No. 39 at p. 9; AHAM, No. 40 at p. 10). 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. For both top-loading standard-size and front-loading standard-size RCWs, DOE's test data show no observable correlation between efficiency and average cycle time. For top-loading standard-size RCWs, the average cycle time for the entire product class is around 50 minutes, as measured according to the appendix J test procedure. 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. This closely matches the range of units at lower efficiency levels, which ranged from around 35 minutes to around 70 minutes. For front-loading standard-size RCWs, the average cycle time for the entire product class is around 45 minutes, as measured according to the appendix J test procedure. 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. This closely matches the range of units at lower efficiency levels, which ranged from around 35 minutes to around 65 minutes.

Based on this data, DOE tentatively concludes that the proposed standard level (*i.e.*, TSL 4), would not result in an increase in average cycle time as measured by appendix J.

DOE requests comment on its cycle time data presented in the performance characteristics test report and on its conclusions derived from this data.

In summary, DOE's test data suggest that the proposed standard level (*i.e.*, 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. Based on DOE's testing of models that currently meet the proposed standards, DOE does not expect performance to be compromised at the proposed standard level.

DOE seeks 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.*, TSL 4). In addition, DOE seeks additional data that stakeholders would like DOE to consider on performance attributes at TSL 4 efficiencies as well as the current minimum energy conservation standards.

b. Availability of "Traditional" Agitators

The inner drum of a baseline standard-size top-loading 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.

A conventional agitator requires clothing to be fully suspended in water; as the agitator rotates, the agitator vanes catch the clothing and move the garments through the water. A rotating wash plate, however, requires a much lower water level inside the wash tub to clean the clothing properly. The wet clothing load sits on top of the wash plate, and as the wash plate rotates, raised fins catch the clothing along the bottom of the wash tub to rotate the garments.

AHAM presented shipment data that showed the number of shipments of clothes washers with and without agitators during 2011–2020. (AHAM, No. 40 at pp. 11–12) Based on this data, AHAM concluded that consumer preference has shifted over the years in favor of clothes washers with agitators. (*Id.*) AHAM commented that manufacturers have introduced or re-introduced top-loading clothes washers with agitator technology due to increasing demand from consumers and from consumer complaints that there does not appear to be enough water in the wash load, and that clothes do not appear to be getting clean, in top-loading clothes washers without agitators. (*Id.*) AHAM asserted that the efficiency levels DOE analyzed in the September 2021 Preliminary Analysis are likely to remove products from the market that are highly rated for consumer satisfaction and reliability, and recommended that DOE's efficiency standards not lead to these products being removed from the market. (*Id.*)

Whirlpool commented that consumers are increasingly demanding top-loading clothes washers with agitators, perhaps due in part to any negative experiences that consumers may have had with previous front-loading or top-loading clothes washers with a wash plate. (Whirlpool, No. 39 at p. 15) Whirlpool presented data showing that 72 percent of top-loading clothes washer shoppers are looking for a clothes washer with an agitator. (*Id.*) Whirlpool also presented data showing that top-loading clothes washers with wash plates once made up about 54 percent of all top-loading shipments, and that number has since declined to 34 percent. (*Id.*) Whirlpool commented that manufacturers have responded to this demand shift in large part by offering a broad assortment of agitator clothes washers. (*Id.*) Whirlpool noted that two major competitors to Whirlpool have recently introduced their first ever top-loading agitator models over the past few years. (*Id.*) Whirlpool asserted that any amended standards from DOE that would

preclude manufacturers from being able to offer top-loading clothes washers with agitators would be problematic for their consumers. (*Id.*)

Whirlpool expressed concern that if the top-loading standard level were amended to EL 2 or above, agitators would be phased out from the U.S. market and would be replaced by wash plates. (Whirlpool, No. 39 at pp. 3–4) Whirlpool recommended that DOE consider not amending the top-loading clothes washer standards, which would allow traditional agitator clothes washers to stay on the market. (Whirlpool, No. 39 at p. 20)

Whirlpool described the two different types of agitators used in clothes washers today: traditional agitators that have an internal mechanism driving the barrel of the agitator in a single direction, and high-efficiency agitators that have the barrel of the agitator fixed to or molded as part of the wash plate. (*Id.*) Whirlpool further explained that traditional agitators operate in deeper water, and the motion of the agitator generates the flow of clothing within the wash bath; whereas high-efficiency agitators use less water and rely on fabric-to-fabric shear to move the clothing within the drum. (*Id.*) Whirlpool commented that consumers may notice that high-efficiency agitator clothes washers use less water or require a longer cycle time than traditional agitator clothes washers. (*Id.*) Whirlpool asserted that many consumers have used traditional agitator clothes washers for their entire lives and may not readily accept the performance, water level, and wash motion differences between agitator and non-agitator models. (*Id.*)

As discussed further in section V.C.1 of this document, DOE is proposing to adopt an amended standard for top-loading, standard-size clothes washers that corresponds to the CEE Tier 1 level. DOE's market analysis indicates that top loading models currently on the market at TSL 4 use wash plates (*i.e.*, do not have agitators). DOE is aware of top-loading clothes washers without an agitator that achieve equal or better cleaning performance than top-loading clothes washers with a traditional-style agitator in third-party performance reviews. According to Consumer Reports, among 40 tested RCW models with a traditional-style agitator, 4 models (10 percent) receive a relative "washing performance" rating of 5 out of 5, and 13 models (33 percent) receive a relative rating of 4 out of 5—for a total of 43 percent of units receiving a score of 4 or 5 out of 5. Among 36 tested models with a high-efficiency wash plate design, 11 models (30 percent)

receive a relative rating of 5 out of 5, and 14 models (39 percent) receive a relative rating of 4 out of 5—for a total of 69 percent of units receiving a score of 4 or 5 out of 5. These ratings indicate that clothes washers with high-efficiency wash plate designs can achieve equal or better overall cleaning performance scores than clothes washers with traditional-style agitators.

As discussed, DOE recognizes that the Consumer Reports cleaning performance test method is inconsistent with the test conditions prescribed by DOE's appendix J test procedure and that products with superior cleaning performance ratings may sacrifice or trade off with one or more other aspects of consumer-relevant performance.

DOE seeks 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 this NOPR.

DOE seeks 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. In particular, DOE seeks information and data on how such utility or performance would be measured or evaluated.

c. Water Levels

Each higher efficiency level considered by DOE corresponds to a higher WER value compared to the baseline level. Higher WER values are achieved through the use of less water during the cycle, which generally achieved through lower water levels during the wash and/or rinse portions of the cycle.

Whirlpool expressed concern that decreasing water levels and wash temperatures would negatively impact consumer perceptions that their clothes washers are working correctly. (Whirlpool, No. 39 at pp. 12–14) Whirlpool stated that across all manufacturers and brands, it saw customer sentiment scores for water level and wash temperatures were net positive for clothes washers that were rated at 6.5 IWF (the current DOE baseline level for top-loading clothes washers), and that customer sentiment scores were net negative for clothes washers rated at 4.3 IWF (the ENERGY STAR Most Efficient level for standard-size clothes washers). (*Id.*) Whirlpool added that decreasing water usage, and therefore increasing detergent concentration, does not correlate to improved consumer satisfaction. (*Id.*)

Whirlpool commented that it received consumer complaints about water levels being too low and not completely covering their clothes, and predicted that consumer complaints would increase with any amended standards that would drive a further decrease in water levels. (*Id.*) Whirlpool added that lowering water levels in order to meet amended standards may leave its clothes washers without enough free water to support the degree of load motion needed to maintain consumer satisfaction. (*Id.*)

Whirlpool further stated that consumers strongly demand flexibility in water level. (Whirlpool, No. 39 at p. 15) Whirlpool commented that manufacturers have responded to this demand for flexibility by offering deep fill and deep-water wash options on top-loading clothes washers. (*Id.*) Whirlpool commented that in the entire top-loading clothes washer segment, Whirlpool is only aware of three models that do not have deep fill options. (*Id.*) Whirlpool expressed concern that amended standards could erode Whirlpool's ability to offer consumers this flexibility. (*Id.*)

Whirlpool commented that manufacturers have taken several actions during and since the last updates to DOE and ENERGY STAR standards to communicate, educate, and set appropriate consumer expectations for performance. (Whirlpool, No. 39 at pp. 14–16) For example, Whirlpool explained that on its websites, it has created a page that describes the various differences between clothes washers with agitators versus clothes washers with wash plates that details how both types of clothes washers work to clean clothes, the differences in water levels between these types of clothes washers, the benefits of each type of clothes washer, and how to find the right type of clothes washer. (*Id.*) Whirlpool added that it also works to educate retail associates about these fundamental differences between clothes washers to communicate this information to consumers and answer any questions they may have while shopping. (*Id.*) Whirlpool commented that despite manufacturers' collective efforts to educate consumers about efficient clothes washers and how they perform, consumers may still not accept new clothes washers that use less energy and water. (*Id.*)

Whirlpool stated that higher levels of torque are needed to move clothes in top-loading clothes washers with lower water levels, which creates more resistance when trying to move clothes around during the wash phase. (Whirlpool, No. 39 at p. 8) Whirlpool

commented that increased resistance and torque create higher levels of stress on many components, cause components to wear out more quickly, and lead to hotter motor temperatures, which requires increased dwell period for cooling. (*Id.*) Whirlpool suggested that DOE capture the cost and product changes necessitated by the additional torque needed to move clothes in a wash basket with lower wash levels. (*Id.*)

Whirlpool commented that it would expect a rebound effect to occur for clothes washers as a result of amended standards. Whirlpool commented that consumers who are dissatisfied with the water level in the DOE-tested cycle will likely take some sort of action to compensate, including adding their own water to the cycle or choosing to largely or exclusively use deep fill and deep water wash options on their clothes washer. Whirlpool added that if consumers are dissatisfied with cleaning and rinse performance, they may decide to wash smaller loads (thereby increasing the number of annual cycles), use warmer wash temperatures, pretreat clothes or use options such as second rinse and pre-soak, or wash a load multiple times. (Whirlpool, No. 39 at pp. 17–18) GEA commented that based on its consumer preference data, consumers expressed a strong preference for control over the amount of water used in their clothes washers. (GEA, No. 38 at p. 2) GEA found that typically, consumers prefer to add more water to their wash load. (*Id.*)

AHAM commented that manufacturers have experienced consumer pushback as a result of reducing water use. (AHAM, No. 40 at p. 11) AHAM noted that, while consumers typically use the normal cycle, most top-loading clothes washers include a deep fill option in order to address consumer interest in the ability to increase water levels. (*Id.*) AHAM added that as a result of reduced water use, consumers tend to rely on deep-fill settings, or add water to their clothes washers themselves. (*Id.*) AHAM commented that a significant portion of consumers dislike clothes washers with low water levels. (*Id.*)

AHAM commented that the effects of strict water requirements may lead to consumer perceptions of inadequate cleaning performance, and will likely cause consumers to take actions that cause efficiency performance to diverge from DOE's projections. AHAM added that this could amount to a negative "rebound effect," where higher efficiency requirements lead to increased energy and water use due to consumers responding to inadequate

performance at stringent efficiency levels. (AHAM, No. 40 at p. 10)

AHAM noted that, while consumers typically use the normal cycle, most top-loading clothes washers include a deep fill option in order to address consumer interest in the ability to increase water levels.

As discussed, DOE has considered potential impacts to the various attributes of product performance as part of its consideration of amended standards, as discussed further in section V.C.1 of this document. To the extent that water levels correlate with cleaning and rinsing performance or other relevant attributes of clothes washer performance, DOE has considered such impacts as part of its analysis.

DOE requests comment and information on sales of RCWs with deep fill and/or deep rinse options or settings and the frequency of use of cycles with these options or settings selected.

d. Availability of Portable Products

As discussed, top-loading portable RCWs are generally mounted on caster wheels, which allows the clothes washer to be moved more easily.

AHAM commented that the proposed energy conservation standards could impact portable clothes washers and cause features of portability and lower price points to be lost. (AHAM, No. 40 at p. 16) AHAM added that the loss of low priced and portable top-loading clothes washers would raise equity concerns. (*Id.*)

DOE's testing and analysis of top-loading standard-size portable units indicates that such products would be able to achieve the proposed standard level for the top-loading standard-size product class with only small changes to the final spin portion of the cycle (e.g., to implement "consistent spin") and a minor reduction in water use. Accordingly, DOE tentatively determines that the proposed standard level would not preclude the availability of portable clothes washers from the market.

e. Conclusion

For the reasons discussed in the previous sections, DOE has tentatively concluded that the standards proposed in this NOPR would not lessen the utility or performance of the RCWs under consideration in this proposed 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.F.1.e of this document, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In

addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation to Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the NOPR TSD presents the estimated

impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this proposed 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.29 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this proposed rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.29—CUMULATIVE EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED IN 2027–2056

	Trial standard level				
	1	2	3	4	5
Power Sector Emissions					
CO ₂ (million metric tons)	20.4	20.6	24.2	49.0	79.3
CH ₄ (thousand tons)	1.5	1.5	1.8	3.4	4.9
N ₂ O (thousand tons)	0.2	0.2	0.2	0.5	0.7
NO _x (thousand tons)	11.4	11.5	13.2	28.3	48.8
SO ₂ (thousand tons)	8.8	8.9	10.8	19.7	28.1
Hg (tons)	0.1	0.1	0.1	0.1	0.2
Upstream Emissions					
CO ₂ (million metric tons)	1.7	1.7	1.9	4.2	7.3
CH ₄ (thousand tons)	161.9	163.4	186.6	408.1	713.3
N ₂ O (thousand tons)	0.0	0.0	0.0	0.0	0.0
NO _x (thousand tons)	25.5	25.7	29.5	64.1	111.4
SO ₂ (thousand tons)	0.1	0.1	0.1	0.2	0.3
Hg (tons)	0.0	0.0	0.0	0.0	0.0
Total FFC Emissions					
CO ₂ (million metric tons)	22.1	22.3	26.1	53.2	86.6
CH ₄ (thousand tons)	163.4	164.9	188.4	411.4	718.3
N ₂ O (thousand tons)	0.2	0.2	0.3	0.5	0.7
NO _x (thousand tons)	36.9	37.2	42.7	92.4	160.2
SO ₂ (thousand tons)	8.9	9.0	10.9	199.9	28.5
Hg (tons)	0.1	0.1	0.1	0.1	0.2

As part of the analysis for this proposed rulemaking, DOE estimated monetary benefits likely to result from the reduced emissions of CO₂ that DOE estimated for each of the considered

TSLs for RCWs. Section IV.L of this document discusses the SC–CO₂ values that DOE used. Table V.30 presents the value of CO₂ emissions reduction at each TSL for each of the SC–CO₂ cases.

The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.30—PRESENT VALUE OF CO₂ EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED IN 2027–2056

TSL	SC–CO ₂ case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(billion 2021\$)			
1	219	924	1,437	2,814
2	221	933	1,451	2,841
3	258	1,088	1,694	3,313
4	509	2,174	3,394	6,613
5	812	3,496	5,470	10,628

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 N₂O that DOE estimated for each of the

considered TSLs for RCWs. Table V.31 presents the value of the CH₄ emissions reduction at each TSL, and Table V.32 presents the value of the N₂O emissions reduction at each TSL. The time-series

of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.31—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED IN 2027–2056

TSL	SC–CH ₄ case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(billion 2021\$)			
1	74	214	297	567
2	74	216	299	572
3	84	246	341	652
4	179	530	738	1,403
5	307	917	1,280	2,428

TABLE V.32—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED IN 2027–2056

TSL	SC–N ₂ O Case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(billion 2021\$)			
1	0.80	3.11	4.79	8.28
2	0.80	3.14	4.84	8.36
3	0.96	3.77	5.81	10.02
4	1.76	6.97	10.78	18.56
5	2.56	10.22	15.84	27.21

DOE is well aware that scientific and economic knowledge about the

contribution of CO₂ and other GHG emissions to changes in the future

global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal

agencies, will continue to review methodologies for estimating the monetary value of reductions in CO₂ and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the proposed standards would be economically justified even without

inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the health benefits associated with NO_x and SO₂ 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.33 presents the present value for NO_x emissions

reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.34 presents similar results for SO₂ emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.33—PRESENT VALUE OF NO_x EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2021\$)	
1	1,467	634
2	1,481	641
3	1,712	739
4	3,468	1,441
5	5,684	2,304

TABLE V.34—PRESENT VALUE OF SO₂ EMISSIONS REDUCTION FOR RESIDENTIAL CLOTHES WASHERS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2021\$)	
1	505	225
2	510	227
3	615	272
4	1,098	472
5	1,540	650

DOE has not considered the monetary benefits of the reduction of Hg for this proposed rule. Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_x, and SO₂ are captured in the previous values, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of Hg, direct PM, and other co-pollutants may be significant.

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.35 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced GHG, NO_x, and

SO₂ emissions to the NPV of consumer benefits calculated for each TSL considered in this proposed 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. 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 in 2027–2056.

TABLE V.35—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Using 3% discount rate for Consumer NPV and Health Benefits (billion 2021\$)					
5% Average SC–GHG case	10.7	10.8	10.8	19.8	29.1
3% Average SC–GHG case	11.5	11.6	11.8	21.8	32.4
2.5% Average SC–GHG case	12.1	12.2	12.5	23.2	34.8
3% 95th percentile SC–GHG case	13.7	13.9	14.4	27.1	41.1
Using 7% discount rate for Consumer NPV and Health Benefits (billion 2021\$)					
5% Average SC–GHG case	4.5	4.6	3.8	7.7	11.8
3% Average SC–GHG case	5.4	5.4	4.8	9.8	15.1

TABLE V.35—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
2.5% Average SC-GHG case	6.0	6.0	5.5	11.2	17.4
3% 95th percentile SC-GHG case	7.6	7.7	7.5	15.1	23.7

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of amended standards for 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. DOE refers to this process as the “walk-down” analysis.

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

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

In DOE’s current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments

and changes in the volume of product purchases in chapter 9 of the NOPR TSD. However, DOE’s current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.¹³¹

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.¹³² DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Residential Clothes Washer Standards

Table V.36 and Table V.37 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). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this document.

¹³¹ 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.

¹³² Sanstad, A.H. *Notes on the Economics of Household Energy Consumption and Technology Choice*. 2010. Lawrence Berkeley National Laboratory. Available at www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf (Last accessed June 12, 2022).

TABLE V.36—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLs: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Cumulative FFC National Energy Savings					
Quads	0.61	0.62	0.74	1.45	2.27
Cumulative FFC Emissions Reduction					
CO ₂ (million metric tons)	22.11	22.32	26.13	53.21	86.62
CH ₄ (thousand tons)	163.41	164.89	188.43	411.43	718.26
N ₂ O (thousand tons)	0.21	0.21	0.26	0.48	0.71
NO _x (thousand tons)	36.90	37.24	42.73	92.39	160.21
SO ₂ (thousand tons)	8.88	8.96	10.88	19.93	28.45
Hg (tons)	0.06	0.06	0.07	0.13	0.18
Present Value of Benefits and Costs (3% discount rate, billion 2021\$)					
Consumer Operating Cost Savings	13.46	13.60	19.88	27.83	35.68
Climate Benefits *	1.14	1.15	1.34	2.71	4.42
Health Benefits **	1.97	1.99	2.33	4.57	7.22
Total Benefits †	16.57	16.74	23.54	35.11	47.32
Consumer Incremental Product Costs ‡	5.07	5.10	11.75	13.31	14.91
Consumer Net Benefits	8.39	8.50	8.13	14.52	20.77
Total Net Benefits	11.50	11.64	11.79	21.80	32.41
Present Value of Benefits and Costs (7% discount rate, billion 2021\$)					
Consumer Operating Cost Savings	6.36	6.43	9.20	12.73	16.12
Climate Benefits *	1.14	1.15	1.34	2.71	4.42
Health Benefits **	0.86	0.87	1.01	1.91	2.95
Total Benefits †	8.36	8.45	11.55	17.35	23.50
Consumer Incremental Product Costs ‡	3.00	3.02	6.72	7.58	8.45
Consumer Net Benefits	3.36	3.41	2.48	5.14	7.68
Total Net Benefits	5.36	5.43	4.83	9.77	15.05

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

* Climate benefits are calculated using four different estimates of the SC–CO₂, SC–CH₄, and SC–N₂O. 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, but the Department does not have a single central SC–GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana v. Biden*, No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from “adopting, employing, treating as binding, or relying upon” the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ and NO_x) PM_{2.5} precursor health benefits and (for NO_x) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM_{2.5} emissions. 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, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

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

TABLE V.37—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLs: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1 *	TSL 2 *	TSL 3 *	TSL 4 *	TSL 5 *
Manufacturer Impacts					
Industry NPV (million 2021\$) (No-new-standards case INPV = 1,738).	1,680.4 to 1,746.4 ..	1,636.5 to 1,702.9 ..	1,490.3 to 1,631.0 ..	1,208.1 to 1,376.7 ..	798.7 to 985.9.
Industry NPV (% change) **	(3.3) to 0.5	(5.9) to (2.0)	(14.3) to (6.2)	(30.5) to (20.8)	(54.1) to (43.3).
Consumer Average LCC Savings (2021\$)					
Semi-Automatic	\$329	\$329	\$329	\$329	\$219.
Top-Loading, Ultra-Compact	n.a.	n.a.	n.a.	n.a.	n.a.
Top-Loading, Standard-Size	\$138	\$138	\$115	\$134	\$157.
Front-Loading, Compact	\$0	\$0	\$0	\$7	\$56.
Front-Loading, Standard-Size	\$57	\$78	\$78	\$19	\$55.

TABLE V.37—SUMMARY OF ANALYTICAL RESULTS FOR RESIDENTIAL CLOTHES WASHER TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1 *	TSL 2 *	TSL 3 *	TSL 4 *	TSL 5 *
Shipment-Weighted Average * ...	\$119	\$124	\$107	\$107	\$132.
Consumer Simple PBP (years)					
Semi-Automatic	0.3	0.3	0.3	0.3	0.4.
Top-Loading, Ultra-Compact	n.a.	n.a.	n.a.	n.a.	n.a.
Top-Loading, Standard-Size	4.6	4.6	6.8	5.9	5.5.
Front-Loading, Compact	0.0	0.0	0.0	9.1	7.1.
Front-Loading, Standard-Size	2.8	2.4	2.4	3.2	3.4.
Shipment-Weighted Average * ...	4.0	3.9	5.5	5.2	4.9.
Percent of Consumers that Experience a Net Cost					
Semi-Automatic	0%	0%	0%	0%	0%.
Top-Loading, Ultra-Compact	n.a.	n.a.	n.a.	n.a.	n.a.
Top-Loading, Standard-Size	14%	14%	28%	25%	23%.
Front-Loading, Compact	0%	0%	0%	24%	29%.
Front-Loading, Standard-Size	0%	0%	0%	24%	18%.
Shipment-Weighted Average * ...	11%	11%	20%	24%	21%.

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.

** Parentheses indicate negative (–) values.

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)) 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)(I)–(VII)) For this NOPR, 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.

Samsung commented that top-loading standard-size clothes washers, which cover roughly 70 percent of the marketplace, offer the greatest efficiency improvement opportunity and should be set to EL 3, which is included in TSL 4. (Samsung, No. 41 at pp. 2–3) Samsung added that DOE’s analysis demonstrates a practical payback period of 4.2 years for top-loading standard-size RCWs, and DOE’s engineering analysis shows that slight adjustments to wash temperature, spray rinse, and changing to a direct drive motor can

contribute to a significant National Energy Savings of 1.85 quads. (*Id.*) Samsung added that direct drive motor and inverter control technology have matured over the years and have become highly cost competitive. (*Id.*) Samsung commented that it predicts these technologies will commonly be used in the near term given the benefits to energy efficiency, quiet operation, and high reliability. (*Id.*) Samsung noted that increasing efficiency for top-loading standard-size clothes washers becomes especially important if DOE’s consumer choice model indicates that the top-loading market share will increase with increased minimum energy performance standards on top-loading standard-size clothes washers. (*Id.*)

Samsung recommended that to realize savings for front-loading standard-size clothes washers, DOE should adopt EL 2, which is included in TSL 2 and TSL 3. (Samsung, No. 41 at p. 3) Samsung commented that when comparing the models listed in DOE’s CCD and those listed in EPA’s Qualified Products List, 78 percent of front-loading standard-size models meet EL 2 proposed in the September 2021 Preliminary TSD. (*Id.*) Samsung noted that increasing the MEPS beyond EL 2 provides diminishing returns in the form of a longer payback period. (*Id.*) Samsung commented that going forward, if DOE expects consumers to adopt top-loading clothes washers, improvement in National Energy Savings for front-loading clothes washers becomes negligible as efficiency level increases. (*Id.*)

As discussed, DOE evaluated each TSL, beginning with the maximum technologically feasible level, to determine the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy. The following paragraphs summarize the results of this evaluation. In particular, the summary discussion emphasizes the impacts on the top-loading standard-size and front-loading standard-size product classes, which together represent 96 percent of the market, as presented in Table IV.34 of this document.

DOE first considered TSL 5, 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 5 (which represents EL 4 for this product class) incorporates the use of a stainless-steel basket, a direct drive motor, a wash plate, reduced hot and warm wash water temperatures compared to temperatures available on baseline units, an increased tub size compared to the baseline, and the fastest achievable spin speeds. In particular, the faster spin speeds and reduced hot and warm wash temperatures provide the improvement in efficiency at TSL 5 compared to TSL 4. For front-loading standard-size RCWs, DOE’s expected design path for TSL 5 (which represents EL 4 for this product class) incorporates the use of the most efficient available direct drive motor, the implementation of advanced sensors, and the fastest achievable spin speeds. In particular, the more efficient motor, faster spin

speeds, and advanced sensors provide the improvement in efficiency at TSL 5 compared to TSL 4. TSL 5 would save an estimated 2.27 quads of energy and 2.94 trillion gallons of water, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be \$7.68 billion using a discount rate of 7 percent, and \$20.77 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 86.62 Mt of CO₂, 28.45 thousand tons of SO₂, 160.21 thousand tons of NO_x, 0.18 tons of Hg, 718.26 thousand tons of CH₄, and 0.71 thousand tons of N₂O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC-GHG at a 3-percent discount rate) at TSL 5 is \$4.42 billion. The estimated monetary value of the health benefits from reduced SO₂ and NO_x emissions at TSL 5 is \$2.95 billion using a 7-percent discount rate and \$7.22 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO₂ and NO_x emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 5 is \$15.05 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 5 is \$32.41 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 5, the average LCC impact is a savings of \$219 for semi-automatic, \$157 for top-loading standard-size, \$56 for front-loading compact, and \$55 for front-loading standard-size clothes washers. The simple payback period is 0.4 years for semi-automatic, 5.5 years for top-loading standard-size, 7.1 years for front-loading compact, and 3.4 years for front-loading standard-size clothes washers. The fraction of consumers experiencing a net LCC cost is 0 percent for semi-automatic, 23 percent for top-loading standard-size, 29 percent for front-loading compact, and 18 percent for front-loading standard-size clothes washers. Notably, for the top-loading standard-size product class, which represents 73 percent of the market, TSL 5 would increase the first cost by \$189, in comparison to an installed cost of \$706 for baseline units. For the front-loading standard-size product class, which represents 23 percent of the market, TSL 5 would increase the first cost by \$70, compared to an installed cost of \$1,195 for baseline units. At TSL

5, the proposed standard for top-loading ultra-compact clothes washers is at the baseline, resulting in no LCC impact, no simple PBP, and no consumers experiencing a net LCC cost.

At TSL 5, the projected change in INPV ranges from a decrease of \$939.6 million to a decrease of \$752.4 million, which correspond to a decrease of 54.1 percent and 43.3 percent, respectively. The loss in INPV is largely driven by industry conversion costs as manufacturers work to redesign their portfolio of model offerings and re-tool entire factories to comply with amended standards at this level. Industry conversion costs could reach \$1,253.8 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 3 percent of RCW annual shipments meet the max-tech levels. For top-loading standard-size clothes washers, which account for 73 percent of annual shipments, less than 1 percent of current shipments meet this level. Of the nine OEMs offering top-loading standard-size products, one OEM offers models that meet the efficiencies required by TSL 5. 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.

Based upon the above considerations, the Secretary tentatively concludes that at TSL 5 for RCWs, the benefits of energy and water savings, positive NPV of consumer benefits, and emission reductions would be outweighed by the impacts on manufacturers, including the large potential reduction in INPV. DOE estimated the potential loss in INPV to be as high as 54 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. Additionally,

when considering the estimated monetary value of emissions reductions—representing \$4.42 billion in climate benefits (associated with the average SC-GHG at a 3-percent discount rate), and \$7.22 billion (using a 3-percent discount rate) or \$2.95 billion (using a 7-percent discount rate) in health benefits—DOE maintains its tentative conclusion that the overall benefits would be outweighed by the impacts on manufacturers. Consequently, the Secretary has tentatively concluded that TSL 5 is not economically justified.

DOE then considered TSL 4, 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. Specifically, for top-loading standard-size RCWs, DOE's expected design path for TSL 4 (which represents EL 3 for this product class) incorporates many of the same technologies and design strategies as described for TSL 5. At TSL 4, top-loading standard-size units would incorporate a stainless-steel basket, a direct drive motor, and a wash plate, consistent with TSL 5. Models at TSL 4 would also incorporate reduced hot wash water temperatures compared to temperatures available at the baseline through TSL 3 levels, increased tub size compared to the baseline (although not as large as TSL 5), and faster spin speeds compared to the baseline (although not as fast as TSL 5). In particular, the faster spin speeds, reduced hot wash temperatures, and use of a wash plate provide the improvement in efficiency at TSL 4 compared to TSL 3. For front-loading standard-size RCWs, DOE's expected design path for TSL 4 (which represents EL 3 for this product class) incorporates the use of the most efficient direct drive motor available and spin speeds that are faster than the baseline level but not as fast as at TSL 5. In particular, more efficient motor and faster spin speeds provide the improvement in efficiency at TSL 4 compared to TSL 3. TSL 4 would save an estimated 1.45 quads of energy and 2.53 trillion gallons of water, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be \$5.14 billion using a discount rate of 7 percent, and \$14.52 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 53.21 Mt of CO₂, 19.93 thousand tons of SO₂, 92.39 thousand tons of NO_x, 0.13 tons of Hg, 411.41 thousand tons of CH₄, and 0.48 thousand tons of N₂O. 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 \$2.71 billion. The estimated monetary value of the health benefits from reduced SO₂ and NO_x emissions at TSL 4 is \$1.91 billion using a 7-percent discount rate and \$4.57 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO₂ and NO_x emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 4 is \$9.77 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is \$21.80 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 4, the average LCC impact is a savings of \$329 for semi-automatic, \$134 for top-loading standard-size, \$7 for front-loading compact, and \$19 for front-loading standard-size clothes washers. The simple payback period is 0.3 years for semi-automatic, 5.9 years for top-loading standard-size, 9.1 years for front-loading compact, and 3.2 years for front-loading standard-size clothes washers. The fraction of consumers experiencing a net LCC cost is 0 percent for semi-automatic, 25 percent for top-loading standard-size, 24 percent for front-loading compact, and 24 percent for front-loading standard-size clothes washers. For the top-loading standard-size product class, TSL 4 would increase the first cost by \$185, in comparison to an installed cost of \$706 for baseline units. For the front-loading standard-size product class, TSL 4 would increase the first cost by \$49, compared to an installed cost of \$1,195 for baseline units. At TSL 4, the proposed standard for top-loading ultra-compact clothes washers 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 24 percent of consumers would experience a net LCC cost at TSL 4. DOE estimated that about 14 percent of low-income households would experience a net LCC cost at TSL 4, and as a result of smaller households and lower annual usage, about 33 percent of senior-only households would experience a net LCC cost at TSL 4.

At TSL 4, the projected change in INPV ranges from a decrease of \$530.2 million to a decrease of \$361.6 million,

which correspond to a decrease of 30.5 percent and 20.8 percent, respectively. The loss in INPV is largely driven by industry conversion costs as manufacturers work to redesign their portfolio of model offerings and update production facilities to comply with amended standards at this level. Industry conversion costs could reach \$690.8 million at this TSL.

At TSL 4, most top-loading standard-size products would need to be redesigned to meet these efficiencies; however, a substantial number of front-loading standard-size products are available on the market due to manufacturers' participation in the ENERGY STAR Most Efficient program. Currently, approximately 14 percent of RCW shipments meet TSL 4 efficiencies, including nearly 46 percent of standard-size front-loading shipments. Of the seven OEMs with standard-size front-loading products, five OEMs offer 87 basic models (representing approximately 50 percent of all front-loading standard-size basic models) that meet TSL 4 efficiencies. For standard-size top-loading products, approximately two percent of shipments meet this level. Of the nine OEMs offering top-loading standard-size products, two OEMs offer around 20 basic models (representing approximately 4 percent of all top-loading standard-size basic models) that meet the efficiencies required by TSL 4. At this level, the remaining seven manufacturers would likely implement largely similar design options as at TSL 5, 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 5. In interviews, manufacturers indicated that meeting TSL 4 efficiencies would require a less extensive redesign than meeting TSL 5 efficiencies.

At TSL 4, manufacturers expressed concerns—both through written comments as well as during confidential manufacturer interviews—regarding impacts to certain attributes of product performance, including wash temperatures, cleaning and rinsing performance, and fabric care, particularly for top-loading standard-size RCWs. As discussed in section V.B.4.a of this document, DOE recognizes that in general, a consumer-acceptable level of cleaning performance (*i.e.*, a representative average use cycle) can be easier to achieve through the use of higher amounts of energy and water use during

the clothes washer cycle. Conversely, maintaining acceptable cleaning performance can be more difficult as energy and water levels are reduced. 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 trade-off with one or more other aspects of performance, such as cleaning performance, depending on which performance characteristics are prioritized by the manufacturer. DOE expects, however, that consumers maintain the same expectations of cleaning performance regardless of the efficiency of the clothes washer.

Manufacturers did not provide any quantitative data to support the assertion that a standard level at TSL 4 would negatively impact product performance. As discussed in section V.B.4.a of this document, DOE's analysis of third-party clothes washer performance reviews suggests that both top-loading and front-loading RCWs models rated at TSL 4 can achieve equal or better overall cleaning performance scores than models with lower efficiency ratings. DOE also conducted its own performance testing on a representative sample of top-loading standard-size and front-loading standard-size RCWs, the results of which suggest that 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. In particular, DOE tentatively concludes that the proposed standard level at TSL 4: (1) would not require any 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 at which fatty soils are soluble; (2) would be able to maintain total cleaning score of at least 90, the market-representative threshold as measured on the Hot temperature selection with the large load size; furthermore, by prioritizing hardware design options over reduced wash temperatures, 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; (3) would not preclude the ability to provide mechanical action scores comparable to the scores for units at lower efficiency levels; and (4) would not result in an increase in average cycle

time as measured by the appendix J test procedure.

In summary, based on DOE's testing of models that currently meet the proposed standards, DOE does not expect performance to be compromised at the proposed standard level. Furthermore, products are readily available on the market at each efficiency level analyzed in the NOPR, including TSL 4, indicating a certain degree of market acceptance at each efficiency level.

DOE requests data and information regarding any quantitative performance-related characteristics at TSL 4 in comparison to performance at the current baseline level (e.g., cleaning performance, rinsing performance, fabric wear, *etc.*), particularly for top-loading standard-size RCWs.

As discussed, DOE's clothes washer test procedure does not prescribe a method for testing clothes washer cleaning performance or other relevant attributes of RCW performance. DOE, in partnership with EPA, has developed the ENERGY STAR Test Method for Determining Residential Clothes Washer Cleaning Performance¹³³ to determine cleaning performance for clothes washers that meet the ENERGY STAR Most Efficient criteria. Cleaning performance is determined on the same test units immediately following the

energy and water consumption tests for ENERGY STAR qualification. Notably, however, this test method is designed to be performed in conjunction with DOE's appendix J2 test procedure—whereas the amended standards proposed by this NOPR would be based on testing conducted to the appendix J test procedure. Appendix J specifies different load sizes than appendix J2, among other changes, which can significantly affect any measurement of cleaning performance. Additional investigation would be required to develop a cleaning performance test procedure designed to be conducted in conjunction with appendix J.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at a standard set at TSL 4 for RCWs would be economically justified. At this TSL, the weighted average LCC savings for all product classes is \$107. An estimated 25 percent of top-loading standard-size clothes washer consumers and an estimated 24 percent of front-loading (compact and standard-size) clothes washer consumers would experience a net cost. DOE acknowledges the larger impact on senior-only households as a result of smaller households and lower average annual use, but notes that the average

LCC savings are still positive. The FFC national energy and water 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, considering low-income and senior-only subgroups as well, vastly outweigh the cost to manufacturers. At TSL 4, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 27 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 4 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing \$2.71 billion in climate benefits (associated with the average SC-GHG at a 3-percent discount rate), and \$4.57 billion (using a 3-percent discount rate) or \$1.91 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

Therefore, based on the above considerations, DOE proposes to adopt the energy conservation standards for RCWs at TSL 4. The proposed amended energy conservation standards for RCWs, which are expressed in EER and WER, are shown in Table V.38.

TABLE V.38—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS

Product class	Minimum energy efficiency ratio (lb/kWh/cycle)	Minimum water efficiency ratio (lb/gal/cycle)
Semi-Automatic Clothes Washers	2.12	0.27
Automatic Clothes Washers:		
Top-Loading, Ultra-Compact (less than 1.6 ft ³ capacity)	3.79	0.29
Top-Loading, Standard-Size (1.6 ft ³ or greater capacity)	4.78	0.63
Front-Loading, Compact (less than 3.0 ft ³ capacity)	5.02	0.71
Front-Loading, Standard-Size (3.0 ft ³ or greater capacity)	5.73	0.77

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2021\$) 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 from emission reductions.

Table V.39 shows the annualized values for RCWs under TSL 4, expressed in 2021\$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_x and SO₂ reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for RCWs is \$800.8 million per year in increased equipment costs, while the estimated annual benefits are \$1,344.2 million from reduced equipment operating costs, \$155.7 million from GHG reductions, and \$202.0 million from reduced NO_x

and SO₂ emissions. In this case, the net benefit amounts to \$901.1 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for RCWs is \$764.0 million per year in increased equipment costs, while the estimated annual benefits are \$1,598.0 million from reduced equipment operating costs, \$155.7 million from GHG reductions, and \$262.2 million from reduced NO_x and SO₂ emissions. In this case, the net benefit amounts to \$1,251.8 million per year.

¹³³ ENERGY STAR test method available at [www.energystar.gov/sites/default/files/asset/](http://www.energystar.gov/sites/default/files/asset/document/Test%20Method%20for%20Determining%20Residential%20Clothes%20Washer%20Cleaning%20Performance%20-%20July%202018_0.pdf)

[document/Test%20Method%20for%20Determining%20Residential%20](http://www.energystar.gov/sites/default/files/asset/document/Test%20Method%20for%20Determining%20Residential%20Clothes%20Washer%20Cleaning%20Performance%20-%20July%202018_0.pdf)

[Clothes%20Washer%20Cleaning%20Performance%20-%20July%202018_0.pdf](http://www.energystar.gov/sites/default/files/asset/document/Test%20Method%20for%20Determining%20Residential%20Clothes%20Washer%20Cleaning%20Performance%20-%20July%202018_0.pdf).

TABLE V.39—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS
[TSL 4]

	Million 2021\$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	1,598.0	1,544.5	1,657.8
Climate Benefits *	155.7	151.7	159.7
Health Benefits **	262.2	255.8	268.9
Total Benefits †	2,015.9	1,952.0	2,086.4
Consumer Incremental Product Costs ‡	764.0	778.7	695.5
Net Benefits	1,251.8	1,173.4	1,390.9
7% discount rate			
Consumer Operating Cost Savings	1,344.2	1,302.8	1,389.7
Climate Benefits * (3% discount rate)	155.7	151.7	159.7
Health Benefits **	202.0	197.5	206.7
Total Benefits †	1,701.9	1,652.0	1,756.1
Consumer Incremental Product Costs ‡	800.8	813.3	737.9
Net Benefits	901.1	838.7	1,018.3

Note: This table presents the costs and benefits associated with RCWs shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the AEO2022 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 the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana v. Biden*, No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from “adopting, employing, treating as binding, or relying upon” the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_x and SO₂. DOE is currently only monetizing (for SO₂ and NO_x) PM_{2.5} precursor health benefits and (for NO_x) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct PM_{2.5} emissions. See section IV.L of this document for more details.

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

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

D. Reporting, Certification, and Sampling Plan

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For RCWs, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.20.

Ameren *et al.* encouraged DOE to require manufacturers to report average cycle time in the CCD. (Ameren *et al.*, No. 42 at pp. 10–12) Ameren *et al.* commented that reporting average cycle time increases stakeholder and consumer access to cycle time, which Ameren *et al.* identify as an important RCW performance attribute. (*Id.*) Ameren *et al.* commented that cycle

time information is important for some consumers, particularly for RCW consumers who routinely wash serial loads. (*Id.*) Ameren *et al.* added that making cycle time widely available enables stakeholders to better evaluate the cycle time of a given clothes washer relative to its performance level, which could be even more important with possible increases to standards that may drive increases in spin times to decrease drying energy. (*Id.*) Ameren *et al.* also commented that reporting RCW cycle time increases the transparency of the energy efficiency metrics since reporting additional information on cycle time helps improve the transparency of how the energy efficiency metric is derived for a given clothes washer. (*Id.*) Ameren *et al.* added that this is especially

important considering the wide variation in the cycle time of top- and front-loading RCWs. (*Id.*) Ameren *et al.* further commented that reporting RCW cycle time enables continuous improvement of the test procedure and energy conservation standard over time. (*Id.*) Ameren *et al.* specified that having access to additional data on cycle time enables DOE and other stakeholder groups to consider more effectively the value of cycle time measurement as a performance feature in future rulemakings. (*Id.*) Ameren *et al.* presented data from NEEA that plotted cycle time versus rated IMEF of 18 top-loading and front-loading RCWs. (*Id.*) Ameren *et al.* found that cycle time varies widely across front-loading and top-loading standard-size product

classes. (*Id.*) Ameren *et al.* added that according to NEEA's testing¹³⁴ some RCWs with identical IMEF ratings can have cycle times that are twice as long as other models. (*Id.*) Ameren *et al.* therefore concluded that these cycle times will also vary in laboratory testing (with the appendix J2 textiles) and that this variation represents real-world cycle time differences. (*Id.*)

The CA IOUs recommended that DOE consider disclosing other configurations such as stacked clothes washers and clothes dryers in the CCD. (CA IOUs, No. 43 at p. 6) The CA IOUs commented that there are several clothes washer configurations available on the market which might offer unique functionality to some consumers while not warranting a separate product class. (*Id.*) For example, the CA IOUs listed combination all-in-one washer-dryers, pedestal type clothes washers, laundry centers,¹³⁵ and double clothes washer products,¹³⁶ and stated that all represent unique product configurations that are not differentiated in the CCD. (*Id.*) The CA IOUs commented that, while these configurations are clear and intuitive to consumers and retailers, the public does not have access to a reliable database denoting these unique product characterizations. (*Id.*) The CA IOUs commented that considering the increasing market share and marketing of these products, they encourage DOE to consider the disclosure of these product configurations into certification requirements and adding those attributes to the CCD. (*Id.*)

In response to Ameren *et al.* and the CA IOUs, the values for which DOE currently requires reporting for RCWs are product characteristics that are required in order for DOE to determine whether the product is in compliance with the applicable standards. For example, currently reported values include characteristics that determine product class (*e.g.*, loading axis, capacity), measured characteristics on which a standard depends (*e.g.*, IMEF, EER), and characteristics necessary for enforcement of standards (*e.g.*, RMC).

At this time, DOE tentatively concludes that cycle time and product configuration (as recommend by commenters) are not required to

determine compliance with the applicable standard. In this NOPR, DOE is not proposing to amend the product-specific certification requirements for RCWs. DOE would consider any amendments to the reported values for RCWs in a separate rulemaking.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (“OIRA”) in the OMB has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this proposed regulatory action constitutes a

“significant regulatory action within the scope of section 3(f)(1)” of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the proposed regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the technical support document for this rulemaking.

B. Review Under the Regulatory Flexibility Act

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

¹³⁴ NEEA’s testing was conducted using an 8.45 lb load of AHAM cotton textiles, using the Normal Cycle on Warm Wash/Cold Rinse with default spin settings. Ameren *et al.* noted that NEEA’s analysis confirms that the cycle times of cycles run with appendix J2 textiles and AHAM cotton textiles are nearly identical.

¹³⁵ A laundry center is a single tall unit which contains both a clothes washer and a clothes dryer.

¹³⁶ The CA IOUs reference products with two integrated clothes washer drums, such as the Samsung FlexWash™ as “double clothes washers.”

for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered

DOE is proposing amended energy conservation standards for RCWs. 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.

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)) This proposed rulemaking is in accordance the 6-year review required under 42 U.S.C. 6295(m)(1).

3. Description on 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,¹³⁷ California Energy Commission's Modernized Appliance Efficiency Database System

("MAEDbS"),¹³⁸ ENERGY STAR's Product Finder data set,¹³⁹ 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 Panjiva¹⁴⁰), and basic model numbers, to identify OEMs of RCWs. DOE further relied on public data and subscription-based market research tools (e.g., Dun & Bradstreet reports¹⁴¹) 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 rulemaking, do not meet the SBA's definition of a "small business," or are foreign-owned and operated.

DOE initially identified 19 OEMs that sell RCWs in the United States. Of the 19 OEMs identified, DOE tentatively determined that one company qualifies as a small business and is not foreign-owned and operated.

DOE reached out to the small business and invited them to participate 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

The one small business identified manufactures one standard-size top-loading clothes washer for residential use. DOE did not identify any RCW models manufactured by this small business listed in the CCD, MAEDbS, or ENERGY STAR databases. Instead, 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. Based on a review of available product literature and test data of a comparable RCW model, DOE estimates that their current design would not meet the efficiencies required at TSL 4. Furthermore, DOE's review of the product suggests that the design could not be easily adapted to meet TSL 4 efficiencies. DOE expects that the small manufacturer would likely need to make significant investments to redesign the product to meet the proposed efficiencies. Therefore, DOE is unable to conclude that the proposed rule would not have a "significant impact on a substantial number of small entities" at this time.

DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and their market shares by product class. DOE also requests comment on the potential impacts of the proposed standard on small manufacturers. In particular, DOE seeks comment on the efficiency performance of the small manufacturer's RCW model and the estimated cost to redesign to the proposed standard level.

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 4. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1, TSL 2, and TSL 3 would likely reduce the impacts on the one small business manufacturer, it would come at the expense of a reduction in energy savings. TSL 1 achieves 58 percent and TSL 2 achieves 57 percent lower energy savings compared to the energy savings at TSL 4. TSL 3 achieves 49 percent lower energy savings compared to the energy savings at TSL 4. Additionally, TSL 1 and TSL 2 achieve 50 percent and TSL 3 achieves 18 percent lower water savings compared to the water savings at TSL 4. TSL 5 were also analyzed, but it was determined this level would lead to greater costs to manufacturers.

Based on the presented discussion, establishing standards at TSL 4 balances the benefits of the energy and water savings at TSL 4 with the potential burdens placed on RCW manufacturers, including small business manufacturers. Accordingly, DOE does not propose one

¹³⁷ 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 March 25, 2022).

¹³⁸ California Energy Commission's Modernized Appliance Efficiency Database System is available at: cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx (Last accessed March 25, 2022).

¹³⁹ U.S. Environmental Protection Agency's ENERGY STAR Product Finder is available at: www.energystar.gov/productfinder/ (Last accessed March 25, 2022).

¹⁴⁰ S&P Global. Panjiva Market Intelligence is available at: panjiva.com/import-export/United-States (Last accessed May 5, 2022).

¹⁴¹ D&B Hoovers|Company Information|Industry Information|Lists, app.dnbhoovers.com/ (Last accessed August 1, 2022).

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 NOPR 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.

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 equipment, 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 would be required for RCWs were this NOPR to be finalized as proposed; however, DOE is not proposing amended certification or reporting requirements for RCWs in this NOPR. Instead, DOE may consider proposals to establish 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

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 ("NEPA") and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021, subpart D, appendix B5.1. DOE anticipates that this rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The

Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed

rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of \$100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by RCW manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency 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 proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the TSD for this

proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(m), this proposed rule would establish amended energy conservation standards for 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 42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

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

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published

at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes amended energy conservation standards for RCWs, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (“OSTP”), issued its Final Information Quality Bulletin for Peer Review (“the Bulletin”). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential

scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.¹⁴² 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 NAS to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.¹⁴³

VII. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website at www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=68. Participants are responsible for ensuring their systems are compatible with the webinar software.

¹⁴² The 2007 "Energy Conservation Standards Rulemaking Peer Review Report" is available at the following website: energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0 (Last accessed June 12, 2022).

¹⁴³ The report is available at www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to ApplianceStandardsQuestions@ee.doe.gov. Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings, as well as on any aspect of the proposed rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this proposed rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed rulemaking. Each participant will be allowed to make a general

statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this proposed rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the previous procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE website. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be

included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as 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).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE seeks comment on the product class structure analyzed in this NOPR.

(2) DOE seeks comment on the technology options not identified in this NOPR that manufacturers may use to attain higher efficiency levels of RCWs.

(3) DOE seeks comment on whether any additional technology options should be screened out on the basis of any of the screening criteria in this NOPR.

(4) DOE seeks comment on whether the baseline efficiency levels analyzed in this NOPR for each product class are appropriate.

(5) DOE seeks comment on whether the higher efficiency levels analyzed in this NOPR for each product class are appropriate.

(6) DOE seeks comment on whether the efficiency levels analyzed in this NOPR for semi-automatic RCWs are appropriate.

(7) DOE seeks comment on the baseline MPCs and incremental MPCs developed for each product class.

(8) DOE seeks comment on its tentative determination to use the DOE dataset as the basis for the translation equations rather than use the joint DOE–AHAM dataset.

(9) DOE seeks comment on its tentative determination not to merge the compact and standard-size translations, but to instead develop separate translations for each product class.

(10) DOE seeks 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.

(11) DOE requests comment and information on the specific efficiency levels at which any potential rebound effects may happen, as well as the magnitude of the effect.

(12) DOE requests comment and information on frequency of cleaning cycles run per number of cycles used to clean clothes and associated data as compared to the recommendations in the manufacturer’s use and care manuals.

(13) DOE requests comment and information on RCW lifetime.

(14) DOE seeks comment on the approach and inputs used to develop no-new standards case shipments projection and market share for each product class.

(15) DOE requests data on the market size and typical selling price of units sold through the second-hand market for residential clothes washers.

(16) For households who would be negatively impacted by amended energy conservation standards, a potential rebate program to reduce the total installed costs would be effective in lowering the percentage of consumers with a net cost and reducing simple payback period. DOE is aware of 80 rebate programs currently available for residential clothes washers meeting ENERGY STAR requirements initiated by 63 organizations in various States as described in chapter 17 of the NOPR TSD. DOE is seeking comment about how amended energy conservation standards may impact the low-income and senior-only consumer economics being presented and considered in this proposed rulemaking.

(17) DOE is seeking comment about definable subpopulations in addition to low-income and senior-only households and the associated data required to differentiate how such subpopulation use clothes washers.

(18) To consider to costs of monitoring test procedure and energy conservation standard rulemakings,

DOE requests AHAM provide the costs of monitoring, which would be independent from the conversion costs required to adapt product designs and manufacturing facilities to an amended standard, for DOE to determine whether these costs would materially affect the analysis. In particular, a summary of the job titles and annual hours per job title at a prototypical company would allow DOE to construct a detailed analysis of AHAM's monitoring costs.

(19) DOE seeks comment on the availability of direct drive motors in quantities required by industry if DOE were to adopt amended standards.

(20) DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each TSL.

(21) DOE seeks comment on whether manufacturers expect manufacturing capacity constraints due to production facility updates would limit product availability to consumers in the timeframe of the amended standard compliance date (2027).

(22) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of RCWs associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

(23) DOE seeks 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. DOE also seeks comment on how relative cleaning performance results would vary if tested under test conditions consistent with the DOE appendix J test procedure.

(24) DOE requests 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.

(25) DOE requests 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.

(26) DOE requests comment on its wash temperature data presented in the performance characteristics test report and on its tentative conclusions derived from this data. DOE requests any additional data DOE should consider about wash temperatures at the proposed standard level, as DOE's data leads to the tentative conclusion that fatty soils would be able to be dissolved at this efficiency level.

(27) DOE requests comment on its stain removal data presented in the

performance characteristics test report and on its conclusions derived from this data. In particular, DOE requests 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. DOE additionally requests 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.

(28) DOE requests comment on its mechanical action data presented in the performance characteristics test report and on its conclusions derived from this data. In particular, DOE requests 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. DOE also requests 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.

(29) DOE requests comment on its cycle time data presented in the performance characteristics test report and on its conclusions derived from this data.

(30) DOE seeks 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.*, TSL 4). In addition, DOE seeks additional data that stakeholders would like DOE to consider on performance attributes at TSL 4 efficiencies as well as the current minimum energy conservation standards.

(31) DOE requests comment and information on sales of RCWs with deep fill and/or deep rinse options or settings and the frequency of use of cycles with these options or settings selected.

(32) DOE requests data and information regarding any quantitative performance-related characteristics at TSL 4 in comparison to performance at the current baseline level (*e.g.*, cleaning performance, rinsing performance, fabric wear, etc.), particularly for top-loading standard-size RCWs.

(33) DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and

their market shares by product class. DOE also requests comment on the potential impacts of the proposed standard on small manufacturers. In particular, DOE seeks comment on the efficiency performance of the small manufacturer's RCW model and the estimated cost to redesign to the proposed standard level.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and announcement of public meeting.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on February 9, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 21, 2023.

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:

■ a. Removing paragraphs (g)(1) through (3);

■ b. Redesignating paragraph (g)(4) as paragraph (g)(1);

■ c. Revising the introductory sentence of newly redesignated paragraph (g)(1); and

■ d. Adding new paragraph (g)(2).
The addition and revision 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, and before [Date 3 years after date of publication of

final rule in the Federal Register], shall have an Integrated Modified Energy Factor no less than, and an Integrated Water Factor no greater than:* * *

(2) Clothes washers manufactured on or after [Date 3 years after date of publication of *final rule in the Federal Register*], 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)
Semi-Automatic Clothes Washers	2.12	0.27
Automatic Clothes Washers:		
Top-Loading, Ultra-Compact (less than 1.6 ft ³ capacity)	3.79	0.29
Top-Loading, Standard-Size (1.6 ft ³ or greater capacity)	4.78	0.63
Front-Loading, Compact (less than 3.0 ft ³ capacity)	5.02	0.71
Front-Loading, Standard-Size (3.0 ft ³ or greater capacity)	5.73	0.77

* * * * *

[FR Doc. 2023–03862 Filed 3–2–23; 8:45 am]

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Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, et al.

Hazardous Materials: Adoption of Miscellaneous Petitions and Updating
Regulatory Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 107, 171, 172, 173, 178, and 180****[Docket No. PHMSA–2020–0102 (HM–219D)]****RIN 2137–AF49****Hazardous Materials: Adoption of Miscellaneous Petitions and Updating Regulatory Requirements****AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes amendments to the Hazardous Materials Regulations (HMR) to update, clarify, improve the safety of, or streamline various regulatory requirements. Specifically, this rulemaking responds to 18 petitions for rulemaking submitted by the regulated community between May 2018 and October 2020 that requests PHMSA address a variety of provisions, including but not limited to those addressing packaging, hazard communication, and the incorporation by reference of certain documents. These proposed revisions maintain or enhance the existing high level of safety under the HMR while providing clarity and appropriate regulatory flexibility in the transport of hazardous materials.

DATES: Comments must be submitted by May 2, 2023. PHMSA will consider late-filed comments to the extent possible.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA–2020–0102 [HM–219D]) by any of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* To U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m.–5:00 p.m., Monday–Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received

will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents, including the Preliminary Regulatory Impact Analysis (PRIA) or comments received, go to www.regulations.gov or DOT's Docket Operations Office (*see ADDRESSES*).

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN” for “proprietary information.” Submissions containing CBI should be sent to Steven Andrews, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Steven Andrews, 202–366–8553, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, DC 20590–0001.

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M. National Technology Transfer and Advancement Act

I. Background

The Administrative Procedure Act requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (*See* 5 U.S.C. 553(e)). PHMSA regulations specify that persons petitioning PHMSA to add, revise, or remove a regulation in the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180) must file a petition for rulemaking containing adequate support for the requested action. (*See* 49 CFR 106.100) PHMSA proposes to amend the HMR in response to petitions for rulemaking submitted by shippers, carriers, manufacturers, and industry representatives, and welcomes petitions from any interested stakeholder or member of the public with suggested changes to improve the HMR.

PHMSA expects that the proposed revisions would maintain the high safety standard currently achieved under the HMR while providing clarity and appropriate regulatory flexibility in the transport of hazardous materials. PHMSA also notes that—insofar as adoption of the petitions as proposed could reduce delays and interruptions of hazardous materials shipments during transportation—the proposed amendments may also lower greenhouse gas (GHG) emissions and safety risks to minority, low-income, underserved, and other disadvantaged populations and communities in the vicinity of interim storage sites and transportation arteries and hubs. A detailed discussion of the petitions and proposals can be found in Section III of this NPRM.

PHMSA proposes to:

- Allow for appropriate flexibility of packaging options in the transportation of compressed natural gas in cylinders.
- Streamline the approval application process for the repair of specific DOT specification cylinders.
- Provide greater clarity on the filling requirements for certain cylinders used to transport hydrogen and hydrogen mixtures.
- Facilitate international commerce and streamline packaging and hazard communication requirements by harmonizing the HMR with international regulations to allow the shipment of de minimis amounts of poisonous materials.
- Provide greater clarity by requiring a specific marking on cylinders to indicate compliance with certain HMR provisions.
- Streamline hazard communication requirements by allowing appropriate

marking exceptions under certain conditions for the transportation of lithium button cell batteries installed in equipment.

- Provide greater flexibility and accuracy in hazard communication by allowing additional descriptions for certain gas mixtures.

- Increase the safe transportation of explosives by updating certain Institute of Makers of Explosives (IME) documents currently incorporated by reference.

- Modify the definition of “liquid” to include the test for determining fluidity (penetrometer test) prescribed in the agreement concerning the International Carriage of Dangerous Goods by Road (ADR).

- Incorporate by reference a Compressed Gas Association (CGA) publication C-20-2014, “Requalification Standard for Metallic, DOT and TC 3-series Gas Cylinders and Tubes Using Ultrasonic Examination,” Second Edition, which will eliminate the need for some existing DOT special permits and allow alternative methods for the requalification of cylinders. This revision would eliminate the need for special permit applications and renewals.¹

- Incorporate by reference the updated Appendix A of CGA publication C-7-2020, “Guide to Classification and Labeling of Compressed Gases,” Eleventh Edition.

- Incorporate by reference the CGA publication C-27-2019, “Standard Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes, First Edition.”

- Incorporate by reference the CGA publication CGA C-29-2019, “Standard for Design Requirements for Tube Trailers and Tube Modules, First Edition.”

- Incorporate by reference the CGA publication CGA V-9-2019, “Compressed Gas Association Standard for Compressed Gas Cylinder Valves, Eighth Edition.”

II. Incorporation by Reference Discussion Under 1 CFR part 51

According to the Office of Management and Budget (OMB), Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in

Conformity Assessment Activities,” Government agencies must use voluntary consensus standards wherever practical in the development of regulations.

PHMSA currently incorporates by reference into the HMR all or the relevant parts of several standards and specifications developed and published by standard development organizations (SDO). In general, SDOs update and revise their published standards every two to five years to reflect modern technology and best technical practices. The National Technology Transfer and Advancement Act of 1995 (NTTAA; Pub. L. 104-113) directs Federal agencies to use standards developed by voluntary consensus standards bodies in lieu of government-written standards unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards bodies develop, establish, or coordinate technical standards using agreed-upon procedures. OMB issued Circular A-119 to implement section 12(d) of the NTTAA relative to the utilization of consensus technical standards by Federal agencies. This circular provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in the NTTAA. Consistent with the requirements of the NTTAA and its statutory authorities, PHMSA is responsible for determining which currently referenced standards should be updated, revised, or removed, and which standards should be added to the HMR. Revisions to materials incorporated by reference in the HMR are handled via the rulemaking process, which allows the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials. Regulations of the Office of the Federal Register require that agencies detail in the preamble of an NPRM the ways the materials it proposes to incorporate by reference are reasonably available to interested parties, or how the agency worked to make those materials reasonably available to interested parties. (See 1 CFR 51.5.)

IME standards are free and accessible to the public on the internet, with access provided through the IME website at https://www.ime.org/products/category/safety_library_publications_slps. The CGA references are available for interested parties to purchase in either print or electronic editions through the CGA organization website at <https://portal.cganet.com/>

https://www.unece.org/publications/Manual_Rev7_E.pdf and The European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) can be found at <https://unece.org/about-adr>. The specific standards are discussed in greater detail in the section-by-section review.

The following standards appear in the amendatory text of this document and have already been approved for the locations in which they appear: ASTM D 4359, CGA TB-25, ISO 6406:2005(E), and ISO 16148:2016(E). No changes are proposed.

III. Review of Petitions and Issues

A. Transportation of Compressed Natural Gas/Methane in UN Pressure Receptacles

In its petition (P-1714),² CGA requests that PHMSA consider an amendment to 49 CFR 173.302b to implement packaging restrictions for the transportation of compressed natural gas (CNG) and methane in United Nations (UN) seamless steel pressure receptacles with a tensile strength greater than 950 MPa. For the purposes of the HMR, “UN1971, Methane, compressed” is compressed natural gas that is at least 98 percent methane and free of corroding components. CGA expresses concern regarding the growth in transport of CNG and methane in these packagings and wants to ensure the safety of the receptacles in this service. CGA provides historical context of PHMSA’s predecessor agency imposing similar packaging restrictions for CNG transported in certain DOT specification cylinders (see 49 CFR 173.302a(a)(4)). These restrictions were intended to limit the effect of impurities in the CNG, such as hydrogen sulfide, on the structural integrity of the steel used in the manufacture of the cylinders. CGA cites several studies on the corrosive effects of natural gas contaminants on a cylinder and notes that the contaminants are usually noncorrosive in the absence of liquid water. Finally, CGA highlights an October 27, 1977, incident in which two people were killed, four people were injured, and a compressor station was damaged when a DOT specification 3T seamless steel cylinder ruptured while being filled with natural gas contaminated with hydrogen sulfide and water. CGA’s specific concern is in regard to UN seamless steel pressure receptacles with

¹ PHMSA notes that it has received a petition to incorporate by reference the 2021 version of this publication <https://www.regulations.gov/docket/PHMSA-2022-0030/document>. PHMSA is currently conducting a technical review and cost evaluation of this publication. PHMSA welcomes comments, data, and information on whether it should consider incorporating the 2021 version into any final rule.

² P-1714—CGA (PHMSA-2018-0054), <https://www.regulations.gov/docket/PHMSA-2018-0054>.

ultimate tensile strengths greater than 950 MPa being used for the storage and transportation of CNG because higher strength UN seamless steel pressure receptacles are susceptible to embrittlement from CNG contaminants and embrittlement makes the receptacles more susceptible to fracture.

Currently, use of UN pressure receptacles for CNG and methane in transportation is subject to the general requirements for shipment of compressed gases in 49 CFR 173.301, additional general requirements of UN pressure receptacles in 49 CFR 173.301b, and the filling requirements of cylinders with non-liquefied (permanent) gases in 49 CFR 173.302. However, under current regulations there are no additional requirements specific to the use of UN pressure receptacles in CNG or methane service.

CGA requests that 49 CFR 173.302b be revised to include conditions for the transportation of CNG and methane in UN stainless steel pressure receptacles. The CGA petition states that natural gas/methane can be safely transported in UN/International Organization for Standardization (ISO) steel pressure receptacles under the following conditions: (1) the product is non-liquefied gas; (2) the UN seamless steel pressure receptacle has a maximum tensile strength not greater than 950 MPa (137,750 psig) and bears an “H” mark indicating that the cylinder is manufactured from a specific type of steel that is intended to prevent hydrogen embrittlement; (3) there is a drain tube for each UN tube; and (4) the moisture content and concentration of the corroding components in the product conforms to the requirements in 49 CFR 173.301b(a)(2). Specifically, the requirements in 49 CFR 173.301b(a)(2) state that gases or gas mixtures must be compatible with the UN pressure receptacle and valve materials as prescribed for metallic materials in ISO 11114-1:2012(E). In addition, CGA requests new text that clarifies the requirements for transporting methane gas with a purity of at least 98 percent within a UN seamless steel pressure receptacle.

PHMSA’s previously considered this issue under petition P-1661³ submitted by CGA on July 15, 2015. That petition was denied due to its conflict with the requirements in 49 CFR 173.302a(a)(4) for DOT specification 3AAX and 3T cylinders when used in methane service. Currently, § 173.302a(a)(4) only allows methane that is non-liquefied, has a minimum purity of 98 percent,

and is commercially free from corroding components to be filled in specification (3AX, 3AAX, and 3T) cylinders.

PHMSA agreed that DOT specification 3T cylinders with a tensile strength in the range of 135–155 kilopounds per square inch (ksi) [931–1,069 megapascals per square inch (MPa)] and steel embrittlement can become a safety issue. However, DOT specification 3AX and 3AAX cylinders typically have strength below 135 ksi (931 MPa), and steel embrittlement is usually not a safety concern. In its denial letter, PHMSA encouraged CGA to consider a revised petition and limit cylinders to steel strengths below 950 MPa for UN/International Standards Organization (ISO) cylinders made in accordance with ISO 9899-1 and ISO 11120 standards. This is because had PHMSA proposed P-1661, it would have caused conflicting requirements for methane shipments in specification (3AAX, 3T, etc.) cylinders versus shipments in UN/ISO steel cylinders (ISO 9809-1 and ISO 11120 standards).

In response to PHMSA’s denial of P-1661, CGA submitted a new petition (P-1714) that addresses PHMSA’s concerns by not including DOT 3T specification cylinders where steel embrittlement poses an unreasonable risk. As a result of PHMSA’s technical review of CGA petition (P-1714), and because it requested regulatory amendments for shipment of methane (including CNG with a methane content of 98 percent or greater) only in UN cylinders, PHMSA determined that the proposals in P-1714 would be limited to pressure receptacles where steel embrittlement is not a safety issue. Additionally, PHMSA notes this revision will align HMR references to UN cylinders with equivalent DOT specification cylinders. PHMSA further agrees that CNG, other than methane, can cause steel embrittlement in seamless steel pressure receptacles with tensile strengths greater than 950 MPa. Therefore, PHMSA believes the changes outlined in the CGA petition P-1714 will improve the safe transportation of CNG.

PHMSA conducted an economic review of this petition and expects these proposed amendments would not result in any material changes in costs or operations for market participants because they are accepted industry practices and address an important safety concern. To the degree that market participants are currently transporting low-purity methane in high-tensile strength receptacles, affected participants would be required to use substitute packaging. Similarly, the proposed change may provide safety benefits to the extent there is any

noncompliance with the practice presented by CGA. A more detailed discussion of this economic analysis can be found in the PRIA posted in the docket to this rulemaking. DOT seeks comment on the number of shipments that may currently be made where substitute packaging would be required under the proposal.

Therefore, PHMSA has determined that there is merit in the CGA petition to amend the requirements for transporting CNG with methane in certain UN seamless stainless steel cylinders. Amending these requirements will enhance safety by authorizing CNG of less than 98 percent methane only in pressure receptacles where steel embrittlement is unlikely to occur. PHMSA proposes to add § 173.302b(f) to specify these requirements for transporting CNG in UN specification pressure receptacles.

B. Threading and Repair of Seamless DOT 3-Series Specification Cylinders and Seamless UN Pressure Receptacles

In its petition (P-1716),⁴ FIBA Technologies, Inc. (FIBA) requests PHMSA consider a revision to the requirements for repairing seamless DOT 3-series specification cylinders and seamless UN pressure receptacles manufactured without external threads, and also to authorize the performance of this work without requiring prior approval from PHMSA. Specifically, this petition requests that PHMSA authorize machining new threads on a previously manufactured seamless cylinder or seamless UN pressure receptacle without requiring an approval. Further, FIBA requests that PHMSA expand the population of UN pressure receptacles eligible for repair work. Regarding external threads, in accordance with the current § 180.212(b)(2), repair work not requiring prior approval is limited to the “rethreading” of DOT specification 3AX, 3AAX, or 3T cylinders or a UN pressure receptacle mounted in multiple-element gas containers (MEGC).⁵

FIBA notes there are older DOT specification 3AAX cylinders that were not equipped with external neck threads at the time of manufacture. These cylinders were manufactured in the 1960s and were mounted onto a semi-trailer by inserting the tube neck into a

⁴ P-1716—FIBA (PHMSA-2018-0074), <https://www.regulations.gov/docket/PHMSA-2018-0074>.

⁵ A multiple-element gas container is an assembly of UN cylinders, tubes, or bundles of cylinders interconnected by a manifold and assembled within a framework. The term includes all service equipment and structural equipment necessary for the transport of gases.

³ P-1661—CGA (PHMSA-2015-0169), <https://www.regulations.gov/docket/PHMSA-2015-0169>.

flange on the semi-trailer bulkhead and then secured in place using set screws. FIBA argues that these methods have been mostly abandoned in favor of a threaded tube neck because a threaded flange and anti-rotation pins provide a more secure connection. Moreover, risk will be reduced by a threaded neck surface and flange connection, rather than a neck with no threads and pins, because the threaded neck and flange more securely mount the cylinders and tubes within the MEGC or motor vehicle (tube trailer or frame). Pins do greater damage to the tube than a threaded neck and flange because of the penetration depth required to achieve a secure connection. Section 180.212(b)(2) already allows the repair of damaged threads, which can be so worn as to be the same as a tube manufactured with no outer diameter neck threads. FIBA argues that there is no difference between threads no longer capable of joining the tube neck to the flange and a tube neck having no threads from the start. The same threading process will be performed on the tube with worn threads as the tube with no threads. Additionally, the same CGA C-23 evaluation process used to determine suitability of the tube neck for rethreading will be used to confirm the suitability of the neck for threading.

Based on a technical review of this petition, PHMSA expects that authorizing the threading of DOT 3AX, 3AAX manufactured without external threads, or 3T specification cylinders or UN pressure receptacles would enhance safety by authorizing a more secure method of connecting MEGC pressure receptacles. PHMSA concludes this is an improvement over the previous method of using setscrews to secure the tubes, a process that results in indentations being carved into the tube necks as the tube jostles during transport. Moreover, DOT did not originally authorize the threading of previously manufactured cylinders due to a lack of standardized safe threading practices at the time PHMSA adopted provisions for these cylinders. Lastly, PHMSA determined that the machining of neck threads or rethreading of seamless UN pressure receptacles should be authorized regardless of whether the receptacle is mounted in a MEGC. As such, standardization in the area of cylinder connections is vital to reducing damage to the cylinder necks and thus to reducing hazardous materials releases. In summary, the technical review of this petition expects the proposed revision would improve safety by ensuring a more secure connection to the motor vehicle.

This proposed revision is not expected to impose any costs to industry. Further, it is expected that the proposed changes would provide appropriate regulatory flexibility and potential cost-savings (*i.e.*, avoided costs associated with an unnecessary approval application process or use of an outdated securement method) without any impact on safety. A more detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to revise § 180.212(b)(2) to allow the machining of external threads on all seamless DOT specification 3AX, 3AAX, or 3T cylinder or a seamless UN pressure receptacle originally manufactured without external threads. Additionally, PHMSA is proposing to authorize the machining of neck threads or rethreading of UN pressure receptacles regardless of whether the receptacle is mounted in a MEGC.

C. Clarification of the Requirements for Certain Non-Liquefied Compressed Gases

In its petition (P-1717),⁶ FIBA requests that PHMSA consider an amendment to 49 CFR 173.302a(c) of the HMR for the special filling limits for DOT specification 3A, 3AX, 3AA, and 3AAX cylinders containing Division. 2.1 (flammable) gases. Final rule HM-233F⁷ adopted Department of Transportation Special Permit (DOT-SP) 6530⁸ into the HMR. This revision authorized the transportation in commerce of hydrogen and mixtures of hydrogen with helium, argon, or nitrogen in certain cylinders filled to 10 percent in excess of their marked service pressure. As part of the HM-233F final rule, PHMSA adopted safety control measures in paragraph (c)(3) of 49 CFR 173.302a instead of paragraph (c). In its petition, FIBA requests that PHMSA amend 49 CFR 173.302a(c)(3) to clarify that the requirements in 49 CFR 173.302a(c)(3)(i)–173.302a(c)(3)(ii) are independent provisions. FIBA asserts this proposed revision will accurately reflect the technical conditions associated with the design and manufactured properties of DOT specification 3A, 3AX, 3AA, and 3AAX cylinders.

⁶ P-1717—FIBA (PHMSA-2018-0075), <https://www.regulations.gov/docket/PHMSA-2018-0075>.

⁷ 81 FR 3635 (Jan. 21, 2016).

⁸ DOT SP-6530, <https://cms7.phmsa.dot.gov/approvals-and-permits/hazmat/file-serve/offer/SP6530.pdf/2018019065/SP6530>.

FIBA also submitted petition (P-1725)⁹ requesting further amendments to § 173.302a(c), concurrent with those requested in P-1717. Specifically, FIBA requests that the plus sign (+) be added following the test date marking on a DOT specification 3A, 3AX, 3AA, and 3AAX cylinder filled with hydrogen or mixtures of hydrogen with helium, argon, or nitrogen to signify that the cylinder may be filled to 10 percent in excess of its marked service pressure. Furthermore, the petition requests that cylinders qualifying for the special filling limit in § 173.302a(c) also be equipped with a pressure relief device (PRD) in accordance with CGA S-1.1 (2011), rather than the requirements in § 173.302a(c)(4), which could potentially conflict with each other. CGA S-1.1 prescribes standards for selecting the correct PRD to meet the requirements of § 173.301(f) for more than 150 gases. It also provides guidance on when a PRD can be optionally omitted and when its use is prohibited, as well as direction on PRD manufacturing, testing, operational parameters, and maintenance. At the time FIBA submitted P-1725, CGA S-1.1 (2011) had not been incorporated by reference into the HMR. Since then, the HM-234 final rule¹⁰ was published, which incorporated by reference CGA S-1.1 (2011) into the HMR and outlines the PRD requirements for cylinders filled with a gas and offered for transportation.

The plus sign marking (+) is associated with a commonly applied provision in the HMR that authorizes a DOT specification cylinder to be filled to 10 percent in excess of its marked service pressure. FIBA states that the plus sign marking (+) is an important means of communicating to cylinder refillers that a cylinder can be filled to 10 percent more than its marked service pressure and, thus, should be added to the special filling requirements in § 173.302a(c).

PHMSA conducted a technical review of the proposals in both petitions along with DOT-SP 6530 and the HM-233F final rule. After this review, PHMSA agrees with FIBA that the safety control measures within DOT-SP 6530 were independent provisions. PHMSA intended to adopt those provisions into the HMR as independent provisions and inadvertently adopted two of the safety controls in §§ 173.302(c)(3)(i) and (ii) as paragraphs of § 173.302a(c)(3). In addition, PHMSA concurs that the proposed revisions to require the plus

⁹ P-1725—FIBA (PHMSA-2018-0112), <https://www.regulations.gov/docket/PHMSA-2018-0112>.

¹⁰ 85 FR 85380 (Dec. 28, 2020).

sign (+) on DOT specification 3A, 3AX, 3AA, and 3AAX cylinders filled with hydrogen or mixtures of hydrogen with helium, argon, or nitrogen would improve the safety of filling these cylinders by providing clarity on the conditions for special filling limits and helping prevent the overfilling of unauthorized cylinders. Finally, PHMSA agrees that cylinders in hydrogen service that are filled to 10 percent in excess of its marked pressure should be equipped with a PRD that is selected as to type, location, and quantity, and tested in accordance with CGA S-1.1 in the same manner as is generally required for cylinders filled with a gas in accordance with § 173.301(f) instead of § 173.302a(c)(4). PHMSA determined that CGA S-1.1 provides much greater specificity than § 173.302a(c)(4) about the type of pressure relief device required for a particular gas service. Therefore, PHMSA proposes to remove the PRD requirements of 49 CFR 173.302a(c)(4) and instead require compliance with the PRD requirements of 49 CFR 173.301(f). This latter provision requires that, with certain exceptions, a cylinder filled with a gas and offered for transportation must be equipped with one or more PRDs sized and selected as to type, location, and quantity, and tested in accordance with CGA S-1.1.

The proposed amendments associated with P-1717 would provide greater clarity on requirements for cylinder design and manufacture, and would not represent any incremental, quantifiable safety effects because PHMSA already authorizes the transportation in commerce of hydrogen and mixtures of hydrogen with helium, argon, or nitrogen in certain cylinders filled to more than 10 percent of their marked service pressures. These proposed amendments would also not impose any new or incremental cost because they merely reorganize the regulations for clarity. Additionally, while the proposed amendments associated with P-1725 would create a new requirement, PHMSA anticipates the amendment would result in only minimal incremental costs to the industry, and impose only minimal, regulatory burden on small businesses or other entities. The additional request that the cylinders qualified for the special filling limit be equipped with pressure relief devices in accordance with CGA S-1.1 is not expected to add any additional cost on affected industries or entities. Currently, § 173.302a(c)(4) contains the same requirements as CGA S-1.1 and therefore the addition of the CGA S-1.1

requirement will not cause any new additional costs beyond those already accounted for previously. A more detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to revise § 173.302a(c) to reflect the safety provisions currently in § 173.302a(c)(3)(i) and (ii) as independent material construction requirements under paragraph (c) as new paragraphs (c)(4) and (5). Moreover, PHMSA proposes to add a requirement in § 173.302a(c)(7) to require the plus sign (+) following the test date marking to indicate compliance with paragraph (c) indicating that the cylinder is allowed to be filled to more than 10 percent of its marked service pressure. Lastly, PHMSA proposes to replace the PRD requirements—found in current § 173.302a(c)(4)—with a new § 173.302a(c)(6). The new provision would require that cylinders must be equipped with PRDs sized and selected as to type, location, and quantity and tested in accordance with CGA S-1.1 (2011) and § 173.301(f).

D. De Minimis Quantities of Poisonous Materials

In its petition (P-1718),¹¹ the Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) requests that PHMSA amend § 173.4b to harmonize the *de minimis* exceptions for Division 6.1, Packing Group (PG) I (no inhalation hazard) materials with international regulations, including the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI) and the International Maritime Dangerous Goods Code (IMDG Code). The *de minimis* exceptions in the HMR provide relief from the general requirements of the HMR for certain hazardous materials shipped in extremely small quantities. The maximum quantity allowed in order to utilize the *de minimis* exception per inner receptacle is 1 mL for authorized liquids and 1 g for authorized solids. Additionally, the aggregate quantity per package may not exceed 100 mL for liquids and 100 g for solids. The exception also requires cushioning and package testing requirements, along with specific provisions for certain materials.

International harmonization includes adopting changes in the HMR to improve regulatory consistency with international regulations and standards,

such as the IMDG Code, the ICAO TI, and the UN Recommendations on the Transport of Dangerous Goods—Model Regulations (UN Model Regulations). Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials. Safety is enhanced by creating a uniform framework for compliance. As the volume of hazardous materials transported in international commerce continues to grow, harmonization is increasingly important. Moreover, the Federal Hazardous Materials Transportation Law (49 U.S.C. 5101 *et seq.*) directs PHMSA to participate in relevant international standard-setting bodies and promotes consistency of the HMR with international transport standards to the extent practicable.

The exceptions in the HMR for *de minimis* quantities were initially adopted in the HM-224D/HM-215J final rule¹² in § 173.4b of the HMR and were intended to align with the provisions for *de minimis* exceptions found in the ICAO Technical Instructions and IMDG Code. However, HM-224D/HM-215J addressed exceptions for *de minimis* quantities of only Division 6.1, PG II and PG III hazardous materials. As noted in the PHMSA Letter of Interpretation (LOI) reference number (Ref. No.) 17-0138,¹³ PHMSA considered exceptions for *de minimis* quantities of only Division 6.1, PG II and PG III hazardous materials in response to a petition for rulemaking. PHMSA now proposes harmonizing the *de minimis* provisions for Division 6.1, PG I (no inhalation hazard) materials with the ICAO TI or IMDG Code in this NPRM, in response to COSTHA's petition.

The COSTHA petition to harmonize the scope of the applicability of the *de minimis* exceptions with international standards by including Division 6.1, PG I materials (no inhalation hazard) would except *de minimis* shipments from the hazardous communication requirements otherwise associated with these shipments. A technical review of this petition found the inclusion of *de minimis* quantities for Division 6.1, PG I (no inhalation hazard) materials into the international regulations can be traced back to working paper ST/SG/AC.10/C.3/2009/45,¹⁴ which was submitted by the United States. Based

¹² 74 FR 2200 (Jan. 14, 2009).

¹³ PHMSA LOI 17-0138, <https://www.phmsa.dot.gov/regulations/title49/interp/17-0138>.

¹⁴ Working paper ST/SG/AC.10/C.3/2009/45, <https://unece.org/DAM/trans/doc/2009/ac10c3/ST-SG-AC10-C3-2009-45e.pdf>.

¹¹ P-1718—COSTHA (PHMSA-2018-0077), <https://www.regulations.gov/docket/PHMSA-2018-0077>.

on the review of this working paper, PHMSA asserts that Division 6.1, PG I (no inhalation hazard) materials should be included as part of the *de minimis* exception.

The primary concern regarding the transportation of a Division 6.1, PG I (no inhalation hazard) material is leakage from a package and potential human exposure. A leak of such a material poses a risk to human health by poisoning. To counter these concerns, this hazard is mitigated by the conditions for transportation in the *de minimis* exceptions, namely, imposing limitations on the quantities allowed to 1 mL or 1 g per inner receptacle. In addition, 49 CFR 173.4b requires that inner receptacles have removable closures sealed by wire, tape, or other positive means (see § 173.4b(a)(2)), which limits the possibility for leakage. Furthermore, a Division 6.1 PG I material that does not pose an inhalation hazard equally poses no vaporization risk should the package rupture. Lastly, *de minimis* packages are required to have cushioning and absorbent material that are not reactive with the hazardous material and can absorb the entirety of the package's contents if the receptacle ruptures. These requirements severely limit the risk of exposure presented by transportation of these materials.

While maintaining safety as described in the prior paragraph, the proposed harmonization would not impose any direct costs on industry and could provide cost savings to shippers by providing the option to ship Division 6.1, PG I (no inhalation hazard) materials under the *de minimis* provisions that provide alternative communication and packaging requirements associated with the preparation of these packages. In total, PHMSA estimates that the proposal would result in cost savings of approximately \$160,000 annually. A more detailed discussion of the economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, upon review of the COSTHA petition to revise the *de minimis* quantities exception to include Division 6.1, PG I materials (no inhalation hazard), PHMSA proposes to revise § 173.4b to include Division 6.1, PG I materials (no inhalation hazard) to the list of authorized materials in § 173.4b(a) PHMSA expects expanding the *de minimis* exceptions to Division 6.1, PG I materials (no inhalation hazard) to maintain the safety of transportation of hazardous materials and provide cost savings through alternative packaging options.

E. Clarification of the Marking Requirements for Button Cell Lithium Batteries Contained in Equipment

In its petition (P-1726),¹⁵ COSTHA requests that PHMSA amend 49 CFR 173.185(c)(3) to clarify that lithium button cell batteries installed in equipment are excepted from the marking requirement and not subject to the quantity per package or per consignment limitation. Currently, § 173.185(c)(3) states that, "Each package must display the lithium battery mark except when a package contains button cell batteries installed in equipment (including circuit boards), or no more than four lithium cells or two lithium batteries contained in equipment, where there are not more than two packages in the consignment." In its petition, COSTHA asserts that the language and grammar used to convey the exception from display of the lithium battery mark has led some in industry to interpret the exception for button cell batteries to be dependent on the number of cells in a package or the number of packages in the consignment. Industry has made several requests for letters of interpretation—12-0261,¹⁶ 14-0013,¹⁷ 15-0171,¹⁸ and 16-0172¹⁹—which illustrates the confusion within the regulated community.

PHMSA published final rule HM-224F²⁰ to revise the HMR applicable to the transport of lithium cells and batteries, consistent with the UN Model Regulations, the ICAO Technical Instructions, and the IMDG Code. As part of final rule HM-224F, PHMSA consolidated the requirements for shipping and transporting lithium cells and batteries into § 173.185 by:

- Requiring cells and batteries to be tested in accordance with the latest revisions to the UN Manual of Tests and Criteria and requiring manufacturers to retain evidence of successful completion of UN testing.
- Eliminating the exceptions for small cells and batteries in air transportation,

except with respect to extremely small cells packed with or contained in equipment.

- Providing relief for (1) the shipment of low production run and prototype batteries and, (2) batteries being shipped for recycling or disposal.

In its petition, COSTHA presents grammatical and typographical changes to § 173.185(c)(3) to clarify the applicability of the lithium battery mark exception for button cell batteries installed in equipment. Consistent with the petition, PHMSA proposes revisions that clarify the exception in § 173.185(c)(3) applies when a package contains only button cell batteries installed in equipment; or when there is a consignment consisting of two packages or less, and each package contains no more than four lithium cells or two batteries installed in equipment.

This proposed change to the HMR is neither expected to result in a cost to industry nor a change to the safety requirements for packages containing lithium button cell batteries contained in equipment. The proposed revision simply clarifies how the exception is applied for better understanding by the reader. Since PHMSA already authorizes this lithium battery mark exception, the proposed change would not represent a quantifiable safety effect. Qualitatively, improved regulatory clarity will assist the regulated community in complying with the requirement and properly exercising the exception. Some entities were reasonably confused by the current text and applied the required mark unnecessarily. To the extent this occurred, the proposed revision could provide economic benefit while maintaining safety. PHMSA believes there is limited risk in excepting packages of button cell lithium batteries installed in equipment from the lithium battery mark. A more detailed discussion of the economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to revise the introductory language in 49 CFR 173.185(c)(3) to clarify that lithium button cell batteries installed in equipment are not subject to any quantity per package or consignment limitations when applying the exception.

F. Incorporate by Reference CGA C-20 (2014)

In its petition (P-1727),²¹ CGA requests that PHMSA incorporate by

¹⁵ P-1726—COSTHA (PHMSA-2019-0002), <https://www.regulations.gov/docket/PHMSA-2019-0002>.

¹⁶ PHMSA LOI 12-0261; <https://cms7.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretations/2012/120261.pdf>.

¹⁷ PHMSA LOI 14-0013; <https://cms7.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretation%20Files/2014/140013.pdf>.

¹⁸ PHMSA LOI 15-0171; <https://cms7.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretation%20Files/2016/150171.pdf>.

¹⁹ PHMSA LOI 16-0172; <https://cms7.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretation%20Files/2017/160172.pdf>.

²⁰ 79 FR 46011 (August 6, 2014).

²¹ P-1727—CGA (PHMSA-2019-0007), <https://www.regulations.gov/docket/PHMSA-2019-0017>.

reference CGA C-20 (2014), "Requalification Standard for Metallic, DOT and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination, Second Edition." CGA also proposes to revise § 180.205 to reflect the ultrasonic examination (UE) methods authorized by CGA C-20. CGA C-20 are an industry standard for the periodic requalification of certain metallic DOT and Transport Canada (TC) 3-series cylinders and tubes. CGA asserts that the incorporation by reference of CGA C-20 would eliminate the need for many special permits that authorize the use of UE methods and would harmonize the various UE methods to requalify these pressure receptacles. CGA further asserts that this standard would establish a uniform set of techniques, uniform acceptance and rejection criteria, and a standard calibration method used during the requalification process of these 3-series gas cylinders and tubes, in contrast to the current special permits, which vary on the requirements associated with use of the UE nondestructive testing methodology for requalification. Finally, the petition asserts that the incorporation by reference of CGA C-20 would enhance public safety by clarifying and mandating consistent requalification practices using UE throughout the gas industry.

CGA C-20 identifies and describes the various acceptable UE methods that may be used in place of the baseline HMR requirements (e.g., internal visual inspection and hydrostatic requalification methods) used to examine certain metallic DOT/TC 3-series gas cylinders and tubes. This standard also specifies the allowable flaw acceptance/rejection criteria.

Under the HMR, requalification periods for DOT/TC 3-series specification cylinders range from three to 12 years, depending on the specification under which each cylinder was made (e.g., 3, 3AA, etc.). Periodic requalification ensures the safety of cylinders by checking for leaks and damage that might threaten the integrity of a cylinder. Cylinders are requalified using volumetric expansion testing, proof pressure testing, and external and internal visual inspections. Currently, special permits are required to use UE in lieu of the requalification requirements in § 180.205.

CGA notes that the increased use of UE necessitates clear and consistent instruction in the application of this technical method, as well as the adherence to proper calibration and acceptance/rejection criteria. CGA asserts that the proposed modifications ensure that this requalification method

is applied consistently to safeguard cylinder serviceability.

PHMSA participated in the task force meetings, provided technical assistance during the development of CGA C-20, and completed a technical review of the final standard. PHMSA's technical review determined that the CGA C-20 standard will positively impact safety by prescribing appropriate procedures for applying UE as the requalification method for DOT/TC 3-series cylinders and tubes.

The total cost savings for industry regarding requalification using CGA C-20 is based on the number of active special permits and the costs associated with periodic renewal of the special permit. We estimate average annual industry cost savings of \$14,613 due to companies no longer being required to apply for a special permit. A more detailed discussion of the economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

PHMSA also proposes to revise 49 CFR 180.205(i) to state that when a cylinder containing hazardous materials is condemned, the requalifier must stamp the cylinder "CONDEMNED" and affix a readily visible label on the cylinder stating: "UN REJECTED, RETURNING TO ORIGIN FOR PROPER DISPOSITION." PHMSA also is clarifying that the requalifier may only transport the condemned cylinder by private motor vehicle carriage to a facility capable of safely removing the contents of the cylinder. PHMSA also notes the publication of the third edition of CGA-20 in 2021 and solicits comment regarding whether this rulemaking should consider incorporating by reference the 2021 edition rather than the 2014 edition. Therefore, PHMSA proposes to add a reference to CGA C-20, "Methods For Ultrasonic Examination Of Metallic, DOT And TC 3-Series Gas Cylinders And Tubes, Second Edition" in 49 CFR 171.7 and revise 49 CFR 180.205 to reflect the UE methods authorized by CGA C-20.

G. Gas Mixtures Containing Components Defined as Liquefied Gases

In its petition (P-1728),²² CGA proposes that PHMSA authorize an alternative description of gas mixtures containing components defined as liquefied gases. The CGA petition would revise the HMR to allow for a gas mixture with components that meet the definition of liquefied compressed gas in § 173.115(e) to be described as a

"compressed gas" when the partial pressures of the liquefied gas components of the mixture are intentionally reduced so that liquefaction does not occur at 20 °C (68 °F). CGA requests in its petition that special provisions be added to Column 7 in the § 172.101 Hazardous Material Table (HMT) applicable to liquefied gas mixtures.

Some compressed gas mixtures contain components that when shipped in their pure form would be considered a liquefied gas. However, when the gas is in a mixture, it can be manipulated to be entirely gaseous at its intended use temperature of 20 °C (68 °F) by reducing the components' partial pressures. Partial pressure is the pressure that would be exerted by one of the gases in a mixture if it occupied the same volume on its own. The sum of all components' partial pressures equals the total pressure of the mixture. Therefore, partial pressure can be lowered by lowering pressure generally (e.g., by lowering temperatures or increasing volume) or altering the ratio of gases in the mixture.

PHMSA conducted a technical review of this petition and agrees with CGA that when the gas is in a mixture, it can be manipulated to be entirely gaseous at its intended use temperature of 20 °C (68 °F) by reducing the components' partial pressures. PHMSA notes that during transportation, the gas mixture or its components may partially liquefy, forming condensation on the container wall, if ambient temperatures are lower than 20 °C (68 °F), but still above -50 °C (-58 °F). When the mixture returns to its use temperature, the condensation will transform back to the gaseous state. There are scenarios where a gas mixture might contain a component that meets the definition of a liquefied compressed gas, and under small temperature changes, a cloud or condensation could build up inside the cylinder. This could lead to the "liquefied compressed gas" description potentially misrepresenting the cylinder's contents to first responders and end users. Moreover, while CGA does not cite a safety concern with the current requirements under the HMR, they do note that there can be confusion among stakeholders when the content of a cylinder is described as a liquefied compressed gas but resembles a non-liquefied compressed gas during transportation and use. Thus, PHMSA has determined that the proposed change is safety neutral or slightly improves safety. However, PHMSA disagrees with the CGA petition to use a special provision to allow for the description of a gas mixture with components that meet the

²² P-1728—CGA (PHMSA-2019-0018), <https://www.regulations.gov/docket/PHMSA-2019-0018>.

definition of liquefied compressed gas to be described as a “compressed gas.” Instead, PHMSA believes that the most appropriate change is to amend the definition of a non-liquefied compressed gas in § 173.115(e), as revising the regulatory text provides a clearer connection for all stakeholders who ship these gases. Nonetheless, PHMSA appreciates any comments on this proposal.

This revision to the HMR is not expected to result in any cost to industry or impose any regulatory burden on small businesses. Given that industries already must describe shipments of these materials on a shipping paper and communicate information about the material and the hazard on the package, there would be little to no cost on entities to change the hazard communication. A more detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to allow certain mixtures of gas with component(s) considered liquefied gas in accordance with 49 CFR 173.115(e) to be described as a “compressed gas” and considered a non-liquefied gas in accordance with § 173.115(d). PHMSA proposes to revise § 173.115(e) to clarify that gas mixtures with component(s) considered liquefied gases may be described using the appropriate hazardous materials description of a non-liquefied compressed gas in 49 CFR 172.101 HMT when the partial pressure(s) of the liquefied gas component(s) in the mixture are reduced so that the mixture is entirely in the gas phase at 20°C (68°F).

H. Incorporate by Reference CGA C-23 (2018)

In its petition (P-1729),²³ CGA proposes that PHMSA incorporate by reference CGA C-23 (2018), “Standard for Inspection of DOT/TC 3 series and ISO 11120 Tube Neck Mounting Surfaces, Second Edition” into 49 CFR 171.7 of the HMR. CGA also proposes that PHMSA revise 49 CFR 180.205 and 180.207 to reference the requirements in CGA C-23. CGA C-23 defines a tube as a seamless pressure vessel authorized for transportation only when horizontally mounted on a motor vehicle or in an International Organization for Standardization (ISO) framework. Tube modules are also commonly known as skid containers, ISO skids, ISO containers, or multiple-element gas containers (MEGCs). Sections 180.205 and 180.207 outline

the general requirements for the requalification of specification cylinders and UN pressure receptacles. The CGA petition would require all requalifiers of tube trailers, skid containers, or MEGCs to periodically disassemble equipment and perform an examination of tube neck mounting surfaces in accordance with CGA C-23.

These tubes are typically mounted to a semitrailer by engaging the threaded surface on either end of the tube with flanges built into the bulkheads located on opposing ends of the trailer. Although secured in place, these mounting points support the full weight of the tube and during transportation are subjected to jostling, temperature changes and all the dynamic forces associated with the acceleration/deceleration of the transport vehicle. Consequently, the constant motion and wear between the tube’s threaded mounting surfaces and the flanges causes, over time, the deterioration of the mounting threads. This deterioration necessitates the periodic disassembly of the tubes from the trailer to inspect them. Therefore, CGA C-23 provides instructions on how to inspect and evaluate DOT/TC 3-Series and ISO 11120 tubes that are 12 ft (3.7 m) or longer, have an outside diameter greater than or equal to 18 inches (457 mm), and are supported by a neck mounting surface. In addition, CGA C-23 provides methods to assess the integrity of tube necks, including but not limited to damage to mounting threads or to pin or set screw marks, as well as other damage. The assessment as outlined in C-23 provides a method for the identification of rejected tubes so that they can be removed from service, thereby improving the safe transportation of these horizontally-mounted cylinder types.

CGA C-23 was developed in response to an incident where a DOT specification 3AAX cylinder was ejected from a semitrailer and ruptured upon initial impact with the roadway. CGA determined that the root cause of the ejection, which contributed to the severity of the incident, was the condition of the connection between the tube neck and flange. CGA asserts that CGA C-23 will enhance the inspection process to include the inspection of the tube mounting and replacement of flanges.

The HMR currently do not reference CGA C-23, but PHMSA references the standard as a safety control in DOT special permits, such as DOT SP-

14206.²⁴ These special permits allow for the requalification of DOT specification cylinders and UN tubes by UE or acoustic emission testing (AET), with a follow-up UE instead of the hydrostatic test currently required under the HMR. These methods are used to ensure the cylinders and tubes remain qualified for hazardous materials service. Moreover, the UE and AET methods are non-destructive methods of examination, that are alternatives to the hydrostatic method. Additionally, the HMR do not require periodic inspection and evaluation of the tube neck mounting surfaces. The CGA petition would enhance transportation safety of these larger cylinders and tubes by including inspection of the tube mounting threads as part of the requalification process.

The proposed new language from CGA would require both specification DOT 3-series and UN tubes that are 12 feet or longer, with an outside diameter greater than or equal to 18 inches and supported by the neck mounting surface during transportation in commerce, to be inspected at least every 10 years in accordance with CGA C-23. CGA also proposes new language in 49 CFR 180.205(d) and 180.207(d) to require DOT 3-series and UN tubes that show evidence of corrosion to the neck threads to be removed and examined in accordance with CGA C-23 before being rejected or returned to service.

PHMSA conducted a technical review of the CGA petition and determined that the incorporation by reference of CGA C-23 will enhance safety by implementing a periodic inspection of the mounting of these tubes. Moreover, the requirements of CGA C-23 are consistent with the safety controls referenced in DOT-SP 14206. There are also improvements offered by the CGA C-23 standard versus the procedures outlined in DOT-SP 14206, such as a table that contains specific dimensional values for use in defining acceptance criteria for tubes with local thin areas (LTA). However, PHMSA found the CGA proposals in §§ 180.205(d)(5) and 180.207(d)(1)(iii) requiring the disassembly of the tube module when visible corrosion in the neck region is present to be too vague. Therefore, PHMSA is referencing the figures and descriptions provided in Section 4.2 of the CGA C-23 standard for extreme neck thread wear conditions in §§ 180.205(d)(5) and 180.207(d)(1)(iii) to clarify conditions when disassembly of the tube module is required.

²³ P-1729—CGA (PHMSA-2019-0059), <https://www.regulations.gov/docket/PHMSA-2019-0059>.

²⁴ DOT SP-14206, <https://www.phmsa.dot.gov/approvals-and-permits/hazmat/file-serve/offer/SP14206.pdf/offerserver/SP14206>.

PHMSA has determined that incorporating by reference CGA C-23 into the HMR would enhance safety for industry and stakeholders by codifying the tube neck thread inspection procedures. PHMSA estimates there will be a one-time cost for industry participants to purchase the CGA C-23 standard. With respect to inspections, there may be some minimal administrative costs associated with special permit holders' permits to reflect the codification of CGA C-23-2018 into the code, but these special permit holders should have been following the requirements of CGA C-23-2018 already. A more detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to revise 49 CFR 171.7 to incorporate by reference CGA C-23 "Standard for Inspection of DOT/TC 3-Series and ISO 11120 Tube Neck Mounting Surfaces, 2nd Edition." PHMSA also proposes to add 49 CFR 180.205(c)(5) to state that DOT 3-series cylinders horizontally mounted on a motor vehicle or in a framework, and longer than 12 feet shall be inspected in accordance with CGA C-23 every 10 years; and add 49 CFR 180.205(d)(5) to specify conditions (as outlined in Section 4.2 of CGA C-23) requiring removal and inspection in accordance with CGA C-23. The current 49 CFR 180.205(d)(5) requiring testing and inspection if the Associate Administrator determines that the cylinder may be in an unsafe condition is renumbered as paragraph (d)(6). PHMSA is also proposing to revise 49 CFR 180.205(i)(2)(i)(C) to state that the qualifier must stamp the cylinder "CONDEMNED" and affix a readily visible label on the cylinder stating: "UN REJECTED, RETURNING TO ORIGIN FOR PROPER DISPOSITION" for a condemned cylinder contains hazardous materials. The qualifier may only transport the condemned cylinder by private motor vehicle carriage to a facility capable of safely removing the contents of the cylinder. Finally, PHMSA proposes to add 49 CFR 180.207(d)(1)(ii) to state that steel UN tubes horizontally mounted on a motor vehicle or in a framework, and longer than 12 feet shall be inspected in accordance with CGA C-23 every 10 years; and to specify conditions (as outlined in Section 4.2 of CGA C-23) requiring removal and inspection in accordance with Section 6 of CGA C-23. (The text at the current 49 CFR 180.207(d)(1) would be renumbered as paragraph (d)(1)(i)).

I. Incorporate by Reference IME Safety Library Publication 23 (SLP-23)

In its petition (P-1731),²⁵ the IME proposes that PHMSA incorporate by reference an updated version of IME SLP-23 (2021), titled "Recommendations for the Transportation of Explosives, Division 1.5; Ammonium Nitrate Emulsions, Division 5.1; and Combustible Liquids in Bulk Packaging." IME states that these revisions and improvements to the standard reflect technological advances and best practices in the industry that will maintain a high level of safety.

SLP-23 (2021) outlines the requirements for transporting certain explosives and ammonium nitrate emulsions, classified as oxidizers, to ensure their safe and efficient transport in bulk packagings by highway, vessel, and rail. These bulk packagings can either be DOT specification or non-DOT specification packagings (e.g., cargo tanks or portable tanks) adapted to accommodate the physical and chemical properties of the bulk explosives, oxidizers, or fuel oil transported. SLP-23 (2021) makes several non-substantive changes and editorial clarifications from the previous publication. Non-substantive changes include changing the structure of SLP-23 to read more consistently with the HMR and editorial revisions.

Substantive changes to SLP-23 (2021) include:

- Deletion of the Vented Pipe Test (VPT) in Appendix A.

Currently, SLP-23 (2011) requires both bulk Division 1.5 explosives and Division 5.1 ammonium nitrate emulsions to pass the VPT. The proposed updated SLP-23 removes the VPT test for these materials. IME asserts that the VPT is not applicable to Division 5.1 and Division 1.5 materials and adds that as outlined in portable tank instruction TP 32 (applicable to UN0331, UN0332, and UN3377 materials), the VPT is required only to demonstrate suitability for containment in tanks as an oxidizer for ammonium nitrate-based emulsions (ANEs) classified as Division 5.1, UN3375. Additionally, IME notes that a significant change to the requirements applicable to the testing of ANEs was approved by the UN Sub-Committee of Experts on the Transport of Dangerous Goods at its 54th Session (Nov/Dec 2018). Under the new testing regime, acceptance criteria will require passing either test series 8(a), 8(b), and 8(c), or if the substance fails the 8(c) test (*i.e.*, the "Koenen Test") and the substance

had a time to reaction in that test longer than 60 seconds and a water content greater than 14 percent, the material would be required to pass test series 8(a), 8(b), and 8(e). Test 8(e) is the Minimum Burning Pressure test (MBP). IME noted that industry is currently gathering data to determine whether use of the MBP test obviates the need for the VPT because, in essence, the VPT is a scaled-up Koenen Test and, therefore, has the same limitations associated with extended time of heating.

- Allowing operators to continually monitor driver qualifications and training instead of conducting an annual audit, as currently required in SLP-23 (2011).

IME notes that the current requirement for an "annual audit" is inadequate to ensure that driver qualification and training programs are comprehensive, effective, and being implemented properly. IME believes that limiting oversight of the program to an annual audit provides less assurance that operators are compliant than would a requirement to continually monitor the driver qualification program.

In addition, IME requests revisions to the HMR that coincide with the incorporation by reference of SLP-23 (2021). IME requests the adoption of DOT-SP 8723, which authorizes "UN0332, Explosive, Blasting, type E," "UN3375, Ammonium nitrate emulsion," and "UN3139, Oxidizing liquid n.o.s. (PG II)" to be transported in IM 101 and 102 portable tanks. IME explains that continuing to operate under DOT-SP 8723 imposes additional administrative costs to both industry and PHMSA and that one of the advantages of incorporating by reference SLP-23 (2011) into the HMR was the elimination of SPs governing bulk transportation of certain materials manufactured and used by the commercial explosives industry. IME asserts that failure to include the provisions from DOT-SP 8723 was an oversight when SLP-23 (2011) was originally incorporated by reference into the HMR. In addition to the administrative cost savings noted above, IME adds that the conversion of SPs into regulations provides certainty to the regulated community and increases transparency for government, stakeholders, and the public. IME proposes that TP codes be assigned to "UN0332, Explosive, blasting, type E," "UN3375, Ammonium nitrate emulsion," and "UN3139, Oxidizing liquid, n.o.s., PG II" to authorize the use of IM 101 and 102 portable tanks when transported under SLP-23 (2021). Lastly, IME proposes a revision to § 173.251 to state that this section is not

²⁵ P-1731—IME (PHMSA-2019-0062), <https://www.regulations.gov/docket/PHMSA-2019-0062>.

applicable when UN3375 is transported in IM 101 or 102 portable tanks in accordance with SLP-23 (2021).

PHMSA conducted a technical review of the revisions to SLP-23 (2021) and concurs with IME that most of the changes in IME SLP-23 (2021) are either non-substantive or editorial in nature. PHMSA does not believe, however, that sufficient data was provided by IME to no longer require the VPT for Division 1.5 blasting explosives and Division 5.1 ANEs when transported in bulk. While it is true that the UN Subcommittee has discussed whether the VPT is beneficial for ANEs when transported in bulk, the discussions are still in preliminary stages and pending further review by the UN Subcommittee. If these provisions are adopted by the UN, PHMSA may consider changes to VPT requirements in a future international harmonization rulemaking. Additionally, if data can be provided in response to this NPRM that demonstrate that the VPT is no longer needed for these materials, PHMSA can consider such data in the development of the final rule. In this NPRM, PHMSA proposes to retain the requirement that Division 1.5 blasting explosives and Division 5.1 ANEs are subject to the VPT, and we have proposed to add a reference to the UN Test Series 8(d) in 49 CFR 171.7(dd)(5) and 172.102(c)(1), SP 148.

PHMSA also concurs with IME that an annual audit is inadequate to ensure that driver qualification and training programs are comprehensive, effective, and being implemented properly. A continual monitoring program better ensures compliance with the driver qualification requirements. While the timing of the oversight of requirements would change—*i.e.*, continuous monitoring instead of an annual audit—the current elements of the qualification and training program would remain unchanged.

Lastly, PHMSA concurs that there is sufficient merit to adopt the provisions of DOT-SP 8723 to authorize “UN0332, Explosive, blasting, type E,” “UN3375, Ammonium nitrate emulsion,” and “UN3139, Oxidizing liquid, n.o.s., PG II” to be transported in IM 101 and 102 portable tanks when shipped under SLP-23 (2021). This would include a conforming revision to indicate that 49 CFR 173.251 does not apply when UN3375 material is transported in IM 101 or 102 portable tanks in accordance with SLP-23. PHMSA has determined that these revisions would maintain the safety of bulk transport of these materials because the SLP-23 (2011) standard currently incorporated by reference already authorizes larger bulk

quantities consistent with the hazardous material offered in accordance with DOT-SP 8723 and has a safety record of use for 10 years.

PHMSA expects the changes proposed by IME in this petition to streamline regulatory requirements without a negative impact on safety. PHMSA quantified the effects of removing the administrative requirements of applying for a special permit and estimates the average annual cost savings to be \$6,120 per year. There are several other effects of this proposal that may result in costs, cost savings, and benefits, but these results are less certain and are described qualitatively. A more detailed discussion of the economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

PHMSA asserts that the incorporation by reference of SLP-23 (2021) will enhance safety by adopting technological advances and best practices used in the bulk explosives industry. PHMSA proposes to incorporate by reference of SLP-23 (2021), “Recommendations for the Transportation of Explosives, Division 1.5; Ammonium Nitrate Emulsions, Division 5.1; and Combustible Liquids in Bulk Packaging” into 49 CFR 171.7(r)(2) and replace the 2011 edition currently in the HMR. PHMSA also proposes to revise special provision 148 to clearly state that the VPT requirements in SLP-23 (2011) would still apply. PHMSA also proposes to add new special provision TP48 to 49 CFR 172.102(c)(8) to authorize the use of IM 101 and 102 portable tanks for ANEs when transported under SLP-23 (2021). PHMSA proposes to assign TP48 to the following UN numbers in 49 CFR 172.102 of the HMT: “UN0332, Explosive, blasting, type E,” “UN3375, Ammonium nitrate emulsion,” and “UN3139, Oxidizing liquid, n.o.s., PG II.” Lastly, PHMSA proposes to revise 49 CFR 173.251 to state that this section is not applicable when “UN3375, Ammonium nitrate emulsion” is transported in IM 101 or 102 portable tanks in accordance with SLP-23 (2021).

J. Revision of Testing and Marking of UN Specification Packagings

In its petition (P-1732),²⁶ the Sporting Arms and Ammunition Manufacturers’ Institute, Inc. (SAAMI) proposes that PHMSA amend 49 CFR 178.503(a)(6) by allowing UN performance-oriented boxes (*e.g.*, UN 4A, 4B, or 4N for steel, aluminum, or other metal boxes,

respectively) to be marked with the last two digits of the year of testing certification rather than the last two digits for year of manufacture. Additionally, the SAAMI petition proposes to add an additional selective testing variation in 49 CFR 178.601(g) to allow for variation of packagings that include articles containing solid hazardous materials, packed in inner packagings without further testing, subject to certain conditions. SAAMI requests that this variation also allow for an increase in dimensions of the outer packaging of the combination packaging based on the tested design type. Lastly, the SAAMI petition proposes to revise the frequency of periodic retesting for combination packagings in 49 CFR 178.601 from 24 months to 60 months. PHMSA needs more time to evaluate this final proposal and therefore it is not proposing the amendment in this rulemaking. However, PHMSA may consider this proposal in a future rulemaking.

With regard to the marking proposal, the marking requirements in 49 CFR 178.503(a)(6) currently require packages to be marked with the last two digits of the year of manufacture. SAAMI asserts that the year of manufacture is meant to tie the packaging to a specific certification (*i.e.*, tied to design qualification testing and periodic retesting to a UN standard). SAAMI asserts that while the date of manufacture is informative, this degree of specificity is not necessary for safety or enforcement purposes. SAAMI adds that because the retesting of the design type occurs every two years,²⁷ industries incur costs to change the year of manufacture marking on packagings that are still being produced under the same design test. (PHMSA notes that this conclusion is based on the presumption that manufacturers of combination packagings are operating at the minimum test frequency of retesting every 24 months.) SAAMI asserts that allowing marking of the last two digits of the year of packaging certification on packagings is considered an acceptable substitute to the current regulatory requirement in 49 CFR 178.503(a)(6) and eliminates the need to change printing plates annually.

PHMSA conducted a technical review of the proposal to authorize boxes marked with the last two digits of the year of testing certification marked rather than the year of manufacture. PHMSA believes that this proposal will

²⁶ P-1732—SAAMI (PHMSA-2019-0069), <https://www.regulations.gov/docket/PHMSA-2019-0069>.

²⁷ The periodic retest requirements for combination packagings call for conducting design qualification retesting at least once every 24 months. See § 178.601(e).

maintain the current safety standard for these packaging types. PHMSA has determined, consistent with SAAMI's petition, that the only likely effect of the proposed revision is that packaging manufacturers that periodically retest packagings less frequently than annually would not need to update printing plates annually, and instead would only need to update plates biennially, resulting in a small reduction in regulatory burden.

With regard to the selective testing variation proposal, 49 CFR 178.601 contains the general requirements for the testing of non-bulk UN performance-oriented packagings and packages. Specifically, 49 CFR 178.601(g) contains packaging variations that allow for the selective testing of packagings that differ only in minor respects from a tested design type. SAAMI proposes in its petition to create an additional packaging variation under 49 CFR 178.601(g) to include small arms ammunition—specifically, “Cartridges for weapons, inert projectile(s) or blank (UN0012 and UN0014); Primers, cap type (UN0044); and Cases, cartridge, empty with primer (UN0055)—packed in inner packages.” Specifically, SAAMI proposes allowing inner packagings of ammunition to be assembled and transported without packaging testing, provided that the outer packaging of a combination package of articles successfully passes the tests in accordance with 49 CFR 178.603 and 178.606. Additionally, the SAAMI petition proposes for the packaging variation to allow for larger packages to use the certification of a smaller tested package.

PHMSA conducted a technical review of the SAAMI proposal for a new selective testing variation to allow for limited testing of combination packagings for small arms ammunition and components. PHMSA concurs with the proposal to allow for a variation in combination packagings used for materials classified as UN0012, UN0014, UN0044, and UN0055 without further testing. PHMSA has determined that allowing for a variation in the packagings used to ship UN0012, UN0014, UN0044, and UN0055 will not lead to a reduction in safety because PHMSA does not expect this minor package variation to affect the performance of the package. PHMSA does not, however, propose to adopt the SAAMI proposal to allow for an increase in external dimensions of the outer package (*i.e.*, allow larger packages) based on the tested design type. This proposal is novel to the extent that no current packaging variation in 49 CFR 178.601(g) of the

HMR allows for an increase in size of a packaging from a tested design type and SAAMI did not provide a safety justification to support such a change. Without this additional data, PHMSA cannot make a determination that increasing the size of a package from a tested design type will not lead to a decrease in safety.

PHMSA conducted an economic evaluation of the proposal to amend § 178.503(a)(6) to allow the year of test certification to be marked on specification boxes instead of the month and year of manufacture. For this proposal, PHMSA estimated annualized cost savings of approximately \$150,000. PHMSA also conducted an economic evaluation of the proposal to amend § 178.601(g) to allow specified inner packagings to be assembled and transported without testing under certain conditions. For this proposal, PHMSA estimates annualized cost savings of approximately \$750,000 if this proposal were to be adopted. Together, PHMSA estimates that these two proposals will yield an annualized cost savings of \$900,000. A more detailed discussion of the economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to amend § 178.503(a)(6) to allow adding the last two digits of the year of certification be marked on type 4 packagings as an alternative to the year of manufacture. In addition, PHMSA proposes a new packaging variation in § 178.601(g)(6) to authorize selective testing of packagings containing “Cartridges for weapons, inert projectile(s) or blank (UN0012 and UN0014); Primers, cap type (UN0044); and Cases, cartridge, empty with primer (UN0055).” Inner packagings intended to contain these materials may be assembled and transported without testing provided that the outer packaging of a combination packaging successfully passes the tests in accordance with 49 CFR 178.603 and 178.606, and the gross mass does not exceed that of the tested type. Further, PHMSA solicits comment on whether this testing variation should be expanded to other types of articles containing solid hazardous materials, such as fireworks. PHMSA asks that comments include the associated cost savings of any such expansion.

K. Authorizing Smaller Combustible Placard on IBCs

In its petition (P–1734),²⁸ Evonik proposes that PHMSA revise 49 CFR

172.514(c) by adding an option for smaller placards for intermediate bulk containers (IBCs) carrying combustible liquids by adopting the provisions in DOT–SP 16295²⁹ into the HMR. This would allow shippers to transport IBCs containing combustible liquids (NA1993) bearing a combustible placard sized to be consistent with the label size specifications in 49 CFR 172.407(c). Section 172.407(c) requires diamond shaped labels to be at least 100 mm (3.9 inches) on each side.

The HMR requires placards to be at least 250 mm (9.84 inches) on each side. Section 172.514(c) prescribes the exceptions for placarding bulk packages. Specifically, paragraph (c)(4) authorizes IBCs to be labeled in accordance with part 172, subpart E. However, IBCs transporting combustible liquids do not qualify for that exception because there is no authorized label for combustible liquids.

Evonik states in its petition that a smaller-sized combustible placard would allow for more space for proper placarding and marking placement due to the commonly limited space available to display hazard information on the IBC side plates and panels. Moreover, Evonik states that a smaller placard provides a level of safety equivalent to the requirements in 49 CFR 172.514(c)(4), where an IBC is authorized to be labeled instead of placarded (*e.g.*, flammable labels vs. flammable placards), and in 49 CFR 172.406(e)(6), where duplicate labels are not required on two sides or two ends of an IBC with a volume of 1.8 m³ (64 cubic feet) or less (approximately 478 gallons). Because these exceptions are allowed for hazardous materials considered to pose greater danger than combustible liquids, Evonik asserts the reduction in size for combustible placards will maintain a safe level of hazard communication for transport of combustible liquids in IBCs.

While this proposal is not technical in nature, PHMSA concludes that—from a policy and safety perspective—this amendment does not change the safety requirements for the transportation of an IBC, but will provide greater flexibility by making more space available for other necessary information on the IBC. Additionally, this amendment would not result in any cost to industry or impose any new regulatory burden to industry. There will be a marginal cost savings due to current special permit holders no longer needing to apply to renew their special permits. A more

²⁸ P–1734—Evonik (PHMSA–2019–0089), <https://www.regulations.gov/docket/PHMSA-2019-0089>.

²⁹ DOT SP–16295, <https://cms7.phmsa.dot.gov/approvals-and-permits/hazmat/file-serve/offer/SP16295.pdf/2018080498/SP16295>.

detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to revise 49 CFR 172.514(c)(4) to allow IBCs containing combustible liquids to be placarded with a combustible placard that meets the label size specifications in § 172.407(c). PHMSA notes that this petition was focused on allowing a smaller placard size for IBCs. Yet, § 172.514(c) authorizes labels—essentially a smaller-sized placard—instead of placards for other types of bulk packagings (e.g., a portable tank having a capacity of less than 3,785 L (1000 gallons). PHMSA solicits comment on whether this rulemaking should also authorize smaller placards for other bulk packagings containing combustible liquids authorized to use a label instead of a placard, and the associated cost savings of such authorization.

L. Incorporate by Reference IME Safety Library Publication 22 (SLP-22)

In its petition (P-1736),³⁰ IME proposes that PHMSA incorporate by reference IME SLP-22 (2019), “Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials.” The HMR currently incorporates by reference the IME SLP-22 (2007) version in the HMR at 49 CFR 171.7(r)(1).

IME notes that DOT has long accepted the SLP-22 publication and its recommendations for the safe transportation of detonators in a vehicle. SLP-22 (2007) is referenced in 49 CFR 173.63 and 177.835. IME notes that much of the SLP-22 standard has remained virtually unchanged since 1972 and has proven effective for the safe transportation of detonators. None of millions of shipments of detonators and explosives made using SLP-22 have resulted in a mass-detonation. The primary intent of SLP-22 is not to prevent mass detonation, but instead to allow sufficient time in the event of a transportation incident, such as fire, to evacuate bystanders to a safe distance. Testing conducted by IME has shown that transporting detonators in an undamaged box constructed to the standard set forth in SLP-22 will prevent, for 30 minutes or longer, mass detonation.

SLP-22 (2019) reflects necessary changes and improvements to the SLP-22 (2007) edition and includes technical

corrections, practical improvements, and deletion of outdated practices.

Specifically, changes to SLP-22 include:

- Providing clarity on the text “other positions may be acceptable” by specifying alternative placement of SLP-22 packages or containers on a motor vehicle based on vehicle cargo space configuration.
- Consistent with the alternative positions, adding a constraint to limit positions of a container on the vehicle as far as possible from the points on the vehicle that are most susceptible to high temperature fires due to accidents or severe mechanical failures (e.g., the vehicle fuel tank).
- Adding reference to IME SLP-23 for containers mounted on a cargo tank motor vehicle.
- Adding a requirement that structural components (i.e., latches) must be bolted or welded to the steel in the wall of the container or compartment.
- Allowing alternative materials of construction subject to certain performance standards (i.e., constructed of or covered with non-sparking material).
- Adopting several revisions that provide clarity and correct typographical errors.

PHMSA conducted a technical review of each revision included in SLP-22 (2019) and has concluded that these changes will either maintain or enhance the safety of transporting detonators by highway with other explosive materials. PHMSA supports the overall intent to allow more time for evacuation should there be an incident. PHMSA proposes to incorporate by reference SLP-22 (2019). PHMSA has concluded that the specifications proposed in Section C.9 of the document are adequate to provide the flexibility to allow for alternative materials of construction without compromising safety.

PHMSA conducted an economic analysis of the IME proposal and found that the changes made to sections C.1 and C.1.a provide more flexibility for businesses in their placement of SLP-22 boxes while still meeting safety standards. The proposed changes to section C.1.c regarding padlocks could result in annual cost savings of approximately \$2,000, assuming a small percentage of vehicles (0.1 percent) take advantage of the one-time cost savings associated with purchasing new padlocks. C.9’s allowance of alternative materials in the construction of SLP-22 boxes may result in cost savings of approximately \$875,000 per year. These cost savings, however, are contingent on the quantity and type of material

substitutions made by SLP-22 box manufacturers, which is uncertain. A more detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for the rulemaking.

Therefore, PHMSA proposes to amend 49 CFR 171.7(r)(1) to reference IME SLP-22 (2019). In addition, PHMSA proposes to make an editorial revision to 49 CFR 171.7(r)(1) by inserting a space between “IME Standard 22,” and “IME” in the first line and amend the date to read “June 2019.”

M. Definition of a Liquid

In its petition (P-1738),³¹ COSTHA proposes that PHMSA modify the definition of a liquid in 49 CFR 171.8 to include the test for determining fluidity—ISO 2137:1985 (penetrometer test)—prescribed in section 2.3.4 of Annex A of the ADR. Section 171.8 states that a liquid means a material, other than an elevated temperature material, with a melting point or initial melting point of 20 °C (68 °F) or lower at a standard pressure of 101.3 kPa (14.7 pounds per square inch). A viscous material for which a specific melting point cannot be determined must be subjected to the procedures specified in ASTM D 4359 (1990), “Standard Test Method for Determining Whether a Material is Liquid or Solid.” The UN Model Regulations, ICAO Technical Instructions, and IMDG Code all include the penetrometer test as an alternative to performing the ASTM D 4359 test method in determination of whether a material is a liquid.

In addition, COSTHA states that there have been no recorded instances of determination of liquidity using the ADR penetrometer test increasing the risk to safety while in transportation. COSTHA adds that under the current system, a material manufactured outside the United States and classified using the penetrometer test may not be reshipped within the United States without first performing the ASTM D 4359 test method. The HMR does not authorize the ADR penetrometer test as a method for determining if a material is a liquid, and thus, any hazard classification based on this result is not valid in the United States. This results in increased cost for shippers to conduct additional testing and creates a barrier to importing materials into the United States.

PHMSA conducted a technical review of the COSTHA proposal to harmonize the HMR definition with international

³⁰ P-1736—IME (PHMSA-2019-0167), <https://www.regulations.gov/docket/PHMSA-2019-0167>.

³¹ P-1738—COSTHA (PHMSA-2019-0233), <https://www.regulations.gov/docket/PHMSA-2019-0233>.

use of the ADR penetrometer test for determination of a liquid. The test proposed, ISO 2137:1985, as identified in the ADR under section 2.3.4, is referenced in the UN Model Regulations Volume 1, 20th edition in section 1.2.1, Definitions, Liquid and in the UN Manual of Tests and Criteria 7th edition as a footnote reference to UNMR 1.2.1 at the end of 20.4.1.5. PHMSA finds that the ISO test is more empirical in nature than ASTM D 4359 and provides better understanding of the physical properties of the tested material. Therefore, PHMSA believes the adoption of penetrometer test into the HMR will provide a level of safety equal or greater to the currently approved ASTM test method. Lastly, the addition of the penetrometer test into the HMR will allow for more flexibility to offerors by providing an additional option for the testing of liquids. An economic analysis of this petition could not validate the estimates from the petitioner that suggest cost savings from this proposal. A more detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

For the reasons stated in this section, PHMSA proposes to revise the definition of a liquid in 49 CFR 171.8 to reference the test for determining fluidity (penetrometer test) prescribed in section 2.3.4 of Annex A of the ADR.

N. Incorporate by Reference Updated CGA C-7 (2020)

In its petition (P-1744),³² CGA proposes that PHMSA incorporate by reference the updated Appendix A of CGA publication C-7 (2020), "Guide to Classification and Labeling of Compressed Gases", Eleventh Edition, into the HMR at 49 CFR 171.7(n)(8). Currently, the HMR incorporates by reference CGA C-7 (2014), "Guide to Classification and Labeling of Compressed Gases," Tenth Edition. The HMR currently authorizes the marking of a Dewar flask or a cylinder in accordance with CGA C-7 (2014), Appendix A instead of labeling (*see* 49 CFR 172.400a). CGA states that an update is needed to CGA C-7, Tenth Edition (2014) to address changes made to Appendix A in the Eleventh Edition (2020), such as:

- Providing greater flexibility in display of the hazard class by allowing it to be displayed on one or two lines.
- Clarifying that the marking system elements must meet certain minimum size requirements.

- Providing an example of the CGA marking system for multiple hazard diamonds that are overlapped.

CGA C-7 (2020) states the general principles for labels and markings of cylinders and provides recommended minimum requirements for many hazardous gases and selected liquids used in such cylinders.

PHMSA conducted a technical review of this petition, including a review of the revised Appendix A to C-7 (2020), and found that the proposed changes are minor and primarily editorial clarifications. PHMSA concludes that these editorial revisions in Appendix A to CGA C-7 (2020) will not negatively impact hazard communication.

PHMSA conducted an economic review of this petition and found no quantifiable benefits associated with this change. However, the proposed changes found in Appendix A to CGA C-7 (2020) would provide clearer guidance to the regulated community and thus increase compliance. A more detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to revise 49 CFR 171.7(n)(8) to reference CGA C-7 (2020), "Guide to Classification and Labeling of Compressed Gases", Eleventh Edition.

O. Incorporate by Reference CGA C-27 (2019)

In its petition (P-1746),³³ CGA proposes that PHMSA incorporate by reference CGA C-27 (2019), "Standard Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes," First Edition. PHMSA notes that this publication defines "tube" as a seamless steel pressure vessel with openings at both ends and with a water capacity of 120 L or greater. CGA proposes to revise 49 CFR 180.212(a)(1) to allow for repairs of a seamless steel DOT 3-series cylinder at a repair facility that holds a valid "K" number approval, issued under the provisions in 49 CFR 107.805. Cylinder owners would be permitted to apply to reduce the service pressure of cylinders in accordance with CGA C-27. Approved facilities would then process these applications to determine if a DOT 3-Series cylinder rejected for insufficient minimum wall thickness could be derated from the original marked service pressure.

CGA C-27 provides a standard procedure to derate the service pressure of DOT 3-series seamless steel tubes with local thin areas in the walls of the

tube that do not meet the minimum thickness criteria of the specification. Derating is the lowering of the maximum allowable service pressure of a cylinder due to thinning of a cylinder's walls to extend the life of the cylinder. In accordance with CGA C-27, any tube with a suspect thin area found during AET, UE, or visual inspection must be evaluated in accordance with CGA C-20. If the tube does not meet the minimum thickness requirements in Section 4b of CGA C-27, a cylinder owner may apply to PHMSA to reduce the marked service pressure of the cylinders, in accordance with Section 4c of CGA C-27. The procedure to derate a tube must be performed by a DOT-approved repair facility. CGA C-27 does not apply to tubes that have been condemned from any requalification method. Cylinder repair shops must be approved by PHMSA to have the authority to repair a cylinder. These companies receive a K-number from PHMSA, and the K-number approval indicates whether a company is authorized to perform repairs or rebuilds of cylinders, and in this case, DOT 3-series tubes.

CGA asserts that the incorporation by reference of CGA C-27 will minimize inquiries to PHMSA by standardizing and codifying the existing process under the PHMSA document, "Guidance for Applications to Down-Rate the Service Pressure of DOT Seamless Steel Cylinders (Rev. 3/27/13)," ³⁴ and provide persons seeking to derate a tube with instruction on pertinent information to submit to PHMSA in a logical and consistent manner.

PHMSA conducted a technical review of the proposals in the petition, including a review of CGA C-27, and found that the proposed method for pressure derating of tubes is essentially the same as what is outlined in the PHMSA guidance document. Both documents provide instructions on how persons should conduct an initial inspection using CGA C-6 (2013), "Standard for Visual Inspection of Steel Compressed Gas Cylinders," to establish that the tube is in good physical, serviceable condition for pressure derating with no rejectable corrosion, pitting, dents, gouges, or other defects. If deemed suitable for pressure derating, the tube should undergo 100 percent ultrasonic testing (UT) to establish a minimum sidewall thickness on which to base the new reduced service pressure. The methodology used in calculation of the new service pressure is the same as the current methodology

³² P-1744—CGA (PHMSA-2020-0104), <https://www.regulations.gov/docket/PHMSA-2020-0104>.

³³ P-1746—CGA (PHMSA-2020-0116), <https://www.regulations.gov/docket/PHMSA-2020-0116>.

³⁴ <https://www.regulations.gov/document/PHMSA-2020-0116-0003>.

used to determine the allowable service pressure for DOT 3-series seamless steel cylinders found in the HMR at 49 CFR 178.36 (3A and 3AX), 49 CFR 178.37 (3AA and 3AAX), and 49 CFR 178.38 (3B). The calculations should then be certified by the tube manufacturer, or by the Independent Inspection Agency (IIA) if the tube manufacturer is no longer in service or available. IIAs are approved by the Associate Administrator to perform a review of a company's inspection or requalification operation. In summary, the PHMSA technical review found that the procedures in CGA C-27 are equivalent to the procedure established in the PHMSA guidance document for pressure derating of tubes and should have no impact on safety.

PHMSA conducted an economic evaluation of this petition and found that no benefits or additional costs other than the cost to obtain the publication are expected as a result of the proposed changes in this petition. A more detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to incorporate by reference CGA C-27 "Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes", First Edition, in 49 CFR 171.7. PHMSA also proposes to add 49 CFR 180.212(a)(4) for instruction on derating of a cylinder reference to CGA C-27.

P. Incorporate by Reference CGA C-29 (2019)

In its petition (P-1747),³⁵ CGA proposes that PHMSA incorporate by reference CGA C-29 (2019), "Standard for Design Requirements for Tube Trailers and Tube Modules," First Edition, which would supersede CGA TB-25 (2018), "Design Considerations for Tube Trailers." CGA also proposes conforming revisions to 49 CFR 173.301 to replace references to CGA TB-25 with references to CGA C-29.

CGA C-29 defines basic design requirements for tube trailers and tube modules to maintain structural integrity during normal conditions of handling and transport. A tube trailer or tube module manufactured in accordance with this standard is less likely to have a separation of the tubes from the trailer or bundle or an unintentional release of product when subjected to the multidirectional forces that can occur during a highway collision, including a rollover accident. Under this standard, tube modules must meet the loading

and accident protection standards that are applied to tube trailers.

In its petition, CGA outlines the changes between the CGA TB-25 (currently incorporated by reference in § 171.7) and CGA C-29. Examples of these revisions include:

- Changing the Technical Bulletin to a CGA Standard.
- Changing the title of the document to "Standard for Design Requirements for Tube Trailers and Tube Modules."
- Adding a scope section that specifies that CGA C-29 is not applicable to a multiple-element gas container (MEGC) because MEGC design requirements are found in 49 CFR 178.75.
- Providing several examples of testing and methods that meet the requirement of verifiable performance testing and analytical methods within the basic design requirements section.
- Changing "should" to "shall" in several places within the document to provide a standard that includes enforceable language.
- Referencing CGA C-23, "Standard for Inspection of DOT/TC 3 Series and ISO 11120 Tube Neck Mounting Surfaces," Second Edition.

CGA developed CGA C-29 to supersede TB-25 and asserts that CGA C-29 provides a more optimal level of safety for the public and a satisfactory performance standard when cylinders are mounted on motor vehicles or in frames for transportation. In addition, CGA asserts that C-29 provides more enforceable language, whereas TB-25 does not (*i.e.*, use of "shall" vs. "should").

A technical review of the petition and supporting documents found that CGA C-29 is technically accurate, consistent with CGA TB-25, and provides safety improvements for the transport of tube trailers. Additionally, PHMSA concludes that tube trailers or modules manufactured in accordance with CGA C-29 are less likely to have separation of tubes from the trailer or bundle, which could result in the unintentional release of hazardous materials, when subjected to multidirectional forces that can occur in highway collisions, including rollover accidents. Therefore, PHMSA asserts the incorporation by reference of CGA C-29 will enhance the safe transportation of hazardous materials in tube trailers.

PHMSA conducted an economic evaluation and found that most operators are already following the guidelines in CGA C-29 and thus there are limited quantifiable economic benefits. The largest potential source of benefits from mandatory adoption is enhanced safety through a more

standardized qualification and testing regime. Minor economic benefits might also be derived from the editorial and definitional clarifications provided in the updated CGA requirements. Should these changes make requirements for operators clearer and easier to follow, that would support compliance with the regulation. A more detailed discussion of the economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to incorporate by reference CGA C-29 "Standard for Design Requirements for Tube Trailers and Tube Modules", First Edition, into 49 CFR 171.7 and remove the references to CGA TB-25, "Design Considerations for Tube Trailers." PHMSA also proposes to revise 49 CFR 173.301(i) to replace references to CGA TB-25 with references to CGA C-29.

Q. Incorporate by Reference CGA V-9 (2019)

In its petition (P-1748),³⁶ CGA proposes that PHMSA incorporate by reference CGA V-9 (2019), "Compressed Gas Association Standard for Compressed Gas Cylinder Valves," Eighth Edition. The HMR currently references the Seventh Edition of CGA V-9 (2012). The major updates to CGA V-9 (2019) ensure continuity and consistency with the testing requirements of ISO 10297, "Gas cylinder—Cylinder valves—Specification and Type Testing."

The CGA V-9 (2019) standard covers compressed gas cylinder valve design, selection, manufacture, and use, including performance requirements such as operating temperature limits, pressure ranges, and flow capabilities. The standard also includes requirements for materials, inlet and outlet connections, cleaning, qualification and production testing, maintenance, and reconditioning. In addition, CGA V-9 (2019) includes guidelines and requirements for the design, material selection, testing, and marking of cylinder valve protection caps. Finally, the standard provides a listing of valve types and associated drawings and their application and limitations.

A technical review of CGA V-9 (2019) verified updates and revisions made to CGA V-9 (2012), which is currently incorporated by reference in the HMR. PHMSA found these revisions were primarily editorial in nature, except for the revision to harmonize CGA V-9 (2019) with the testing requirements of ISO 10297. Because PHMSA has already

³⁵ P-1747—CGA (PHMSA-2020-0117), <https://www.regulations.gov/docket/PHMSA-2020-0117>.

³⁶ P-1748—CGA (PHMSA-2020-0124), <https://www.regulations.gov/docket/PHMSA-2020-0124>.

incorporated by reference ISO 10297 in the HMR, there is no technical reason to not incorporate by reference the updated version of CGA V-9 (2019), which references the ISO 10297 standard. In addition, because CGA-V-9 (2019) now references ISO 10297, it will allow greater flexibility in selecting and qualifying valves and thus avoid redundant compliance with both ISO 10297 and CGA V-9 (2019).

PHMSA asserts that this proposal should result in benefits to the industry, as CGA V-9 (2019) allows the use of listed valves in other standards, such as those qualified to ISO 10297, thereby avoiding or minimizing additional qualification costs. Manufacturers and users of compressed gas cylinder valves would no longer need to conduct two different tests to satisfy ISO 10297 (as currently required by the HMR) and CGA V-9 (2019). A more detailed discussion of this economic analysis of this proposal can be found in the PRIA posted to the docket for this rulemaking.

Therefore, PHMSA proposes to revise § 171.7(n)(26) to replace CGA V-9 (2012), “Compressed Gas Association Standard for Compressed Cylinder Valves”, Seventh Edition, with CGA V-9 (2019), “Compressed Gas Association Standard for Compressed Cylinder Valves,” Eighth Edition.

R. Phaseout of Hydrofluorocarbons (HFCs)

The Environmental Protection Agency (EPA) published a final rule³⁷ to issue regulations implementing certain provisions of the American Innovation and Manufacturing (AIM) Act,³⁸ as enacted on December 27, 2020. One provision of the AIM Act mandates the phasedown of HFCs—a group of chemicals commonly referred to as refrigerants because of their primary use for cooling and refrigeration applications like air conditioning—by at least 85 percent by 2036. HFCs are highly potent greenhouse gases that trap heat in the atmosphere and warm the planet. The Act directs the EPA to implement the phasedown by issuing a fixed quantity of transferrable production and consumption allowances, which producers and importers of hydrofluorocarbons must hold in quantities equal to the number of hydrofluorocarbons they produce or import. For the time period of 2022–2050, the EPA estimates the rulemaking will avoid cumulative emissions of 4,560 million metric tons of exchange

value equivalent³⁹ of HFCs in the United States with a present value of cumulative net benefits of \$272.7 billion.⁴⁰

The EPA final rule implements a two-stage approach that first prohibits additional disposable cylinders—*i.e.*, non-refillables—from being introduced to the market by January 1, 2025, and secondly prohibits sales altogether by January 1, 2027. A primary example of a non-refillable cylinder authorized for transport of HFCs is a DOT 39 cylinder. In the final rule, EPA notes that the AIM Act gives the agency broad authority to implement these prohibitions relating to the sale or distribution, or offer for sale or distribution, of regulated substances that were illegally produced or imported.

In this NPRM, PHMSA proposes to adopt the same prohibition on the filling and transportation of certain HFCs in non-refillable cylinders to align with EPA’s efforts to fulfill the AIM Act mandate and combat climate impacts, and to avoid potential confusion by industry if PHMSA were to continue to authorize these materials in non-refillable cylinders while prohibited by EPA. Currently in the HMR, the filling of cylinders with liquefied compressed gases such as these HFCs is authorized in § 173.304. To align with the EPA prohibition on the import, filling, and use of non-refillable cylinders as part of the phaseout of HFCs, PHMSA proposes to revise the § 173.304(d) transportation requirements for refrigerant gases. First, PHMSA proposes to move the current paragraph (d) requirements to a new paragraph (d)(1) regarding refrigerant and dispersant gases. Second, PHMSA proposes to create a new paragraph (d)(2) to add a list of HFCs that would no longer be permitted to be filled and transported in non-refillable cylinders. These HFCs include:

Chemical name	Common name
CHF2CHF2	HFC–134.
CH2FCF3	HFC–134a.
CH2FCHF2	HFC–143.
CHF2CH2CF3	HFC–245fa.
CF3CH2CF2CH3	HFC–365mfc.
CF3CHFCF3	HFC–227ea.
CH2FCF2CF3	HFC–236cb.
CHF2CHFCF3	HFC–236ea.
CF3CH2CF3	HFC–236fa.
CH2FCF2CHF2	HFC–245ca.
CF3CHFCHFCF2CF3	HFC–43–10mee.
CH2F2	HFC–32.
CHF2CF3	HFC–125.

³⁹ EPA uses the term “exchange value equivalent” to provide a common unit of measure between HFCs and the AIM Act defines “exchange value” as the value assigned to a regulated substance (*i.e.*, a regulated HFC).

⁴⁰ 86 FR 55116 (Oct. 5, 2021).

Chemical name	Common name
CH3CF3	HFC–143a.
CH3F	HFC–41.
CH2FCH2F	HFC–152.
CH3CHF2	HFC–152a.
CHF3	HFC–23.

Finally, this proposal would phase out the import or domestic filling of a listed HFC in a non-refillable cylinder by January 1, 2025, and would prohibit the offering of HFCs identified in this section in a non-refillable cylinder after January 1, 2027. Lastly, this proposal provides a phaseout exception for small cans (*i.e.*, an aerosol can) containing less than two pounds of a listed HFC that has a self-sealing valve and meets the valve specification requirements in 40 CFR 82.154(c)(2)—*i.e.*, the EPA specifications for self-sealing valves.

S. Emergency Processing of Special Permits

Section 107.117 of the HMR outlines the conditions necessary for applicants who apply for emergency processing of their special permit request. PHMSA occasionally issues a special permit that the Associate Administrator determines is needed to address an imminent safety issue, a threat to national security, or to prevent significant economic loss. (See 49 CFR 107.117(a)) However, PHMSA has found it necessary to add an additional criterion due to situations arising that require processing of an emergency special permit but is not clearly outlined in the current 49 CFR 107.117(a). To meet this need, PHMSA is proposing to add a new paragraph (a)(4) to provide clarification that the Associate Administrator may also approve emergency processing of a special permit in support of certain essential governmental functions—both foreign and domestic. For example, a foreign government request for the emergency processing of a special permit application regarding the timely movement of a hazardous material—from or through the United States—in support of law enforcement, life safety (*e.g.*, providing health services items or equipment containing hazardous materials during a pandemic), or judicial activities may qualify under the new paragraph. Separately, to provide clarification of 49 CFR 107.117(a)(2), we are proposing to split the current paragraph (a)(2) into two distinct paragraphs—(a)(2) and (3).

IV. Section-by-Section Review

Below is a section-by-section description of the changes being proposed.

³⁷ 86 FR 55116 (Oct. 5, 2021).

³⁸ <https://www.epa.gov/climate-hfcs-reduction/aim-act>.

A. Section 107.117

49 CFR 107.117 outlines situations when emergency processing of special permits may be appropriate. In this NPRM, PHMSA is proposing to add 49 CFR 107.117(a)(4) to clarify that PHMSA may use emergency processing of special permits in support of essential governmental functions. Separately, to provide clarification of 49 CFR 107.117(a)(2), we are proposing to split the current clauses into two distinct paragraphs—(a)(2) and (3).

B. Section 171.7

Section 171.7 lists all standards incorporated by reference into the HMR that are not specifically set forth in the regulations. In this NPRM, PHMSA is proposing to incorporate by reference the following publications by CGA, IME, and the UN:

- CGA C-7 (2020), *Guide to Classification and Labeling of Compressed Gases*, (Eleventh Edition), into 49 CFR 172.400a. This publication has been prepared as a guide for the classification and labelling of compressed gases. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

- CGA C-20 (2014), *Requalification Standard for Metallic, DOT and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination* (Second Edition), into 49 CFR 180.205. This publication is used for the requalification of seamless cylinders and tubes using UE. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

- CGA C-23 (2018), *Standard for Inspection of DOT/TC 3 Series and ISO 11120, Tube Neck Mounting Surfaces* (Second Edition), into 49 CFR 180.205 and 180.207. This publication applies to the inspection and evaluation of DOT/TC 3-Series and ISO 11120 tubes 12 ft (3.7 m) or longer with an outside diameter greater than or equal to 18 in (457 mm) that are supported by the neck mounting surface. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

- CGA C-27 (2019), *Standard Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes* (First Edition), into 49 CFR 180.212. This publication provides a standard procedure to derate the service pressure of DOT 3-series seamless steel tubes with local thin areas (LTA) that do not meet the minimum wall thickness of certain DOT specifications. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

- CGA C-29 (2019), *Standard for Design Requirements for Tube Trailers and Tube Modules*, (First Edition), into 49 CFR 173.301. This publication defines basic design requirements for tube trailers and tube modules, manufactured or modified on or after May 11, 2009, to maintain structural integrity during normal conditions of handling and transport. It is general in nature and does not cover all circumstances for each individual cylinder type or lading. Tube trailers manufactured or modified before May 11, 2009, can continue to follow the requirements in TB-25 “Design Considerations for Tube Trailers.” Any modifications to the tube trailer, however, should be done in accordance with CGA C-29.

- CGA V-9 (2019), *Compressed Gas Association Standard for Compressed Gas Cylinder Valves*, (Eight Edition), into 49 CFR 173.301. This publication covers cylinder valve design, manufacture, and use including performance requirements such as operating temperature limits, pressure ranges, and flow capabilities. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

- SLP-22 (2019), *Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials* into 49 CFR 173.63 and 177.835. This publication outlines the guidelines for the safe transportation of detonators in commercial transportation.

- SLP-23 (2021), *Recommendations for the Transportation of Explosives, Division 1.5; Ammonium Nitrate Emulsions, Division 5.1; and Combustible Liquids in Bulk Packaging* into 49 CFR 173.66 introductory text and 177.835(d). This publication specifies the requirements for the transportation in bulk packaging of certain Class 1 and Class 5 hazardous materials essential to commercial blasting operations.

- *European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR)*, which is already incorporated by reference in § 171.23, into 49 CFR 171.8. The European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) outlines regulations concerning the international carriage of dangerous goods by road within the EU and other countries that are party to the agreement. This publication presents the European Agreement, the Protocol Signatures, the annexes, and the amendments. In addition to a new title, the 2020 edition of this document includes amendments necessary to

ensure harmonization of ADR with the UN Model Regulations, additional amendments adopted by the Working Group on Tanks as well as amendments proposed by the Working Group on Standards.

- United Nations’ *Recommendations on Test Series 8: Applicability of Test Series 8(d)*, June 2019, into 49 CFR 172.102(c)(1), special provision 148. This test series is used to determine if an ammonium nitrate emulsion, suspension or gel, intermediate for blasting explosives (ANE), is insensitive enough for inclusion in Division 5.1, and to evaluate the suitability for transport in tanks.

Additionally, CGA has moved to a new headquarters location. Therefore, we have proposed a revision to 49 CFR 171.7(n) accordingly.

C. Section 171.8

Section 171.8 defines terms used throughout the HMR that have broad or multi-modal applicability. PHMSA proposes to modify the definition of *liquid* in § 171.8 to include the test for determining fluidity (penetrometer test) prescribed in section 2.3.4 of Annex A of the ADR as an alternative method for determining if a material is a liquid.

D. Section 172.101

The HMT is contained in § 172.101. The HMT lists alphabetically, by proper shipping name, those materials that have been designated hazardous materials for the purpose of transportation. It provides information used on shipping papers, package marking, and labeling, as well as other pertinent shipping information for hazardous materials. PHMSA proposes to amend the HMT by referencing special provision TP48 in Column 7 of the HMT for the following HMT entries: “UN0332, Explosive, Blasting, type E”, “UN3375, Ammonium nitrate emulsion”, and “UN3139, Oxidizing liquid n.o.s. (PG II)”.

E. Section 172.102

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to quantities or forms of hazardous materials. PHMSA proposes to add a new special provision “TP48” to allow the use of IM 101 and 102 portable tanks when transported in accordance with SLP-23. In addition, PHMSA is proposing to revise special provision “148” to require materials assigned this provision to be subject to the Vented Pipe Test (VPT). This ensures continued performance of

VPT requirements in the absence of required use of the test in the proposed update of the incorporation by reference of IME SLP-23.

F. Section 172.514

Section 172.514 prescribes the placarding requirements for bulk packagings. PHMSA proposes to revise 49 CFR 172.514(c)(4) to allow an option to use a placard that meets the label specification size requirements in 49 CFR 172.407(c) for combustible liquids transported in IBCs.

G. Section 173.4b

Section 173.4b prescribes exceptions for transporting certain hazardous materials in *de minimis* quantities. PHMSA proposes to revise paragraph (a) to include Division 6.1, PG I materials (no inhalation hazard) in the list of materials authorized for this exception.

H. Section 173.115

Section 173.115 prescribes definitions for Class 2, Divisions 2.1, 2.2, and 2.3 hazardous materials. PHMSA proposes to revise 49 CFR 173.115(e) to state that gas mixtures with component(s) that are liquefied gases may be described using the appropriate hazardous materials description of a non-liquefied compressed gas in the HMT at 49 CFR 172.101 when the partial pressure(s) of the liquefied component(s) in the mixture are reduced so that the mixture is entirely in the gas phase at 20 °C.

I. Section 173.185

Section 173.185 prescribes the requirements for packaging and transporting lithium cells and batteries. PHMSA proposes to revise paragraph (c)(3) to clarify that lithium button cell batteries installed in equipment are not subject to any per package or consignment limitations.

J. Section 173.251

Section 173.251 outlines the bulk packaging requirements for ammonium nitrate emulsion, suspension, or gel. PHMSA proposes to revise 49 CFR 173.251 to state that this section is not applicable when “UN3375, Ammonium nitrate emulsion” is transported in IM 101 or 102 portable tanks in accordance with SLP-23 (2021).

K. Section 173.301

Section 173.301 outlines the general requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles, and spherical pressure vessels. PHMSA proposes to revise 49 CFR 173.301 to replace references to

CGA TB-25 with references to CGA C-29.

L. Section 173.302a

Section 173.302a specifies the additional requirements for shipment of non-liquefied (permanent) compressed gases in specification cylinders. PHMSA proposes to revise paragraph (c) by redesignating 49 CFR 173.302a(c)(3)(i) and (ii) as 49 CFR 173.302a(c)(4) and (5) to properly reflect that the safety provisions currently in 49 CFR 173.302a(c)(3)(i) and (ii) are independent material construction requirements under paragraph (c). PHMSA also proposes to add paragraph (c)(6) to require that cylinders be equipped with pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with CGA S-1.1 (previously in paragraph (c)(4)). Lastly, PHMSA proposes to add paragraph (c)(7) to require a plus sign (+) be added following the test date marking on the cylinder to indicate compliance with paragraph (c) of this section.

M. Section 173.302b

Section 173.302b describes the additional requirements for shipment of non-liquefied (permanent) compressed gases in UN pressure receptacles. PHMSA proposes to revise this section by adding a new paragraph (f) to specify packaging restrictions for transporting compressed natural gas and methane in UN seamless steel pressure receptacles. For methane and natural gas with a methane content of 98 percent or greater, the maximum tensile strength of the UN seamless steel pressure receptacle may not exceed 1100 MPa (159,542 psi), and the contents must be free of corroding components. For natural gas with methane content of less than 98 percent, the maximum tensile strength of the UN seamless steel pressure receptacle may not exceed 950 MPa (137,750 psi). Additionally, each discharge end of a UN refillable seamless steel tube must be equipped with an internal drain tube, and the moisture content and concentration of the corroding components must conform to the requirements in § 173.301b(a)(2).

N. Section 173.304

Section 173.304 contains the requirements for the filling of cylinders with liquefied compressed gases. Paragraph (d) specifies authorized cylinders for the transportation of refrigerant and dispersant gases. PHMSA proposes to revise this paragraph by adding a list of the HFCs that are being phased out for use and

transportation to align with the EPA implementation of the AIM Act. Additionally, PHMSA proposes language to outline the phaseout dates and exceptions for the transportation of HFCs listed in this section.

O. Section 178.503

Section 178.503 prescribes the requirements for the marking of non-bulk performance-oriented packagings. PHMSA proposes to revise 49 CFR 178.503(a)(6) to allow 4-series boxes to be marked with the last two digits of the year of certification in lieu of the year of manufacture as currently required in the HMR.

P. Section 178.601

Section 178.601 prescribes the general requirements for the testing of non-bulk performance-oriented packagings and packages. PHMSA proposes to redesignate paragraphs (g)(6) through (8) as paragraphs (g)(7) through (9) and add new paragraph (g)(6) to allow packages tested with articles containing solid hazardous materials without intermediate packaging(s) to be assembled with any intermediate packaging(s) without further testing. Moreover, PHMSA is revising the redesignated paragraph (g)(8) approval provision to include new paragraph (g)(6), such that paragraphs (g)(1) through (7) are referenced in the revised paragraph (g)(8).

Q. Section 180.205

Section 180.205 prescribes the general requirements for requalification of specification cylinders. PHMSA proposes to revise this section to incorporate provisions consistent with CGA C-20-2014, “Requalification Standard for Metallic, DOT and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination” (Second Edition), which allow for the use of UE for cylinder requalification. PHMSA proposes to revise paragraphs (e)(2) and (f) to specify that a cylinder requalified using UE must be visually inspected in accordance with paragraph (e)(1). Additionally, PHMSA proposes to add a new paragraph (h) to specify that requalification using UE must be done in accordance with CGA C-20 and by a facility approved by PHMSA for performing UE operations. PHMSA proposes revisions to paragraphs (i) and (j) to specify the rejection requirements for a cylinder that fails requalification tests.

PHMSA also proposes to add § 180.205(c)(5). This paragraph will specify that a DOT 3-series specification cylinder that is 12 feet or longer with an outside diameter greater than or equal to

18 inches and supported by the neck mounting surface during transportation in commerce must be inspected at least every 10 years in accordance with CGA C-23. Lastly, PHMSA proposes to add paragraph (d)(5) to specify the conditions for removal and examination of cylinders in accordance with CGA C-23.

R. Section 180.207

Section 180.207 prescribes the requirements for the requalification of UN pressure receptacles. PHMSA proposes to revise 49 CFR 180.207(d)(1) to require that each seamless steel UN pressure receptacle that is 12 ft or longer with an outside diameter greater than or equal to 18 in supported by the neck mounting surface during transportation in commerce be inspected at least every 10 years in accordance with CGA C-23. In addition, PHMSA proposes to specify conditions for removal and examination of the cylinder in accordance with CGA C-23.

S. Section 180.209

Section 180.209 describes the requalification requirements for specification cylinders. PHMSA proposes an editorial revision to paragraphs (d) and (m) to reference 49 CFR 180.205(j) instead of 49 CFR 180.205(i).

T. Section 180.212

Section 180.212 specifies the requirements for the repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles. PHMSA is proposing to add 49 CFR 180.212(a)(4) to allow derating the service pressure of DOT 3-series seamless steel tubes. PHMSA also proposes to revise 49 CFR 180.212(b)(2) to: (1) allow, as a repair, the external threading of a DOT 3-series cylinder or

a seamless UN pressure receptacle manufactured without external threads; and (2) not limit external rethreading to UN pressure receptacles mounted in a MEGC.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is published under the authority of Federal Hazardous Materials Transportation Law (Federal Hazmat Law; 49 U.S.C. 5101 *et seq.*), which authorizes the Secretary of Transportation to “prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.” The Secretary has delegated the authority granted in the Federal Hazmat Law to the PHMSA Administrator at 49 CFR 1.97. This rulemaking proposes to amend several sections of the HMR in response to 18 petitions for rulemaking received from the regulated community.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Background

Executive Order 12866 (“Regulatory Planning and Review”) requires that agencies “should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.” Agencies should consider quantifiable measures and qualitative measures of costs and benefits that are difficult to quantify. Further, Executive Order 12866 recommends that agencies maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach. Similarly, DOT Order 2100.6A

(“Rulemaking and Guidance Procedures”) requires that regulations issued by PHMSA, and other DOT Operating Administrations should consider an assessment of the potential benefits, costs, and other important impacts of the proposed action. Also, they should quantify (to the extent practicable) the benefits, costs, and any significant distributional impacts, including any environmental impacts.

PHMSA is responding to 18 petitions that have been submitted by the public in accordance with the Administrative Procedure Act (5 U.S.C. 553(e)) and PHMSA’s rulemaking procedure regulations (49 CFR 106.95 and 106.100). Overall, this proposed rule would maintain the continued safe transportation of hazardous materials while producing a net cost savings. PHMSA’s findings are summarized here and described in further detail in the preliminary Regulatory Impact Analysis (PRIA), which can be found in the regulatory docket (Docket ID: PHMSA–2020–0102) at www.regulations.gov.

Summary of Findings

PHMSA estimates a present value of quantified net cost savings of approximately \$15.18 million over a perpetual time horizon and \$1.22 million annualized at a 7 percent discount rate. These estimates do not include non-monetized and qualitative cost/cost savings discussed in the PRIA.

PHMSA’s cost savings analysis relies on the monetization of impacts for seven petitions included in this rulemaking. All these petitions have annualized cost savings. The following table presents a summary of the seven petitions that would have monetized impacts upon codification and contribute to PHMSA’s estimation of quantified net cost savings.

TABLE 1—SUMMARY OF COST/COST SAVINGS OF PETITIONS FOR REGULATORY REFORM

Petition No.	Rule provision	All figures in \$ USD. “X” indicates insignificant cost/savings			
		Significant costs	One-time cost savings	Significant benefits	Annual cost savings
P-1718	49 CFR 173.4b	X	X	X	162,000
P-1727	49 CFR 180.205	500	X	X	28,000
P-1729	49 CFR 171.7	115,239	X	129,480	X
P-1731	49 CFR 171.7(r)(2)	X	X	X	6,120
P-1732	49 CFR 178.503(a)(6)	X	X	X	150,000
P-1734	49 CFR 172.514(c)(4)	X	X	X	770
P-1736	49 CFR 171.7(r)(1)	X	X	X	876,000
Total (\$USD) .....	.....	115,739	X	129,480	1,222,890
Net Present Value of Total Net Savings (One-Time Benefits—One-Time Costs + Future Annualized Net Benefit at 7 percent Discount).					15,188,633

In addition to these seven items, PHMSA described an additional 11 items that may streamline regulatory compliance. While information gaps prevent quantification of cost savings for these items, PHMSA has determined that they provide relief from unnecessary requirements or provide additional flexibility without compromising safety.

Conclusion

This NPRM is not considered a significant regulatory action within the meaning of Executive Order 12866 (E.O. 12866) and DOT policies and procedures. (See DOT Order 2100.6A.⁴¹) The economic effects of this regulatory action would not have an effect on the economy that exceeds the \$100 million annual threshold defined by E.O. 12866, and that the regulatory action is not otherwise significant. PHMSA estimates a present value of quantified net cost savings of approximately \$15.18 million over a perpetual time horizon and \$1.22 million annualized at a 7 percent discount rate. Please see the PRIA in the regulatory docket for additional detail and a description of PHMSA's methods and calculations.

C. Executive Order 13132

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and the presidential memorandum ("Preemption") published in the **Federal Register** on May 22, 2009 (74 FR 24693). Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may 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." This rulemaking does not propose any regulation that has substantial direct effects on the states, the relationship between the National Government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal Hazmat Law contains a general preemption provision (49 U.S.C. 5125(a)) in the event compliance with a state, local, or Indian tribe requirement

is not possible or presents an obstacle to compliance. Additionally, Federal Hazmat Law contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribal requirements on:

(1) The designation, description, and classification of hazardous materials.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject items above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. DOT has determined that this proposed rule would provide cost savings and regulatory flexibility to the regulated community without compromising safety. This rulemaking proposes to address 18 petitions for rulemaking submitted by the regulated community. PHMSA invites those with an interest in the issues presented to comment on the effect that the adoption of specific proposals may have on state or local governments.

D. Executive Order 13175

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect tribal communities by imposing "substantial direct compliance costs" or "substantial direct effects" on such communities or the relationship and distribution of power between the Federal Government and Indian tribes. PHMSA has determined that this rulemaking does not have substantial tribal implications. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply.

However, we invite Indian tribal governments to provide comments on the costs and effects that this NPRM

could potentially have on tribal communities.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Flexibility Fairness Act of 1996, requires Federal regulatory agencies to prepare an Initial Regulatory Flexibility Analysis (IRFA) for any NPRM subject to notice-and-comment rulemaking under the Administrative Procedure Act, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities. The small entities that could be impacted by this proposal include all small entities engaged in the shipment of hazardous materials. PHMSA expects this proposed rule to facilitate new technologies or other changes that provide safety equivalence at lower cost, streamline or reduce recordkeeping and other paperwork and reporting requirements, and address other changes to reduce the regulatory burden of the HMR. PHMSA has individually evaluated each regulatory change contained in this rulemaking using available information and certifies that none of the proposed changes will have a significant economic impact on a substantial number of small businesses. PHMSA is proposing some new requirements in this NPRM but does not expect these requirements to have a significant impact.

These new requirements include:

1. P-1714—The proposal adds a new packaging restriction for CNG and methane in seamless steel pressure receptacles. While this is a new requirement under the HMR, CGA stated in its petition that market participants already follow the proposed practices for UN/ISO cylinders. PHMSA, whose subject matter experts participate in the CGA membership meetings and conferences, has spoken with CGA members and corroborated this assertion; therefore, it does not anticipate that the proposed changes will have an impact on small businesses.

2. P-1727—This petition incorporates by reference CGA C-20 (2014), "Requalification Standard for Metallic, DOT and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination, Second Edition." As part of the IBR of this new document, cylinder requalifiers must stamp the cylinder "CONDEMNED" and affix a readily visible label on the cylinder stating: "UN REJECTED, RETURNING TO ORIGIN FOR PROPER DISPOSITION."

⁴¹ DOT Order 2100.6A "Rulemaking and Guidance Procedures" (June 7, 2021) at: <https://www.transportation.gov/sites/dot.gov/files/2021-06/DOT-2100.6A-Rulemaking-and-Guidance-%28003%29.pdf>.

However, PHMSA asserts there will be an overall positive impact on small business for three reasons. Firstly, most large and small affected entities are members of the CGA, allowing them free access to updated CGA reference materials. Secondly, substantially all affected entities already possess cylinder stamping equipment required to implement this regulation and stamping itself takes very little time. Thirdly, small businesses are expected to benefit from this change because small businesses are currently disproportionately burdened by the various special permit requirements that this stamping substitutes for. The time to stamp the cylinders is minimal, and overall, there will be positive impact on small businesses due to no longer needing to apply for a special permit.

3. Phaseout of HFCs—This rulemaking harmonizes with the EPA phaseout of the use of non-refillable cylinders for the transportation of GHGs. While this revision does impose a cost to industry, this cost has already been accounted for in the EPA final rule. Therefore, the proposed revisions in this NPRM do not impose any additional new cost on industry.

The remainder of the proposals in this NPRM are expected to result in cost savings/streamline regulatory requirements without impacting safety. As such, PHMSA's assessment of non-significant impact on small businesses can be found under the costs and benefits sections found within the PRIA.

F. Paperwork Reduction Act

This NPRM does not impose new information collection requirements. PHMSA currently has an approved information collection under OMB Control No. 2137-0051, entitled "Rulemaking, Special Permits, and Preemption Requirements," expiring on November 30, 2024. This rulemaking eliminates the need for persons to renew a special permit, resulting in a decrease in burden. PHMSA estimates the reduction in information collection burden as follows:

OMB Control No. 2137-0051:
Rulemaking, Special Permits, and Preemption Requirements.

Decrease in Annual Number of Respondents: 139.

Decrease in Annual Responses: 139.
Decrease in Annual Burden Hours: 208.5.

Decrease in Annual Burden Cost: \$0.
PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this NPRM. Address

written comments to the Dockets Unit as identified in the **ADDRESSES** section of this NPRM. PHMSA must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this NPRM.

Notwithstanding any other provision of law, no person is required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number.

Please direct your requests for a copy of this information collection to Steven Andrews, Office of Hazardous Materials Standards (PHH-12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, 2nd Floor, Washington, DC 20590-0001.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) requires agencies to assess the effects of Federal regulatory actions on state, local, and tribal governments, and the private sector. For any NPRM or final rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, or by the private sector of \$100 million or more in 1996 dollars in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

As explained in the PRIA, available for review in the docket, this proposed rulemaking does not impose unfunded mandates under the UMRA. It does not result in costs of \$100 million or more in 1996 dollars to either state, local, or tribal governments, or to the private sector, in any one year. Therefore, the analytical requirements of UMRA do not apply. A copy of the PRIA is available for review in the docket.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) requires that Federal agencies analyze proposed actions to determine whether the action would have a significant impact on the human environment. The Council on Environmental Quality implementing regulations (40 CFR parts 1500 through 1508) requires Federal agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) probable environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. DOT Order

5610.1C ("Procedures for Considering Environmental Impacts") establishes departmental procedures for evaluation of environmental impacts under NEPA and its implementing regulations.

1. Purpose and Need

In response to petitions for rulemaking submitted by the regulated community, PHMSA proposes to amend the HMR to update, clarify, or streamline various regulatory requirements. Specifically, PHMSA proposes amendments that include—but are not limited to—the following: incorporating by reference (IBR) multiple publications from CGA, IME, and the UN; allowing for greater flexibility of packaging options in the transportation of compressed natural gas in cylinders; streamlining the approval application process for the repair of specific DOT specification cylinders; providing greater clarity regarding the filling requirements for certain cylinders used to transport hydrogen and hydrogen mixtures; streamlining hazard communication by allowing marking exceptions under certain conditions during the transportation of lithium button cell batteries; and modifying the definition of liquid to include the test for determining fluidity (penetrometer test) prescribed in the ADR.

These amendments are intended to promote safety, provide clarity and streamline regulatory requirements. The proposed changes were identified in response to petitions from stakeholders affected by the HMR. These proposed changes would clarify the HMR and enhance safety, while offering some net economic benefits.

This action: (1) fulfills our statutory directive to promote transportation safety; (2) fulfills our statutory directive under the Administrative Procedure Act that requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (5 U.S.C. 553(e)); (3) supports governmental efforts to eliminate unnecessary burdens on the regulated community; (4) addresses safety concerns raised by petitioners and removes identified regulatory ambiguity; and (5) simplifies and clarifies the regulations to promote understanding and compliance.

These regulatory revisions would offer more efficient and effective ways of achieving the PHMSA goal of safe and secure transportation of hazardous materials in commerce, protecting both people and the environment.

2. Alternatives

In proposing this rulemaking, PHMSA is considering the following alternatives:

No Action Alternative: If PHMSA were to select the No Action Alternative, current regulations would remain in place and no provisions would be amended or added.

Proposed Action Alternative: This alternative is the current proposal as it appears in this NPRM, applying to transport of hazardous materials by various transport modes (highway, rail, vessel and aircraft). The proposed amendments included in this alternative are more fully discussed in the preamble and regulatory text sections of this NPRM.

3. Analysis of Environmental Impacts

No Action Alternative

If PHMSA were to select the No Action Alternative, current regulations would remain in place and no new provisions would be added. However, efficiencies gained through the proposals, which include harmonization in updates to transport standards, lists of regulated substances, definitions, packagings, markings requirements, shipper requirements, and modal requirements, would not be realized. Foregone efficiencies in the No Action Alternative also include freeing up

limited resources to concentrate on hazardous materials transportation issues of potentially much greater environmental impact. Not adopting the proposed environmental and safety requirements in the NPRM under the “No Action Alternative” would result in a lost opportunity for reducing negative environmental and safety-related impacts. Greenhouse gas emissions would remain the same under the No Action Alternative. However, PHMSA expects that the No Action Alternative could have a modest negative impact on GHG emissions. PHMSA expects the provisions for the transportation of compressed natural gas/methane in UN pressure receptacles to have a minimal positive effect on greenhouse gas emissions. This would result from stricter packaging restrictions that should result in fewer failures of these packages resulting in fewer releases of materials into the environment. Therefore, by choosing the No Action Alternative, a potential reduction in GHG emissions would not be achieved.

Proposed Action Alternative

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the risk of release and

resulting environmental impact; the risk to human safety, including any risk to first responders; the longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area using specific resources, especially any sensitive areas and how they could be impacted by any proposed regulations. The regulatory changes proposed in this rulemaking have been determined to be clarification, technology/design updates, harmonization, regulatory flexibility, standard incorporation, or editorial in nature. As such, these amendments have little or no impact on the risk of release and resulting environmental impact, human safety, or longevity of the packaging. None of these amendments would be carried out in a defined geographic area because this is a nationwide rulemaking.

The “Proposed Action Alternative” encompasses enhanced and clarified regulatory requirements, which would result in increased compliance and fewer negative environmental and safety impacts. This environmental assessment incorporates the safety analyses in the preamble sections of this NPRM. The table and list below summarize the possible environmental benefits, greenhouse gas emissions, and any potential negative impacts for the amendments proposed in the NPRM.

SUMMARY OF PROBABLE ENVIRONMENTAL IMPACTS BY AMENDMENTS

Proposed amendment(s) to HMR (lettered as above herein)	Type of amendment(s)	Probable environmental impact(s) anticipated	Greenhouse gas emissions
1. P-1714—Transportation of Compressed Natural Gas/Methane in UN Pressure Receptacles.	Regulatory Flexibility	Minimal positive impacts	Minimal positive impacts.
2. P-1716—Threading and repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles.	Regulatory Flexibility	No impacts	No impacts.
3. P-1717/P-1725—Clarification of the requirements for non-liquefied compressed gases.	Regulatory Flexibility	No impacts	No impacts.
4. P-1718—De minimus quantities of poisonous materials.	Regulatory Flexibility—Harmonization.	No impacts	No impacts.
5. P-1736—Clarification of the marking requirements for button cell lithium batteries contained in equipment.	Regulatory Flexibility	No impacts	No impacts.
6. P-1727—IBR of CGA C-20 (2014)	Standard Incorporation	No impacts	No impacts.
7. P-1728—Gas Mixtures Containing Components Defined as Liquefied Gases.	Regulatory Flexibility	No impacts	No impacts.
8. P-1729—Incorporation by reference of CGA C-23 (2018).	Standard Incorporation	Minimal positive impacts	No impacts.
9. P-1731—IBR of IME’s Safety Library Publication 23 (SLP-23).	Standard Incorporation	No impacts	No impacts.
10. P-1732—Revision of testing and marking of UN specification packagings.	Regulatory Flexibility	No impacts	No impacts.
11. P-1734—Authorizing smaller-sized combustible placard on IBCs.	Regulatory Flexibility	No impacts	No impacts.
12. P-1736—IBR of IME Safety Library Publication 22 (SLP-22).	Standard Incorporation	No impacts	No impacts.

SUMMARY OF PROBABLE ENVIRONMENTAL IMPACTS BY AMENDMENTS—Continued

Proposed amendment(s) to HMR (lettered as above herein)	Type of amendment(s)	Probable environmental impact(s) anticipated	Greenhouse gas emissions
13. P-1738—Definition of a Liquid	Regulatory Flexibility—Harmonization.	No impacts	No impacts.
14. P-1744—Incorporate by reference updated Appendix A to CGA C-7 (2020).	Standard Incorporation	No impacts	No impacts.
15. P-1746—IBR of CGA C-27 (2019)	Standard Incorporation	No impacts	No impacts.
16. P-1747—IBR of CGA C-29 (2019)	Standard Incorporation	Minimal positive impacts	No impacts.
17. P-1748—IBR of CGA V-9 (2019)	Standard Incorporation	No impacts	No impacts.

1. *P-1714*—PHMSA proposes implementing packaging restrictions for the transportation of CNG and methane in UN seamless steel pressure receptacles with a tensile strength greater than 950 MPa. As discussed in Sections III and IV of this proposed rule, PHMSA expects that proposed packaging restrictions should result in fewer failures of these packages resulting in fewer releases of materials into the environment. Additionally, because this proposed revision involves the transportation of GHGs, PHMSA expects that this proposed revision may have a minimal effect on the reduction of GHGs emissions.

2. *P-1716*—PHMSA proposes revising the requirements for repairing seamless DOT 3-series specification cylinders and seamless UN pressure receptacles manufactured without external threads and authorizing the performance of this work without requiring prior approval from PHMSA. This proposal provides regulatory flexibility while maintaining safety. As discussed in Sections III and IV of this proposed rule, PHMSA has determined that this is an improvement over the previous method of using setscrews to secure the tubes, which resulted in indentations being carved into the tube necks as the tube jostled during transport. Because this proposal should lower the risk of an incident, since this package is expected to increase safety, the proposal may result in positive environmental impacts due less risk of an accident in transportation. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

3. *P-1717/P-1725*—PHMSA proposes to amend 49 CFR 173.302a(c) of the HMR for the special filling limits for DOT specification 3A, 3AX, 3AA, and 3AAX cylinders containing Division 2.1 (flammable) gases. As discussed in Sections III and IV of this proposed rule, these amendments would not represent any incremental, quantifiable safety effects because PHMSA already authorizes the transportation in commerce of hydrogen and mixtures of hydrogen with helium, argon, or

nitrogen in certain cylinders filled to more than 10 percent of their marked service pressures. Therefore, PHMSA does not expect this proposal to have any impacts on the environment. Similarly, PHMSA does not expect any effects on GHG emissions.

4. *P-1718*—PHMSA proposes to amend 49 CFR 173.4b to harmonize the *de minimis* exceptions for Division 6.1, PG I (no inhalation hazard) materials with international regulations. The release of Division 6.1, PG I materials, including toxic substances, poisons, and irritating material, can have a negative effect on human health and the environment due to toxicity levels of the material. However, as discussed in Sections III and IV of this proposed rule, because the proposed revision would authorize an existing exception for *de minimis* quantities of additional materials with appropriate safeguards, PHMSA does not expect any significant environmental impacts. Similarly, PHMSA does not expect any effects on GHG emissions.

5. *P-1726*—PHMSA proposes to revise 49 CFR 173.185(c)(3) to clarify that lithium button cell batteries installed in equipment are excepted from the marking requirement and not subject to the quantity per package or per consignment limitation. As discussed in Sections III and IV of this proposed rule, because this is not a new requirement and simply clarifies the current requirements in the HMR, PHMSA does not expect any environmental impacts. Similarly, PHMSA does not expect this revision to result in any change in GHG emissions.

6. *P-1727*—PHMSA proposes to IBR CGA C-20 (2014), “Requalification Standard for Metallic, DOT and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination, Second Edition.” CGA C-20 provides technical specification for the ultrasonic examination of cylinders. As discussed in Sections III and IV of this proposed rule, PHMSA expects that the use of ultrasonic examination will provide a level of safety at least equivalent to what is currently allowed under the HMR.

PHMSA already allows for the ultrasonic examination of certain cylinders (see 49 CFR 180.212 for example). Additionally, 49 CFR 180.205(f) will no longer require internal visual inspection for these cylinders once they have undergone ultrasonic examination, as these actions would be duplicative. PHMSA does not expect the incorporation by reference of CGC C-20 to have any environmental impacts. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

7. *P-1728*—PHMSA proposes to authorize an alternative description of gas mixtures containing components defined as liquefied gases. This proposal helps clarify confusion among stakeholders when the content of a cylinder is described as a liquefied compressed gas that resembles a non-liquefied compressed gas. As discussed in Sections III and IV of this proposed rule, PHMSA has determined that the proposed change is safety neutral or slightly improves safety and will provide regulatory flexibility to the regulated community without a reduction in safety. For these reasons, PHMSA does not expect this proposal to have any environmental impacts. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

8. *P-1729*—PHMSA proposes to IBR CGA C-23 (2018), “Standard for Inspection of DOT/TC 3 series and ISO 11120 Tube Neck Mounting Surfaces, Second Edition” into the HMR at 49 CFR 171.7. As discussed in Sections III and IV of this proposed rule, CGA C-23 provides an inspection standard that PHMSA expects will reduce the likelihood of a release from a DOT/TC 3 series cylinders. Thus, PHMSA expects this proposal to have a minimal positive environmental impact. PHMSA does not expect this revision to result in any increase to GHG emissions.

9. *P-1731*—PHMSA proposes to IBR an updated version of IME SLP-23 (2021) titled, “Recommendations for the Transportation of Explosives, Division 1.5; Ammonium Nitrate Emulsions,

Division 5.1; and Combustible Liquids in Bulk Packaging.” As discussed in Sections III and IV of this proposed rule, this updates a previously approved version of SLP–23 and provides necessary technical updates and regulatory flexibility. As part of the updated SLP–23, IME included packages designed for the safe transportation of Ammonium Nitrate Emulsions. As part of the review of the IME proposals, PHMSA determined these packages were adequate for the safe transportation of Ammonium Nitrate Emulsions. Thus, PHMSA does not expect this proposal to have any environmental impacts. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

10. *P-1732*—PHMSA proposes to amend 49 CFR 178.503(a)(6) by allowing the last two digits of the year of certification to be marked on a type 4 packagings, rather than the last two digits of the year of manufacture. As discussed in Sections III and IV of this proposed rule, PHMSA has determined that the only effect of the proposed revision is that package manufacturers would not need to update printing plates annually. Instead, they would only need to update plates biennially, resulting in a small reduction in regulatory burden. PHMSA expects that this proposal will provide regulatory flexibility to the regulated community without a reduction in safety. For these reasons, PHMSA does not expect this proposal to have any environmental impacts. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

11. *P-1734*—PHMSA proposes to revise 49 CFR 172.514(c) by incorporating the provisions in DOT SP–16295, which would add an option for smaller placards for IBCs carrying combustible liquids. As discussed in Sections III and IV of this proposed rule, this proposal does not change the safety requirements for the transportation or filling of an IBC. PHMSA expects that this proposal will provide regulatory flexibility to the regulated community without a reduction in safety. For these reasons, PHMSA does not expect this proposal to have any environmental impacts. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

12. *P-1736*—IME proposes that PHMSA IBR IME SLP–22 (2019), “Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials.” As discussed in Sections III and IV of this proposed rule, PHMSA conducted a technical review and examined each of these revisions

included in SLP–22 (2019) and asserts that these changes will either maintain or enhance safety requirements. Additionally, PHMSA expects that this proposal will provide regulatory flexibility to the regulated community without a reduction in safety. The proposal may result in minor positive environmental impacts due to less packaging failures due to an increase in safety. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

13. *P-1738*—PHMSA proposes modifying the definition of liquids in 49 CFR 171.8 to include the test for determining fluidity (penetrometer test), prescribed in section 2.3.4 of Annex A of the ADR. As discussed in Sections III and IV of this proposed rule, PHMSA asserts that the proposed test is more empirical in nature and provides better understanding of the properties of the tested material and thus better hazard classification. PHMSA expects that this proposal will provide regulatory flexibility to the regulated community by offering an additional test method and will not result in a reduction in safety. As a result, PHMSA does not expect this proposal to have any environmental impacts. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

14. *P-1744*—PHMSA proposes to IBR the updated Appendix A of CGA publication C–7 (2020), “Guide to Classification and Labeling of Compressed Gases, Eleventh Edition,” into the HMR at 49 CFR 171.7(n)(8). As discussed in Sections III and IV of this proposed rule, this proposal updates a previously approved version of CGA C–7 and provides necessary technical updates and regulatory flexibility. PHMSA expects that this proposal will provide regulatory flexibility to the regulated community without any reduction in safety. As a result, PHMSA does not expect this proposal to have any environmental impacts. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

15. *P-1746*—PHMSA proposes to IBR CGA C–27 (2019), “Standard Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes, First Edition.” As discussed in Sections III and IV of this proposed rule, PHMSA has determined that the proposed method for pressure derating of tubes is essentially the same as what is outlined in current PHMSA guidance. PHMSA expects that this proposal will provide regulatory flexibility to the regulated community without a reduction in safety. Therefore, PHMSA does not expect this proposal to have any environmental impacts. Similarly,

PHMSA does not expect this revision to result in any increase to GHG emissions.

16. *P-1747*—PHMSA proposes to IBR CGA C–29 (2019), “Standard for Design Requirements for Tube Trailers and Tube Modules, First Edition,” which would supersede CGA TB–25 (2018), “Design Considerations for Tube Trailers.” As discussed in Sections III and IV of this proposed rule, PHMSA concludes that tube trailers or modules manufactured in accordance with CGA C–29 are less likely to have separation of tubes from the trailer or bundle, resulting in the unintentional release of hazardous materials, when subjected to multidirectional forces that can occur in highway collisions, including rollover accidents. PHMSA expects that this proposal will increase safety for the transportation of hazardous materials in tube trailers because it may reduce the incidence of releases of hazardous materials due to failure of tube mountings. Therefore, PHMSA does expect this proposal may have minimal positive environmental impacts.

PHMSA does not expect this revision to result in any increase to GHG emissions.

17. *P-1748*—PHMSA proposes to incorporate by reference CGA V–9 (2019), “Compressed Gas Association Standard for Compressed Gas Cylinder Valves, Eighth Edition.” As discussed in Sections III and IV of this proposed rule, this proposal updates a previously approved version of CGA V–9 and provides necessary technical updates and regulatory flexibility. PHMSA expects that this proposal will provide regulatory flexibility to the regulated community without a reduction in safety. PHMSA does not expect this proposal to have any environmental impacts. Similarly, PHMSA does not expect this revision to result in any increase to GHG emissions.

4. Agencies Consulted

PHMSA has coordinated with the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the U.S. Coast Guard, and the Environmental Protection Agency in the development of this proposed rule. PHMSA solicits and will consider comments by members of the public, state and local governments, tribal communities, industry, and any other interested stakeholders regarding the NPRM’s potential impacts on the human environment.

5. Proposed Finding of No Significant Impact

PHMSA expects the adoption of the “Proposed Action Alternative” will maintain the HMR’s current high level

of safety for shipments of hazardous materials transported by highway, rail, aircraft, and vessel, and as such finds the HMR amendments in the NPRM would have no significant impact on the human environment. PHMSA expects that the “Proposed Action Alternative” will avoid any adverse safety, environmental justice, and GHG emissions impacts of the “No Action Alternative.” Furthermore, based on PHMSA’s analysis of these provisions described above, PHMSA finds that codification and implementation of this rule would not result in a significant impact to the human environment.

PHMSA welcomes any views, data, or information related to environmental impacts that may result from NPRM’s proposed requirements, the No Action Alternative, and other viable alternatives and their environmental impacts.

I. Environmental Justice

DOT Order 5610.2C (“Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) and Executive Orders 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”),⁴² 13985 (“Advancing Racial Equity and Support for Underserved Communities Through the Federal Government”),⁴³ 13990 (“Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”),⁴⁴ and 14008 (“Tackling the Climate Crisis at Home and Abroad”)⁴⁵ require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects of their programs, policies, and activities on minority populations, low-income populations, and other underserved and disadvantaged communities.

PHMSA has evaluated this proposed rule under the above Executive orders and DOT Order 5610.2C. PHMSA does not expect the proposed rule, if finalized, to cause disproportionately high and adverse human health and environmental effects on minority, low-income, underserved, and other disadvantaged populations and communities. The rulemaking is facially neutral and national in scope; it is

neither directed toward a particular population, region, or community, nor is it expected to adversely impact any particular population, region, or community. And because PHMSA expects the rulemaking would not adversely affect the safe transportation of hazardous materials generally, PHMSA does not expect the proposed revisions would entail disproportionately high adverse risks for minority populations, low-income populations, or other underserved and other disadvantaged communities.

PHMSA submits that the proposed rulemaking could, in fact, reduce risks to minority populations, low-income populations, or other underserved and other disadvantaged communities. Because the proposed HMR amendments could avoid the release of hazardous materials and reduce the frequency of delays and returned/resubmitted shipments of hazardous materials resulting from conflict between the current HMR and updated international standards, the proposed rule could reduce risks to populations and communities—including any minority, low-income, underserved and other disadvantaged populations and communities—in the vicinity of interim storage sites and transportation arteries and hubs. Additionally, as explained in the above discussion of NEPA, PHMSA expects that its proposed HMR amendments will yield minimal GHG emissions reductions, thereby reducing the risks posed by anthropogenic climate change to minority, low-income, underserved, and other disadvantaged populations and communities.

PHMSA solicits comment from minority, low-income, underserved, and other disadvantaged populations and communities on potential impacts of the proposed rulemaking.

J. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform any amendments to the HMR considered in this rulemaking. 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). For information on DOT’s compliance with the Privacy Act, please see www.dot.gov/privacy.

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, “Promoting International Regulatory Cooperation,” agencies must consider whether the impacts associated with significant variations between domestic

and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. (See 77 FR 26413 (May 4, 2012)) In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. This proposed rule does not negatively impact international trade.

L. Executive Order 13211

Executive Order 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”) [66 FR 28355; May 22, 2001] requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” Under the executive order, a “significant energy action” is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advanced notice of proposed rulemaking (ANPRM), and NPRM) that: (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.

This rulemaking has not been designated as a significant regulatory action and has not been designated by OIRA as a significant energy action. In addition, PHMSA does not anticipate that this rulemaking would result in a significant adverse effect on the supply, distribution, or use of energy. Therefore, PHMSA has not prepared an energy impact statement. PHMSA welcomes any data or information related to energy impacts that may result from this NPRM, as well as possible alternatives and their energy impacts. Please describe the impacts and the basis for the comment.

M. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA; 15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities

⁴² 59 FR 7629 (Feb. 11, 1994).

⁴³ 86 FR 7009 (Jan. 20, 2021).

⁴⁴ 86 FR 7037 (Jan. 20, 2021).

⁴⁵ 86 FR 7619 (Feb. 1, 2021).

unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standards bodies. Consistent with the goals of the NTTAA, PHMSA has adopted a significant number of voluntary consensus standards, which are listed in 49 CFR 171.7.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements, Definitions and abbreviations.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Training, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Section 4; Pub. L. 104–121 Sections 212–213; Pub. L. 104–134 Section 31001; Pub. L. 114–74 Section 701 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

■ 2. In § 107.117, revise paragraph (a) to read as follows:

§ 107.117 Emergency processing.

(a) An application is granted emergency processing if the Associate Administrator, on the basis of the application and any inquiry undertaken, finds that:

(1) Emergency processing is necessary to prevent significant injury to persons or property (other than the hazardous material to be transported) that could not be prevented if the application were processed on a routine basis;

(2) Emergency processing is necessary for immediate national security purposes;

(3) Emergency processing is necessary to prevent significant economic loss that could not be prevented if the application were processed on a routine basis; or

(4) Emergency processing is necessary in support of an essential governmental (domestic or foreign) function that could not be satisfied if the application were processed on a routine basis.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 3. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 701 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 4. In § 171.7:

■ a. Revise paragraphs (n) and (r)(1) and (2);

■ b. In paragraph (dd)(4), remove the text “§ 171.23” and add, in its place, the text “§§ 171.8; 171.23”; and

■ c. Add paragraph (dd)(5).

The revisions and addition read as follows:

§ 171.7 Reference material.

* * * * *

(n) *Compressed Gas Association (CGA)*, 8484 Westpark Drive, Suite 220, McLean, VA 22102; telephone 703–788–2700, www.cganet.com.

(1) CGA C–1—2016, *Methods for Pressure Testing Compressed Gas Cylinders*, Eleventh edition, copyright 2016; into §§ 178.36; 178.37; 178.38; 178.39; 178.42; 178.44; 178.45; 178.46; 178.47; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.65; 178.68; 180.205; 180.209.

(2) CGA C–3—2005 (Reaffirmed 2011), *Standards for Welding on Thin-Walled Steel Cylinders*, Seventh edition, copyright 2005; into §§ 178.47; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57;

178.58; 178.59; 178.60; 178.61; 178.65; 178.68; 180.211.

(3) CGA C–5, *Cylinder Service Life—Seamless Steel High Pressure Cylinders*, 1991 (Reaffirmed 1995); into § 173.302a.

(4) CGA C–6—2013, *Standards for Visual Inspection of Steel Compressed Gas Cylinders*, Eleventh edition, copyright 2013; into §§ 172.102; 173.3; 173.198; 180.205; 180.209; 180.211; 180.411; 180.519.

(5) CGA C–6.1—2013, *Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders*, Sixth edition, copyright 2013 (corrected 4/14/2015); into §§ 180.205; 180.209.

(6) CGA C–6.2, *Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders*, Third edition, 1996; into § 180.205.

(7) CGA C–6.3—2013, *Standard for Visual Inspection of Low Pressure Aluminum Alloy Compressed Gas Cylinders*, Third edition, copyright 2013; into §§ 180.205; 180.209.

(8) CGA C–7 (2020), *Guide to Classification and Labeling of Compressed Gases*, Eleventh Edition; into § 172.400a.

(9) CGA C–8, *Standard for Requalification of DOT–3HT Cylinder Design*, 1985; into §§ 180.205; 180.209.

(10) CGA C–11—2013, *Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture*, Fifth edition, copyright 2013; into § 178.35.

(11) CGA C–12, *Qualification Procedure for Acetylene Cylinder Design*, 1994; into §§ 173.301; 173.303; 178.59; 178.60.

(12) CGA C–13, *Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders*, Fourth edition, 2000; into §§ 173.303; 180.205; 180.209.

(13) CGA C–14—2005 (Reaffirmed 2010), *Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems*, Fourth edition, copyright 2005; into §§ 173.301; 173.323.

(14) CGA C–20 (2014), *Requalification Standard for Metallic, DOT and TC 3-series Gas Cylinders and Tubes Using Ultrasonic Examination* (Second Edition); into § 180.205.

(15) CGA C–23 (2018), *Standard for Inspection of DOT/TC 3 Series and ISO 11120, Tube Neck Mounting Surfaces* (Second Edition); into §§ 180.205; 180.207.

(16) CGA C–27 (2019), *Standard Procedure to Derate the Service Pressure of DOT Series Seamless Steel Tubes* (First Edition); into § 180.212.

(17) CGA C–29 (2019), *Standard for Design Requirements for Tube Trailers and Tube Modules* (First Edition); into § 173.301.

(18) CGA G–1.6—2011, *Standard for Mobile Acetylene Trailer Systems*,

Seventh edition, copyright 2011; into § 173.301.

(19) CGA G–2.2, Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia, Second edition, 1985 (Reaffirmed 1997); into § 173.315.

(20) CGA G–4.1, Cleaning Equipment for Oxygen Service, 1985; into § 178.338–15.

(21) CGA P–20, Standard for the Classification of Toxic Gas Mixtures, Third edition, 2003; into § 173.115.

(22) CGA S–1.1—2011, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases; Fourteenth edition, copyright 2011; into §§ 173.301; 173.304a; 178.75.

(23) CGA S–1.2, Safety Relief Device Standards Part 2—Cargo and Portable Tanks for Compressed Gases, 1980; into §§ 173.315; 173.318; 178.276; 178.277.

(24) CGA S–7—2013, Standard for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, Fifth edition, copyright 2013; into § 173.301.

(25) CGA Technical Bulletin TB–2, Guidelines for Inspection and Repair of MC–330 and MC–331 Cargo Tanks, 1980; into §§ 180.407; 180.413.

(26) CGA Technical Bulletin TB–25 (CGA TB–25), Design Considerations for Tube Trailers, 2008 Edition; into § 173.301.

(27) CGA V–9 (2019), Compressed Gas Association Standard for Compressed Cylinder Valves, Eighth Edition; into § 173.301.

* * * * *

(r) * * *

(1) IME Standard 22, IME Safety Library Publication No. 22, Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, June 2019; into §§ 173.63; 177.835.

(2) IME Standard 23, IME Safety Library Publication No. 23, Recommendations for the Transportation of Explosives, Division 1.5, Ammonium Nitrate Emulsions, Division 5.1, Combustible Liquids, Class 3, and Corrosives, Class 8 in Bulk Packaging, March 2021, into §§ 172.102; 173.66; 173.251; 177.835.

* * * * *

(dd) * * *

(5) Recommendations on Test Series 8: Applicability of Test Series 8(d), June 2019; into § 172.102.

* * * * *

■ 5. In § 171.8, revise the definition of “Liquid” to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Liquid means a material, other than an elevated temperature material, with a

melting point or initial melting point of 20 °C (68 °F) or lower at a standard pressure of 101.3 kPa (14.7 psia). A viscous material for which a specific melting point cannot be determined must be subjected to the procedures specified in ASTM D 4359 (IBR, see § 171.7) or to the test for determining fluidity (penetrometer test) prescribed in section 2.3.4. of Annex A of the Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) (IBR, see § 171.7).

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 6. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 7. In § 172.101, the Hazardous Materials Table is amended by revising the entries under “[REVISE]” to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identifica- tion Nos.	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.44)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo air- craft only	Location	Other
(1)							(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
[REVISE]													
	* Ammonium nitrate emulsion or Ammonium nitrate suspension or Ammonium nitrate gel, inter- mediate for blasting explosives.	5.1	* UN3375	* II	5.1	* 147, 148, 163, IB2, IP16, TP48.	* None	* 231	* 251	* Forbidden	* Forbidden	D	25, 59, 60, 66, 124
	* Explosive, blasting, type E or Agent blasting, Type E.	1.5D	* UN0332	*	1.5D	* 105, 106, 148, TP48.	* None	* 62	* None	* Forbidden	* Forbidden	03	25, 19E
G	Oxidizing liquid, n.o.s	5.1	* UN3139	* I II	5.1 5.1	* 62, 127, A2 62, 127, 148, A2, IB2, TP48.	* None 152	* 201 202	* 243 242	* Forbidden 1 L	* 2.5 L 5 L	D B	56, 58, 138 56, 58, 138
				III	5.1	62, 127, 148, A2, IB2.	152	203	241	2.5 L	30 L	B	56, 58, 138
	*		*	*		*	*	*	*	*	*		*

* * * * *

■ 8. In § 172.102:

■ a. In paragraph (c)(1), revise special provision 148; and

■ b. In paragraph (c)(8)(ii), add special provision TP48 in numerical order.

The revision and addition read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

148 For domestic transportation, this entry directs to § 173.66 of this subchapter for:

a. The standards for transporting a single bulk hazardous material for blasting by cargo tank motor vehicles (CTMV); and

b. The standards for CTMVs capable of transporting multiple hazardous materials for blasting in bulk and non-bulk packagings (*i.e.*, a multipurpose bulk truck). Note: “UN3375, Ammonium nitrate emulsion” and “UN0332, Explosive, blasting, type E or Agent blasting, Type E” are subject to the United Nations (UN) Test Series 8(d) (IBR, see § 171.7 of this subchapter), otherwise known as the Vented Pipe Test (VPT).

* * * * *

(8) * * *

(ii) * * *

TP48 The use of IM 101 and 102 portable tanks when transported in accordance with IME Standard 23 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 9. In § 172.514, revise paragraph (c)(4) to read as follows:

§ 172.514 Bulk packagings.

* * * * *

(c) * * *

(4) For an intermediate bulk container (IBC) labeled in accordance with subpart E of this part, the IBC may display the proper shipping name and UN identification number markings in accordance with § 172.301(a)(1) in place of the UN number on an orange panel, placard, or white square-on-point configuration as prescribed in § 172.336(d). Additionally, IBCs containing a combustible liquid may be placarded with a combustible placard that meets the label specifications for size in § 172.407(c). However, a transport vehicle containing IBCs with a reduced-size combustible placard is still required to conform to the placarding requirements in this subpart, including the size requirements in § 172.519(c); and

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 10. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 11. In § 173.4b, revise the introductory text to paragraph (a) to read as follows:

§ 173.4b De minimis exceptions.

(a) When packaged in accordance with this section, the following materials do not meet the definition of a hazardous material in § 171.8 of this subchapter and therefore, are not subject to the requirements of this subchapter: Packing Group II and III materials of hazard Class 3, Division 4.1, Division 4.2, Division 4.3, Division 5.1, Class 8, and Class 9; and materials of hazard Division 6.1 (no inhalation hazard).

* * * * *

■ 12. In § 173.115, revise the introductory text to paragraph (e) to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(e) *Liquefied compressed gas.* A gas, which when packaged under pressure for transportation is partially liquid at temperatures above –50 °C (–58 °F), is considered to be a liquefied compressed gas. Gas mixtures with component(s) that are liquefied gases may be described using the hazardous materials description of a compressed gas in the 49 CFR 172.101 Hazardous Materials Table when the partial pressure(s) of the liquefied gas component(s) in the mixture are reduced so that the mixture is entirely in the gas phase at 20 °C (68 °F). A liquefied compressed gas is further categorized as follows:

* * * * *

■ 13. In § 173.185, revise the introductory text to paragraph (c)(3) to read as follows:

§ 173.185 Lithium cells and batteries.

* * * * *

(c) * * *

(3) *Hazard communication.* Each package must display the lithium battery mark except when a package contains only button cell batteries contained in equipment (including circuit boards), or when a consignment contains two packages or fewer where each package contains not more than four lithium cells or two batteries contained in equipment.

* * * * *

■ 14. In § 173.251, add paragraph (a)(3) to read as follows:

§ 173.251 Bulk packaging for ammonium nitrate emulsion, suspension, or gel.

* * * * *

(a) * * *

(3) This section does not apply to “UN3375, Ammonium Nitrate Emulsion” when transported in IM 101 or 102 portable tanks in accordance with IME Standard 23 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 15. In § 173.301, revise paragraph (i)(2) to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(i) * * *

(2) Seamless DOT specification cylinders longer than 2 m (6.5 ft) are authorized for transportation only when horizontally mounted on a motor vehicle or in an ISO framework or other framework of equivalent structural integrity in accordance with CGA C–29 (IBR, see § 171.7 of this subchapter). Seamless DOT specification cylinders longer than 2 m (6.5 ft) manufactured prior to May 11, 2009, may continue to use CGA TB–25. The pressure relief device must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the pressure relief devices must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders.

* * * * *

■ 16. In § 173.302a:

■ a. Remove the semicolons at the ends of paragraphs (c)(1) and (2) and add periods in their places;

■ b. Revise paragraphs (c)(3) and (4); and

■ c. Add paragraphs (c)(5) through (7).
The revisions and additions read as follows:

§ 173.302a Additional requirements for shipment of non-liquefied (permanent) compressed gases in specification cylinders.

* * * * *

(c) * * *

(3) DOT specification 3A and 3AX cylinders are limited to those having an intermediate manganese composition.

(4) Cylinders manufactured with intermediate manganese steel must have been normalized, not quenched and tempered. Quench and temper treatment of intermediate steel is not authorized.

(5) Cylinders manufactured with chrome moly steel must have been quenched and tempered, not

normalized. Use of normalized chrome moly steel cylinders is not permitted.

(6) Cylinders must be equipped with pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with § 173.301(f).

(7) A plus sign (+) is added following the test date marking on the cylinder.

* * * * *

■ 17. In § 173.302b, add paragraph (f) to read as follows:

§ 173.302b Additional requirements for shipment of non-liquefied (permanent) compressed gases in UN pressure receptacles.

* * * * *

(f) *Methane, compressed, or natural gas, compressed, UN1971.* Methane, compressed, or natural gas, compressed is authorized in a UN seamless steel pressure receptacle under the following conditions:

(1) For methane, and for natural gas with a methane content of 98.0 percent or greater—

(i) The maximum tensile strength of the UN seamless steel pressure receptacle may not exceed 1100 MPa (159,542 psi); and

(ii) The contents are commercially free of corroding components.

(2) For natural gas with a methane content of less than 98.0 percent—

(i) The maximum tensile strength of the UN seamless steel pressure receptacle may not exceed 950 MPa (137,750 psi);

(ii) Each discharge end of a UN refillable seamless steel tube must be equipped with an internal drain tube; and

(iii) The moisture content and concentration of the corroding components must conform to the requirements in § 173.301b(a)(2).

■ 18. In § 173.304, revise paragraph (d) to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

* * * * *

(d) *Refrigerant and dispersant gases.*

(1) Nontoxic and nonflammable refrigerant or dispersant gases must be offered for transportation in cylinders prescribed in § 173.304a, or in DOT 2P, 2Q, or 2Q1 containers (§§ 178.33, 178.33a, and 178.33d-2 of this subchapter). DOT 2P, 2Q, and 2Q1 containers must be packed in strong outer packagings designed to protect valves from damage or accidental functioning under conditions incident to transportation. For DOT 2P and 2Q containers, the pressure inside the containers may not exceed 87 psia at 21.1 °C (70 °F). For 2Q1 containers, the

pressure inside the container may not exceed 210 psig at 55 °C (131 °F). Each completed metal container filled for shipment must be heated until its contents reach a minimum temperature of 55 °C (131 °F) without evidence of leakage, distortion, or other defect. Each outer package must be plainly marked “INSIDE CONTAINERS COMPLY WITH PRESCRIBED SPECIFICATIONS”.

(2) The following hydrofluorocarbons are prohibited from being filled or transported in non-refillable cylinders pursuant to the phaseout conditions identified in paragraphs (d)(2)(i) through (iii) of this section:

TABLE 1 TO PARAGRAPH (d)(2)
INTRODUCTORY TEXT

Chemical name	Common name
CHF2CHF2	HFC-134.
CH2FCF3	HFC-134a
CH2FCHF2	HFC-143.
CHF2CH2CF3	HFC-245fa
CF3CH2CF2CH3	HFC-365mfc.
CF3CHFCF3	HFC-227ea.
CH2FCF2CF3	HFC-236cb.
CHF2CHFCF3	HFC-236ea.
CF3CH2CF3	HFC-236fa.
CH2FCF2CHF2	HFC-245ca.
CF3CHFCF2CF3	HFC-43-10mee.
CH2F2	HFC-32.
CHF2CF3	HFC-125.
CH3CF3	HFC-143a.
CH3F	HFC-41.
CH2FCH2F	HFC-152.
CH3CHF2	HFC-152a.
CHF3	HFC-23.

(i) As of January 1, 2025, no person may:

(A) Import a non-refillable cylinder filled with a material identified in table 1 to paragraph (d)(2) introductory text of this section; or

(B) Fill a non-refillable cylinder with a material identified in table 1 to paragraph (d)(2) introductory text of this section.

(ii) As of January 1, 2027, no person may offer for transportation or transport a material identified in table 1 to paragraph (d)(2) introductory text of this section in a non-refillable cylinder.

(iii) A container with two pounds or less of net material listed in table 1 to paragraph (d)(2) introductory text of this section that has a self-sealing valve that meets the requirements in 40 CFR 82.154(c)(2) is not subject to this prohibition.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 19. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 20. In § 178.503, revise paragraph (a)(6) to read as follows:

§ 178.503 Marking of packagings.

(a) * * *

(6) The last two digits of the year of manufacture. Packagings of types 1H and 3H shall also be marked with the month of manufacture in any appropriate manner; this may be marked on the packaging in a different place from the remainder of the markings. For boxes, the last two digits may alternatively be the year of certification;

* * * * *

■ 21. In § 178.601:

■ a. Redesignate paragraphs (g)(6) through (8) as paragraphs (g)(7) through (9);

■ b. Add new paragraph (g)(6); and

■ c. Revise newly-redesignated paragraph (g)(8).

The addition and revision read follows:

§ 178.601 General requirements.

* * * * *

(g) * * *

(6) *Selective testing of combination packagings for small arms ammunition. Variation 6.* Variations in inner and intermediate packagings are permitted in packages for articles containing solid hazardous materials without further testing of the package under the following conditions:

(i) The package has been tested containing only the articles to be transported without intermediate containment;

(ii) The outer packaging must have passed the stacking test set forth in § 178.606 when empty, *i.e.*, without cushioning or inner or intermediate packagings with the test mass of identical packages being the mass of the package filled with the articles;

(iii) Only articles tested without intermediate containment may be transported; however, a variety of articles tested in this fashion may be assembled in a package with intermediate containment;

(iv) No articles demonstrate a loss of material in testing; and

(v) The completed package does not exceed the marked maximum gross mass of the package.

* * * * *

(8) *Approval of selective testing.* In addition to the provisions of paragraphs (g)(1) through (7) of this section, the Associate Administrator may approve the selective testing of packagings that differ only in minor respects from a tested type.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 22. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 23. In § 180.205:

- a. Add paragraph (c)(5);
- b. Remove the word “or” at the end of paragraph (d)(4);
- c. Redesignate paragraph (d)(5) as paragraph (d)(6) and add new paragraph (d)(5);
- d. Revise paragraphs (e)(2) and (f);
- e. Redesignate paragraphs (h) through (j) as paragraphs (i) through (k) and add new paragraph (h); and
- f. Revise newly-redesignated paragraphs (i)(1) and (j)(2)(i)(C).

The additions and revisions read as follows:

§ 180.205 General requirements for requalification of specification cylinders.

(c) * * *

(5) Each 3-series specification cylinder that is horizontally mounted on a motor vehicle or in a framework and that is: 12 feet or longer; has an outside diameter greater than or equal to 18 inches; and is supported by the neck mounting surface during transportation in commerce must be inspected at the time of requalification in accordance with CGA C–23 (IBR, see § 171.7 of this subchapter). If the due date of the tube neck mounting surface inspection required by CGA C–23 does not align with the periodic requalification due date of the specification cylinder, an additional two years shall be allowed after the 10-year requalification due date to complete the neck inspection. After the expiration of the time period, including the two-year grace period, specification cylinders subject to the CGA C–23 inspection shall not be charged or filled but may be transported for the purposes of draining, purging, and performing required inspections.

(d) * * *

(5) For a cylinder subject to paragraph (c)(5) of this section, if there is visible corrosion around the neck or under the flange/sleeve, as outlined in Section 4.2 of CGA C–23, it must be removed and examined in accordance with CGA C–23 before being returned to service; or

(e) * * *

(2) Requalified in accordance with this section, regardless of the date of the previous requalification. When requalification is performed using ultrasonic examination, the cylinder must be visually inspected in

accordance with paragraph (e)(1) of this section;

(f) *Visual inspection.* Except as otherwise provided in this subpart, each time a cylinder is pressure tested, it must be given an internal and external visual inspection.

(1) The visual inspection must be performed in accordance with the following CGA Pamphlets (all IBR, see § 171.7 of this subchapter): C–6 for steel and nickel cylinders; C–6.1 for seamless aluminum cylinders; C–6.2 for fiber reinforced composite special permit cylinders; C–6.3 for low pressure aluminum cylinders; C–8 for DOT 3HT cylinders; and C–13 for DOT 8 series cylinders.

(2) If a cylinder or tube is requalified by ultrasonic examination, only an external visual inspection is required.

(3) For each cylinder with a coating or attachments that would inhibit inspection of the cylinder, the coating or attachments must be removed before performing the visual inspection.

(4) Each cylinder subject to visual inspection must be approved, rejected, or condemned according to the criteria in the applicable CGA pamphlet.

(5) In addition to other requirements prescribed in this paragraph (f), each specification cylinder manufactured of aluminum alloy 6351–T6 and used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), or oxygen service must be inspected for sustained load cracking in accordance with appendix C to this part at the first scheduled five-year requalification period after January 1, 2007, and every five years thereafter.

(6) Except in association with an authorized repair, removal of wall thickness via grinding, sanding, or other means is not permitted. Removal of paint or loose material to prepare the cylinder for inspection is permitted (*i.e.*, shot blasting).

(7) Chasing of cylinder threads to clean them is permitted, but removal of metal must not occur. Retapping of cylinder threads is not permitted, except by the original manufacturer, as provided in § 180.212.

(h) *Ultrasonic examination (UE).* Requalification of cylinders and tubes using UE must be performed in accordance with CGA C–20 (IBR, see § 171.7 of this subchapter).

(i) * * *

(1) Except as provided in paragraphs (i)(3) and (4) of this section, a cylinder that is rejected may not be marked as

meeting the requirements of this section.

(j) * * *

(2) * * *

(i) * * *

(C) As an alternative to the stamping or labeling as described in this paragraph (j)(2), at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure. If a condemned cylinder contains hazardous materials, the requalifier must stamp the cylinder “CONDEMNED” and affix a readily visible label on the cylinder stating: “UN REJECTED, RETURNING TO ORIGIN FOR PROPER DISPOSITION.” The requalifier may only transport the condemned cylinder by private motor vehicle carriage to a facility capable of safely removing the contents of the cylinder.

■ 24. In § 180.207, revise paragraph (d)(1) to read as follows:

§ 180.207 Requirements for requalification of UN pressure receptacles.

(d) * * *

(1) *Seamless steel.* (i) Each seamless steel UN pressure receptacle, including pressure receptacles exceeding 150 L capacity installed in multiple-element gas containers (MEGCs) or in other service, must be requalified in accordance with ISO 6406:2005(E) (IBR, see § 171.7 of this subchapter). However, UN cylinders with a tensile strength greater than or equal to 950 MPa must be requalified by ultrasonic examination in accordance with ISO 6406:2005(E). For seamless steel cylinders and tubes, the internal inspection and hydraulic pressure test may be replaced by a procedure conforming to ISO 16148:2016(E) (IBR, see § 171.7 of this subchapter).

(ii) Each seamless steel UN pressure receptacle that is horizontally mounted on a motor vehicle or in a framework and that is 12 feet or longer; has an outside diameter greater than or equal to 18 inches; and is supported by a neck mounting surface during transportation must be inspected at the time of requalification in accordance with CGA C–23 (IBR, see § 171.7 of this subchapter). Notwithstanding the periodic inspection, if the seamless steel UN pressure receptacle shows visible corrosion, as outlined in Section 4.2 of CGA C–23, around the neck or under the flange/sleeve, then it must be removed and examined in accordance with Section 6 of CGA C–23 prior to returning to service.

* * *

■ 25. In § 180.209:

- a. Revise paragraph (d) and the introductory text to paragraph (m); and
- b. Designate the table immediately following the introductory text to paragraph (m) as table 4 to paragraph (m).

The revisions read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

* * * * *

(d) *Cylinders 5.44 kg (12 lb) or less with service pressures of 300 psig or less.* A cylinder of 5.44 kg (12 lb) or less water capacity authorized for service pressure of 300 psig or less must be given a complete external visual inspection at the time periodic requalification becomes due. External visual inspection must be in accordance with CGA C-6 or C-6.1 (IBR, see § 171.7 of this subchapter). The cylinder may be proof pressure tested. The test is successful if the cylinder, when examined under test pressure, does not display a defect described in § 180.205(j)(1)(ii) or (iii). Upon successful completion of the test and inspection, the cylinder must be marked in accordance with § 180.213.

* * * * *

(m) *DOT-3AL cylinders manufactured of 6351-T6 aluminum alloy.* In addition to the periodic requalification and marking described in § 180.205, each cylinder manufactured of aluminum alloy 6351-T6 used in self-contained

underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), or oxygen service must be requalified and inspected for sustained load cracking in accordance with the non-destructive examination method described in the following table. Each cylinder with sustained load cracking that has expanded into the neck threads must be condemned in accordance with § 180.205(j). This paragraph (m) does not apply to cylinders used for carbon dioxide, fire extinguisher, or other industrial gas service.

* * * * *

- 26. In § 180.212, add paragraph (a)(4) and revise paragraph (b)(2) to read as follows:

§ 180.212 Repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles.

(a) * * *

(4) Derating service pressure of DOT 3-series seamless steel tubes. DOT 3-series seamless steel tubes with an outside diameter greater than 9⁵/₈ in (244.5 mm) may be processed by a repair facility for derating the marked service pressure in accordance with CGA C-27 (IBR, see § 171.7 of this subchapter).

(b) * * *

(2) External rethreading of a DOT 3AX, 3AAX, or 3T specification cylinder or a UN pressure receptacle, and external threading of a seamless DOT 3AX, 3AAX, or 3T specification

cylinder or seamless UN pressure receptacle originally manufactured without external threads; or the internal rethreading of a DOT-3 series cylinder or a seamless UN pressure receptacle when performed by a cylinder manufacturer of these types of cylinders. The repair work must be performed under the supervision of an independent inspection agency. Upon completion of the rethreading or post-manufacture threading, the threads must be gauged in accordance with Federal Standard H-28 or an equivalent standard containing the same specification limits. The rethreaded cylinder or UN pressure receptacle must be stamped clearly and legibly with the words “RETHREAD” and a post-manufacture threaded cylinder or UN pressure receptacle must be stamped clearly and legibly with the words “POST-THREAD”, on the shoulder, top head, or neck. No DOT specification cylinder or UN pressure receptacle may be rethreaded more than one time without approval of the Associate Administrator.

Signed in Washington, DC, on February 14, 2023, under authority delegated in 49 CFR 1.97(b).

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

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