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FEDERAL REGISTER

Vol. 88 Tuesday,

No. 117 June 20, 2023

Pages 39763–39994

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Presidential Documents

Title 3—

The President

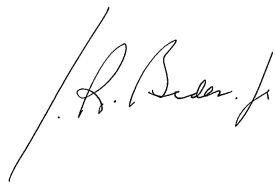
Memorandum of June 13, 2023

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $325 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, June 13, 2023

[FR Doc. 2023–13193
Filed 6–16–23; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Proclamation 10596 of June 14, 2023

World Elder Abuse Awareness Day, 2023

By the President of the United States of America

A Proclamation

Around the world, a silent epidemic of elder abuse is denying seniors the ability to age with dignity, security, and grace. No nation is immune. In America, 1 in 10 people over the age of 60 has experienced some form of elder abuse, with cases still widely underreported. On World Elder Abuse Awareness Day, we highlight the signs of this crisis, lift up the voices of survivors, and strive to improve resources for those on a path to healing.

Fighting elder abuse begins with bringing it out of the shadows and raising awareness about its many forms. While some victims show injuries from physical or sexual violence, others experience psychological abuse, neglect, and financial exploitation, which may be more difficult to detect. These offenses can happen anywhere—at home with family or friends, at work among colleagues, online, and in other public and private places. Wherever it occurs, it is antithetical to the basic American belief that every human being, regardless of age, deserves to be treated with dignity and respect.

To date, my Administration has invested over $430 million to strengthen Adult Protective Services across our country, improving their ability to investigate reports of elder abuse; support survivors with emergency needs like food, shelter, or law enforcement protection; and help provide medical and mental health treatment, legal and financial assistance, and more. My 2024 Budget calls for an additional $43 million beyond our current spending level to support these vital programs.

Last year, I reauthorized and strengthened the Violence Against Women Act, which includes dedicated funding for service providers, law enforcement, and prosecutors responding to domestic and sexual violence experienced by older adults. And because America's seniors saw over $3 billion siphoned from their pockets by fraudsters and scammers last year, the Federal Trade Commission, the Federal Communications Commission, the Consumer Financial Protection Bureau, and other regulatory agencies have been laser-focused on identifying, preventing, and, where appropriate, taking enforcement action against loan scams, mortgage scams, romance scams, price gouging, and identity theft. Every American—especially seniors who have worked their whole lives for what they have—deserves the peace of knowing that they are protected from exploitation and that help is close at hand should emergencies arise.

But the security of elderly people involves more than protecting them against malicious schemes. My Administration is also working to improve the quality of care that older Americans receive at home and in other residential settings. Long-term care costs for the elderly and people with disabilities are up 40 percent over the last decade, and too many care workers are underpaid and undervalued. In fact, too many are leaving the profession altogether. That is why, in addition to implementing a National Strategy to Support Family Caregivers, I signed an Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers. It will make long-term care more accessible and affordable for families; support family caregivers shouldering immense responsibility; and improve job quality for home care workers and staff at nursing homes, which in turn bolsters the workforce. I

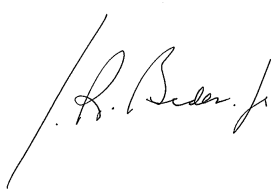
continue calling on the Congress to pass laws that improve the safety and quality of care in nursing homes. My new Budget would also invest $150 billion over the next decade to improve and expand Medicaid home- and community-based services—making it easier for seniors and people with disabilities to receive quality care in their own homes.

The same principles guiding my Administration's work to protect and support the elderly at home also motivate our partnerships abroad. United States local law enforcement agencies, through Department of State programs, are training foreign counterparts to help them investigate crimes against the elderly and provide assistance to victims. Through the first-ever Strategy on Global Women's Economic Security, we are also working to improve conditions and opportunities for caregivers around the world, many of whom are older women or support aging adults. Our Strategy to Prevent and Respond to Gender-based Violence Globally is meanwhile focused on fighting elder abuse as a form of gender-based violence, recognizing that gender-based violence affects people of all ages, including older adults.

Today, let us pledge to protect seniors who deserve to be treated with dignity and respect not only because of a lifetime of contribution but because of their overriding humanity. It is fundamental that we shape a world that values seniors' wisdom, celebrates their achievements, and treats their lives and rights as sacred, and it is within our reach to make it a reality.

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 June 15, 2023, as World Elder Abuse Awareness Day. I encourage all Americans to be diligent, work together to strengthen existing partnerships, and develop new opportunities to improve our Nation's prevention and response to elder abuse, neglect, and exploitation.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, 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.



[FR Doc. 2023–13170
Filed 6–16–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 701 and 760

[Docket ID: USDA–2021–0012]

RIN 0503–AA75

Pandemic Assistance Programs and Agricultural Disaster Assistance Programs

AGENCY: Commodity Credit Corporation (CCC), Farm Service Agency (FSA), and Office of the Secretary, Department of Agriculture (USDA).

ACTION: Technical correction.

SUMMARY: The Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) are making technical corrections to certain regulations that were published on January 11, 2023. These technical corrections will be made to: Phase 2 of the Emergency Relief Program (ERP); the Emergency Conservation Program (ECP); and the Emergency Forest Restoration Program (EFRP).

DATES: Effective June 20, 2023.

FOR FURTHER INFORMATION CONTACT: For ERP: Kathy Sayers; telephone: (202) 720–7649; email: kathy.sayers@*usda.gov.* For ECP and EFRP: Shanita Landon; telephone: (202) 690–1612; email: *shanita.landon@usda.gov.* Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

ECP and EFRP

FSA announced changes made to ECP in a final rule on January 11, 2023 (88 FR 1862–8892). FSA inadvertently omitted a modification in 7 CFR 701.111 (applicable to ECP) and 7 CFR 701.211 (applicable to EFRP) to clarify sources of Federal funding that would be considered a duplicative payment. This correction amends the ECP regulation in 7 CFR 701.111(a) by striking ''or State'' and provides additional clarity to the EFRP regulation in 7 CFR 701.211 by inserting ''Federal'' throughout to describe the funding sources that would be considered a duplicative payment. In addition, we are correcting a typographical error by inserting the word ''or'' after paragraph (a)(3) to clarify the items in 7 CFR 701.111(a).

ERP Phase 2

FSA announced ERP Phase 2 in the final rule published on January 11, 2023. This document amends the ERP Phase 2 provisions in 7 CFR 760.1903 to address an unintended gap in how certain crop losses may be accounted for in a producer's payment based on allowable gross revenue. This amendment provides a method for including in allowable gross revenue a value for certain crops, as determined by the Deputy Administrator, produced by a producer that do not generate revenue for the producer directly from the sale of the crop and that the producer uses within their ordinary operation. This would include, for example, wine makers who grow their own wine grapes and process those grapes into wine and producers of forage crops who store the crop to feed to livestock on their farm. These producers would not have revenue from the sale of the portion of their crop used for these purposes to include in their allowable gross revenue.

Wine grapes used to process grapes into wine and forage crops that are stored and fed to livestock have been determined by the Deputy Administrator to qualify for this method. The value of the eligible crop will be based on the producer's actual production of the crop and a price for the crop determined by the producer based on the best available data for each crop, such as published price data for the crop [1] or the average price obtained by other producers in the area, as determined by the Deputy Administrator and published through guidance on FSA's website.[2] This provision does not cover crops that were sold by a producer.

This document corrects § 760.1903(a)(4) and (5) to specify that benefits for the listed agricultural programs and CCC loans that are treated as income and reported to the IRS are included in a producer's allowable gross revenue if those benefits or CCC loans are for eligible crops. This document also corrects the regulation in § 760.1906 regarding the payment limitation for ERP Phase 2. As explained in the prior notice of funds availability for ERP Phase 1, published on May 18, 2022 (87 FR 30164–30172), and in the final rule that included ERP Phase 2, published on January 11, 2023, ERP is administered under 2 phases using shared payment limitations. As under similar FSA programs, a single ERP payment limitation will be applied based on the program year of a payment, regardless of whether the payment is issued under ERP Phase 1 or Phase 2. FSA will not combine payments from different program years for the purpose of payment limitation. This change is consistent with how FSA has implemented ERP and does not affect any payments that have been issued; it is being corrected in this document to reflect how ERP has been administered.

USDA Non-Discrimination Policy

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Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY) or dial 711 for

[1] Published sources of price data that the Deputy Administrator may consider include, but are not limited to, Federal Crop Insurance Corporation-established prices, FSA-established National Crop Table prices, and National Agricultural Statistic Service prices.

[2] See *https://www.fsa.usda.gov/programs-and-services/emergency-relief/index.*

Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

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List of Subjects

7 CFR Part 701

Disaster assistance, Environmental protection, Forests and forest products, Grant programs—agriculture, Grant programs—natural resources, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Water resources, Wildlife.

7 CFR Part 760

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

PART 701—EMERGENCY CONSERVATION PROGRAM, EMERGENCY FOREST RESTORATION PROGRAM, AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 16 U.S.C. 2201–2206; Sec. 101, Pub. L. 109–148, 119 Stat. 2747; and Pub. L. 111–212, 124 Stat. 2302.

Subpart B—Emergency Conservation Program

§ 701.111 Amended]

■ 2. Amend § 701.111 as follows:
■ a. In paragraph (a) introductory text remove the words ''or State'';
■ b. In paragraph (a)(3) remove the ''expenses.'' and add ''expenses; or'' in its place; and
■ c. In paragraph (a)(4) remove the words ''other program'' and add ''other Federal program'' in their place.

Subpart C—Emergency Forest Restoration Program

§ 701.211 Amended]

■ 3. Amend § 701.211 as follows:
■ a. In paragraph (a) remove the words ''funding for'' and add the words ''federal funding for'' in their place;
■ b. In paragraph (a)(5), remove the words ''other program'' and add ''other Federal program'' in their place; and
■ c. In paragraph (b), remove the words ''duplicate funds'' and add ''duplicate Federal funds'' in their place and remove the words ''all programs'' and add ''all Federal programs'' in their place.

PART 760—INDEMNITY PAYMENT PROGRAMS

■ 4. The authority citation for part 760 continues to read as follows:

Authority: 7 U.S.C. 4501 and 1531; 16 U.S.C. 3801, note; 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; Title IX, Pub. L. 110–28, 121 Stat. 211; Sec. 748, Pub. L. 111–80, 123 Stat. 2131; Title I, Pub. L. 115–123, 132 Stat. 65; Title I, Pub. L. 116–20, 133 Stat. 871; Division B, Title VII, Pub. L. 116–94, 133 Stat. 2658; and Division B, Title I, Pub. L. 117–43, 135 Stat. 344.

Subpart S—Emergency Relief Program

■ 5. Amend § 760.1903 as follows:
■ a. In paragraph (a)(4), remove the word ''under'' and add ''for eligible crops under'' in its place;
■ b. In paragraph (a)(5), remove the word ''loans,'' and add ''loans for eligible crops,'' in its place; and
■ c. Add paragraph (j).

The addition reads as follows.

§ 760.1903 Allowable gross revenue.

* * * * *

(j) The Deputy Administrator may determine that certain eligible crops produced by a producer that do not generate revenue for the producer directly from the sale of the crop and that the producer uses within their ordinary operation may be included in a producer's allowable gross revenue. This determination is at the Deputy Administrator's discretion. The value of the eligible crop reported in the producer's allowable gross revenue will be based on the producer's actual production of the crop and a price for the crop based on the best available data for each crop, as determined by the Deputy Administrator and published through guidance on FSA's website.

§ 760.1906 Amended]

■ 6. In paragraphs (a)(2), (b)(1)(ii), and (b)(2)(ii) of § 760.1906, remove the phrase ''years 2021 and 2022'', and add ''year 2021'' in their places.

Zach Ducheneaux,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2023–12912 Filed 6–16–23; 8:45 am]

BILLING CODE 3411–E2–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

Office of the Secretary

43 CFR Part 30

[BIA–2019–0006; 234A2100DD/AAKC001030/A0A501010.999900]

RIN 1094–AA55

American Indian Probate Regulations; Corrections

AGENCY: Bureau of Indian Affairs, Office of the Secretary, Interior.

ACTION: Correcting amendments.

SUMMARY: On December 20, 2021, the Department of the Interior (Department) published a final rule to update the regulations governing probate of property that the United States holds in trust or restricted status for American Indians. We are publishing several corrections to that final rule in this document. These corrections are editorial in nature and involve no substantiative changes to any applicable regulations.

DATES: These corrections are effective on June 20, 2023.

FOR FURTHER INFORMATION CONTACT: Rachel Lukens, Counsel to the Director, Office of Hearings and Appeals, 801 N Quincy Street, Suite 300, Arlington, VA 22203; (703) 223–9934; email: *rachel_lukens@oha.doi.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Department of the Interior finalized updates to its regulations on December 20, 2021 (86 FR 72068) governing probate of property that the United States holds in trust or restricted status for American Indians, in an effort to continually improve the services the

Department provides to individual Indians and Tribes. These updates allow the Office of Hearings and Appeals (OHA) to adjudicate probate cases more efficiently. Following publication, the OHA Probate Hearings Division (Ph.D.) realized that, due to the reorganization of the regulations, multiple cross-references within the regulations were now incorrect. In a number of instances editorial changes created ambiguity in the final language. And the final published version does not contain the correct website address for Ph.D. This action makes the necessary editorial corrections to the Department's regulations.

Administrative Procedure

We have determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are impractical and unnecessary. Public comment could not inform this correction process in any meaningful way. We have further determined that, under 5 U.S.C. 553(d)(3), the agency has good cause to make this rule effective upon publication, as it is important for the proper administration of our programs for our rulemaking documents published in the **Federal Register** to be complete and accurate.

List of Subjects

25 CFR Part 15

Estates, Indian Law.

43 CFR Part 30

Administrative practice and procedure, Claims, Estates, Indians, Lawyers.

For the reasons given in the preamble, the Department amends part 15 of title 25 and part 30 of title 43 of the Code of Federal Regulations as follows:

Title 25—Indians

Chapter I—Bureau of Indian Affairs, Department of the Interior

PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE OSAGE NATION AND THE FIVE CIVILIZED TRIBES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.;* 44 U.S.C. 3101 *et seq.*

Subpart C—Preparing the Probate File

§ 15.202 [Amended]

■ 2. Amend § 15.202, in paragraph (b) introductory text, by adding the word ''in'' before the phrase ''the probate file''.

Subpart E—Probate Processing and Distribution

§ 15.404 [Amended]

■ 3. Amend § 15.404, in paragraph (c), by adding the word ''a'' before the phrase ''certification of service''.

§ 15.405 [Amended]

■ 4. Amend § 15.405:
■ a. In paragraph (a) introductory text, by removing the word ''it'' and adding in its place the acronym ''BIA''; and
■ b. In paragraph (a)(3), by removing the words ''to a'' and adding in their place the word ''the''.

Title 43—Public Lands: Interior

PART 30—INDIAN PROBATE HEARINGS PROCEDURES

■ 5. The authority citation for part 30 continues to read as follows:

Authority: 5 U.S.C. 301, 503; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.;* 43 U.S.C. 1201, 1457.

Subpart A—Scope of Part; Definitions

■ 6. Amend § 30.100 by revising paragraph (c)(3) to read as follows:

§ 30.100 How do I use this part?

* * * * *

(c) * * *

(3) §§ 30.183 through 30.189, except for §§ 30.186(a), (b)(2), and (c) and 30.187.

* * * * *

§ 30.101 [Amended]

■ 7. Amend § 30.101, in the definition of ''Lineal descendent'', by removing the word ''descendent'' and adding in its place the word ''descendant''.

Subpart H—Renunciation of Interest

§ 30.186 [Amended]

■ 8. Amend § 30.186, in paragraph (b)(1), by removing the reference ''§ 30.182 or § 30.183'' and adding in its place ''§ 30.183 or § 30.184''.

Subpart J—Formal Probate Proceedings

§ 30.211 [Amended]

■ 9. Amend § 30.211:
■ a. In paragraph (c), by removing the website address ''*https://www.doi.gov/oha/organization/Ph.D.*'' and adding in its place ''*https://www.doi.gov/oha/organization/PHD*''.
■ b. In paragraph (e) introductory text, by removing the phrase ''listed in paragraph (e)'' and adding in its place ''listed in paragraph (f)''; and
■ c. In paragraph (e)(3), by removing the phrase ''listed in paragraph (d)(1) or (2)'' and adding in its place ''listed in paragraph (e)(1) or (2)''.

§ 30.243 [Amended]

■ 10. Amend § 30.243, in the introductory text, by removing the comma after the words ''reopened if''.

§ 30.248 [Amended]

■ 11. Amend § 30.248:

■ a. In paragraph (a)(5), by removing the reference ''§ 30.245(c)'' and adding in its place ''§ 30.247(c)''.

■ b. In paragraph (b)(2)(ii), by removing the word ''filling'' and adding in its place the word ''filing''.

Subpart M—Purchase at Probate

§ 30.403 [Amended]

■ 12. Amend § 30.403:

■ a. In paragraph (a) introductory text, by removing the phrase ''as provided in paragraphs (b) and (c)'' and adding in its place ''as provided in paragraph (e)''; and

■ b. In paragraph (f), by removing the phrase ''conditions in paragraph (c)'' and add in its place ''conditions in paragraph (e)''.

§ 30.413 [Amended]

■ 13. Amend § 30.413, in paragraph (a)(2), by removing the reference ''§ 30.403(c)'' and adding in its place ''§ 30.403(e)''.

§ 30.415 [Amended]

■ 14. Amend § 30.415, in paragraph (a)(3), by removing the word ''Any'' and adding the words ''You are any'' in its place.

§ 30.416 [Amended]

■ 15. Amend § 30.416, in the introductory text, by removing the period and adding a colon in its place.

§ 30.417 [Amended]

■ 16. Amend § 30.417, in paragraph (a) introductory text, by removing the acronym ''OST'' and adding in its place ''BTFA''.

This action is taken pursuant to delegated authority.

Bryan Newland,

Assistant Secretary—Indian Affairs.

Joan M. Mooney,

Principal Deputy Assistant Secretary, Exercising the Delegated Authority of the Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2023–12928 Filed 6–16–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0348]

Special Local Regulation; 39th Annual Sarasota P1 Powerboat Grand Prix; Gulf of Mexico

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation on the waters of the Gulf of Mexico, in the vicinity of Lido Beach, Florida, during the Sarasota Powerboat Grand Prix. Our regulation for marine events within the Captain of the Port St. Petersburg identifies the regulated area for this event in Gulf of Mexico, in the vicinity of Lido Beach, Florida. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the designated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: The regulations in 33 CFR 100.703, Table 1 to § 100.703, Item 4 will be enforced daily from 8 a.m. until 5 p.m., on July 1, 2023, through July 2, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Chief Marine Science Technician Ryan D. Shaak, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Ryan.D.Shaak@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.703, Table 1 to § 100.703, Item No. 4, for the Sarasota Powerboat Grand Prix/Powerboat P–1 USA, LLC regulated area from July 1, 2023, through July 2, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, Sector St. Petersburg, § 100.703, Table 1 to § 100.703, Item No. 4, specifies the location of the regulated area for the Sarasota Powerboat Grand Prix/Powerboat P–1 USA, LLC which encompasses portions of the Gulf of Mexico near Lido beach. During the enforcement periods, as reflected in § 100.703(c), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, or both.

Dated: June 12, 2023.

Michael P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2023–13008 Filed 6–16–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0448; FRL–10570–01–OCSPP]

Trifloxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of trifloxystrobin in or on multiple crops that are discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 20, 2023. Objections and requests for hearings must be received on or before August 21, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0448, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0448 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before August 21, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. *See https://www.epa.gov////-05//2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information

(CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0448, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov//where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 21, 2021 (86 FR 58239) (FRL–8792–04–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E8931) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.555 be amended by establishing tolerances for residues of trifloxystrobin, methyl (α*E*)-α-(methoxyimino)-2-[[[[(1*E*)-1-[3-(trifluoromethyl)phenyl] ethylidene]amino]oxy]methyl]benzeneace, in or on the raw agricultural commodities Brassica, leafy greens, subgroup 4–16B at 30 parts per million (ppm); Celtuce at 9 ppm; Fennel, Florence, fresh leaves and stalk at 9 ppm; Fruit, citrus, group 10–10 at 0.6 ppm; Fruit, pome, group 11–10 at 0.7 ppm; Fruit, stone, group 12–12 at 3 ppm; Kohlrabi at 2 ppm; Leafy greens subgroup 4–16A at 30 ppm; Leaf petiole vegetable subgroup 22B at 9 ppm; Nut, tree, group 14–12 at 0.04 ppm; Onion, bulb, subgroup 3–07A at 0.04 ppm; Onion, green, subgroup 3–07B at 1.5 ppm; Spice group 26 at 30 ppm; Vegetable, Brassica, head and stem, group 5–16 at 2 ppm; Vegetable, fruiting, group 8–10 at 0.5 ppm; Individual crops of Proposed Subgroup 6–XXA: Edible podded bean legume vegetable subgroup at 1.5 ppm; Individual crops of Proposed Subgroup 6–XXE: Dried shelled bean, except soybean, subgroup at 0.06 ppm; and Individual commodities of Proposed Crop Subgroup 6–XXF: Dried shelled pea subgroup at 0.2 ppm. Due to the length of the list of commodities, please refer to the document EPA issued in the **Federal Register** on October 21, 2021, for a complete list of the tolerances requested.

The petition also proposed to remove established tolerances for residues of trifloxystrobin in or on the following: Brassica, head and stem, subgroup 5A at 2.0 ppm; Brassica, leafy greens, subgroup 5B at 30 ppm; Fruit, citrus, group 10 at 0.6 ppm; Fruit, pome at 0.5 ppm; Fruit, stone, group 12 at 2 ppm; Leaf petioles subgroup 4B at 9.0 ppm; Leafy greens, subgroup 4A at 30 ppm; Nut, tree, group 14 at 0.04 ppm; Pea and bean, dried shelled, except soybean, subgroup 6C at 0.06 ppm; Pistachio at 0.04 ppm; Vegetable, fruiting at 0.5 ppm.

That document referenced a summary of the petition, which is available in the docket, *https://www.regulations.gov.* No substantive comments were submitted in response to this petition.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing tolerances for three subgroups in the recently revised Legume vegetable crop group 6–22 instead of the specific commodities in those subgroups as requested by the petitioner. See the **Federal Register** of September 21, 2022 (87 FR 57627) (FRL–5031–13–OCSPP).

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for trifloxystrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with trifloxystrobin follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemaking of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemaking, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published a number of tolerance rulemakings for trifloxystrobin, in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to trifloxystrobin and established tolerances for residues of that chemical. EPA is incorporating previously published sections of those rulemakings that remain unchanged, as described further in this rulemaking. Specific information on the risk assessment conducted in support of this action, including on the studies received and the nature of the adverse effects caused by trifloxystrobin, can be found in the document titled ''Trifloxystrobin. Human Health Risk Assessment for Proposed New Uses on Bulb Onion (Subgroup 3–07A), Green Onion (Subgroup 3–07B), and Individual Commodities of Proposed Subgroup 6–XXA, E, and F, and for Crop Group Conversions and Expansions'' which is available in the docket for this action at *https://www.regulations.gov.*

Toxicological profile. For a discussion of the Toxicological Profile of trifloxystrobin, see Unit III.A. of the trifloxystrobin tolerance rulemaking published in the **Federal Register** of February 15, 2019 (84 FR 4340) (FRL–9985–23).

Toxicological points of departure/Levels of concern. For a summary of the Toxicological Points of Departure/Levels of Concern used for the safety

assessment, see Unit III.B. of the February 15, 2019, rulemaking.

Exposure assessment. Much of the exposure assessment remains the same since the February 15, 2019, and January 11, 2022 (87 FR 1363) (FRL–9086–01–OCSPP) rulemakings, although the new exposure assessment incorporates additional dietary exposures from the petitioned-for tolerances. These updates are discussed in this section; for a description of the rest of EPA's approach to and assumptions for the exposure assessment, see Unit III.C in the February 15, 2019, and Unit III in the January 11, 2022, rulemaking.

EPA's acute and chronic dietary (food and drinking water) exposure assessments have been updated to include the exposure from residues of trifloxystrobin on the commodities identified in this action as well as exposure from existing tolerances. The dietary exposure and risk assessment was conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 4.02. This software uses 2005–2010 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The acute dietary assessment used tolerance-level residues, 100 percent crop treated (PCT) and default processing factors. A partially refined chronic dietary exposure and risk assessment was conducted. Chronic dietary assumptions included average field trial residues for selected crops (subgroups 4A and 4B, subgroups 5A and 5B, crop group 26, apples, and rice); tolerance-level residues for all other crop commodities; empirical and default processing factors; and some PCT data.

Anticipated residue and PCT information. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The following average percent crop treated estimates were used in the chronic dietary risk assessment for the following crops that are currently registered for trifloxystrobin: almonds: 20%, apples: 35%, apricots: 15%, cabbage: <2.5%, cantaloupes: 2.5%, carrots: 2.5%, cauliflower: <1%, celery: 25%, cherries: 45%, corn: <2.5%, cotton: <1%, cucumbers: <2.5%, dry beans/peas: <1%, grapefruit: 35%, grapes, table: 50%; grapes, raisin: 25%, grapes, wine: 25%, hazelnuts: 70%, lemons: <1%, lettuce: <1%, nectarines: 15%, oranges: 10%, peaches: 10%, peanuts: 5%, pears: 15%, pecans: 15%, peppers: <2.5%, pistachios: 10%, plums: 5%, potatoes: <1%, prunes: <1%, pumpkins: 5%, rice: 15%, soybeans: <2.5%, squash: <2.5%, strawberries: 15%, sugar beets: 5%, sweet corn: <1%, tangerines: 5%, tomatoes: <1%, watermelons: 5%, wheat: <2.5%. One hundred PCT was assumed for the remaining commodities.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5% as the average PCT value, respectively. In those cases, the Agency would use 1% or 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses 2.5% as the maximum PCT.

The Agency believes that Conditions a, b, and c discussed above have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which trifloxystrobin may be applied in a particular area.

Drinking water and non-occupational exposures. The estimated drinking water concentrations (EDWCs) have been updated since the 2019 and 2022 rulemakings. The highest daily value of 436 ppb and a post-breakthrough average of 356 ppb for trifloxystrobin total toxic residues (TTR) in groundwater were used as residues in drinking water for acute and chronic dietary risk analyses, respectively.

The residential exposure assessment has not changed since the 2022 rulemaking. For a summary of the residential exposure analysis for trifloxystrobin used for the human risk assessment, please reference Unit III of the January 11, 2022, rulemaking.

Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available

information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to trifloxystrobin and any other substances and trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that trifloxystrobin has a common mechanism of toxicity with other substances.

Safety factor for infants and children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X for all routes of exposure other than inhalation. The FQPA safety factor of 10X has been retained for inhalation endpoints only to account for the lack of the subchronic inhalation toxicity study for trifloxystrobin at this time. See Unit III.D. of the February 15, 2019, rulemaking for a discussion of the Agency's rationale for that determination.

Aggregate risks and determination of safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the acute population-adjusted dose (aPAD) and chronic population-adjusted dose (cPAD). Short-, intermediate-, and chronic-term aggregate risks are evaluated by comparing the estimated total food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists.

Acute dietary (food and drinking water) risks are below the Agency's level of concern of 100% of the aPAD: they are 3% of the aPAD for females 13 to 49 years old, which is the only population subgroup of concern. Chronic dietary (food and drinking water) risks are below the Agency's level of concern of 100% of the cPAD: they are 79% of the cPAD for infants less than 1 year old, which is the population subgroup with the highest exposure estimate. The short-term aggregate risk for the population subgroup with the highest total exposure (children 1 to less than 2 years old) is an aggregate MOE of 124, which is above the level of concern of 100 and not of concern. Short-term aggregate risk calculations are protective of the intermediate-term duration of exposure. Because trifloxystrobin is classified as ''not likely to be carcinogenic to humans'', EPA has concluded that aggregate exposure to trifloxystrobin is not likely to pose a cancer risk.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to trifloxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the February 15, 2019, rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The U.S. tolerances are harmonized with Codex MRLs for residues of trifloxystrobin on pome fruits, and stone fruits. There are no Codex MRLs for Brassica, leafy greens, subgroup 4–16B; celtuce; fruit, citrus, group 10–10; Florence fennel; kohlrabi; onion, bulb, subgroup 3–07A; or spice group 26. For many of the rest of the crops covered by this action, the majority of Codex MRLs are lower than the U.S. tolerances (lettuce, spinach, celery, nuts, leek (which is in green onion subgroup 3–07B), broccoli, broccoli Chinese, cauliflower, Brussels sprouts, cabbage, cabbage savoy, edible podded beans). No harmonization is possible for these commodities because decreasing the tolerance to harmonize with the Codex MRL could put U.S. growers at risk of violative residues despite legal use of trifloxystrobin. The U.S. tolerance for the fruiting vegetables group is being established at 0.5 ppm and is not being harmonized with the Codex MRLs for eggplant and tomato (0.7 ppm) or bell pepper (0.3 ppm). Harmonization with the bell pepper tolerance could lead to violative residues despite compliance with approved label language. Moreover, EPA prefers to leave tolerances for these commodities at 0.5 ppm, as that level harmonizes with Canadian MRLs. The U.S. tolerances for dried beans and peas (0.06 ppm and 0.2 ppm, respectively) are not being harmonized with the Codex MRLs for those same commodities (0.5 ppm and 1.5 ppm, respectively) since the Codex MRLs are more than five times higher than the U.S. tolerances. Harmonizing with the Codex MRLs would complicate the ability to detect pesticide misuse. Moreover, the available residue data support the lower tolerances for dried beans and peas.

V. Conclusion

Therefore, tolerances are established for residues of trifloxystrobin in or on Brassica, leafy greens, subgroup 4–16B at 30 ppm; Celtuce at 9 ppm; Fennel, Florence, fresh leaves and stalk at 9 ppm; Fruit, citrus, group 10–10 at 0.6 ppm; Fruit, pome, group 11–10 at 0.7 ppm; Fruit, stone, group 12–12 at 3 ppm; Kohlrabi at 2 ppm; Leaf petiole vegetable subgroup 22B at 9 ppm; Leafy greens subgroup 4–16A at 30 ppm; Nut, tree, group 14–12 at 0.04 ppm; Onion, bulb, subgroup 3–07A at 0.04 ppm; Onion, green, subgroup 3–07B at 1.5 ppm; Spice group 26 at 30 ppm; Vegetable, Brassica, head and stem, group 5–16 at 2 ppm; Vegetable, fruiting, group 8–10 at 0.5 ppm; Vegetable, legume, bean, edible podded, subgroup 6–22A at 1.5 ppm; Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E at 0.06 ppm; and Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F at 0.2 ppm.

Additionally, the established tolerances on Brassica, head and stem, subgroup 5A; Brassica, leafy greens, subgroup 5B; Dill, seed; Fruit, citrus, group 10; Fruit, pome; Fruit, stone, group 12; Leaf petioles subgroup 4B; Leafy greens, subgroup 4A; Nut, tree, group 14; Pea and bean, dried shelled, except soybean, subgroup 6C; Pistachio; and Vegetable, fruiting, are removed as unnecessary.

The tolerance for Vegetable, legume, edible podded, subgroup 6A with footnote 4 indicating there are no U.S. registrations on this commodity as of January 11, 2022, is removed as unnecessary. The edible podded beans covered by the previous subgroup 6A tolerance are included in the newly established tolerance Vegetable, legume, bean, edible podded, subgroup 6–22A at 1.5 ppm, which supports a domestic use on edible podded beans. Individual tolerances are established for the edible podded peas that were covered by the previous subgroup 6A tolerance: Pea, dwarf, edible podded; Pea, green, edible podded; Pea, pigeon, edible podded; Pea, snap, edible podded; Pea, snow, edible podded; and Pea, sugar snap, edible podded. Although green pea and snap pea are not expressly identified in subgroup 6A, they are varieties belonging to the Pisum genus, which is covered by subgroup 6A. These edible

podded pea tolerances include footnote 4 indicating there are no U.S. registrations for these commodities.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 13, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter 1 as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.555, revise the table in paragraph (a) to read as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Alfalfa, forage	0.01
Alfalfa, hay	0.01
Almond, hulls	9.0
Apple, wet pomace	5.0
Artichoke, globe	1.0
Asparagus	0.07
Banana [1]	0.10
Barley, grain	0.05
Barley, hay	0.3
Barley, straw	5.0
Beet, sugar, dried pulp	0.4
Beet, sugar, molasses	0.2
Beet, sugar, roots	0.1
Beet, sugar, tops	4.0
Berry, low growing subgroup 13–07G	1.5
Brassica, leafy greens, subgroup 4–16B	30
Caneberry, subgroup 13–07A [4]	2
Canistel	0.7
Cattle, fat	0.1
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Celtuce	9
Citrus, dried pulp	1.0
Citrus, oil	38

TABLE 1 TO PARAGRAPH (a)—Continued

Commodity	Parts per million
Coffee, green bean [2]	0.02
Corn, field, forage	8.0
Corn, field, grain	0.05
Corn, field, stover	7
Corn, field, refined oil	0.1
Corn, pop, grain	0.05
Corn, pop, stover	7
Corn, sweet, cannery waste	0.6
Corn, sweet, forage	7.0
Corn, sweet, kernel plus cob with husks removed	0.04
Corn, sweet, stover	4.0
Cotton, gin byproducts	3.0
Cottonseed subgroup 20C	0.50
Currant [4]	3
Egg	0.04
Fennel, Florence, fresh leaves and stalk	9
Flax, seed	0.40
Fruit, citrus, group 10–10	0.6
Fruit, pome, group 11–10	0.7
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	2.0
Fruit, stone, group 12–12	3
Goat, fat	0.1
Goat, meat	0.1
Goat, meat byproducts	0.1
Grain, aspirated fractions	10
Grape, raisin	5.0
Grass, forage	12
Grass, hay	17
Herbs, subgroup 19A	200
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.05
Hop, dried cones	11.0
Horse, fat	0.1
Horse, meat	0.1
Horse, meat byproducts	0.1
Kohlrabi	2
Leaf petiole vegetable subgroup 22B	9
Leafy greens subgroup 4–16A	30
Mango	0.7
Milk	0.02
Nut, tree, group 14–12	0.04
Oat, forage	0.3
Oat, grain	0.05
Oat, hay	0.3
Oat, straw	5.0
Onion, bulb, subgroup 3–07A	0.04
Onion, green, subgroup 3–07B	1.5
Papaya	0.7
Pea, dwarf, edible podded [4]	1.5
Pea, field, hay	15
Pea, field, vines	4
Pea, green, edible podded [4]	1.5
Pea, pigeon, edible podded [4]	1.5
Pea, snap, edible podded [4]	1.5
Pea, snow, edible podded [4]	1.5
Pea, sugar snap, edible podded [4]	1.5
Pea and bean, succulent shelled, subgroup 6B [4]	0.2
Peanut, hay	4.0
Peanut	0.05
Poultry, fat	0.04
Poultry, meat	0.04
Poultry, meat byproducts	0.04
Radish, tops	10
Rice, grain	3.5
Rice, hulls	8
Sapodilla	0.7
Sapote, black	0.7
Sapote, mamey	0.7
Sheep, fat	0.1
Sheep, meat	0.1

TABLE 1 TO PARAGRAPH (a)—Continued

Commodity	Parts per million
Sheep, meat byproducts	0.1
Soybean, forage	10.0
Soybean, hay	25.0
Soybean, seed	0.08
Spice group 26	30
Star apple	0.7
Tea, dried [3]	5
Tea, instant [3]	5
Tropical and subtropical, small fruit, edible peel, subgroup 23A [4]	0.3
Vegetable, Brassica, head and stem, group 5–16	2
Vegetable, cucurbit, group 9	0.50
Vegetable, fruiting, group 8–10	0.5
Vegetable, legume, bean, edible podded, subgroup 6–22A	1.5
Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E	0.06
Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F	0.2
Vegetable, root, except sugar beet, subgroup 1B	0.1
Vegetable, tuberous and corm, subgroup 1C	0.04
Wheat, bran	0.15
Wheat, forage	0.3
Wheat, grain	0.05
Wheat, hay	0.2
Wheat, straw	5.0

[1] There are no U.S. registrations as of September 27, 1999, for use on banana.
[2] There are no U.S. registrations as of January 18, 2012, for use on coffee, green bean.
[3] There are no U.S. registrations as of June 24, 2019, for use on tea.
[4] There are no U.S. registrations on this commodity as of January 11, 2022.

* * * * *

[FR Doc. 2023–13023 Filed 6–16–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0014; FRL–11019–01–OCSPP]

Glufosinate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of glufosinate in or on tropical and subtropical, medium to large fruit, edible peel, subgroup 23B; tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B; and tropical and subtropical, small fruit, inedible peel, subgroup 24A. The regulation also establishes tolerances with regional registrations in or on grass, forage and grass, hay. The Interregional Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 20, 2023. Objections and requests for hearings must be received on or before August 21, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0014, is available online at *http://www.regulations.gov* or in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744.

For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the **Federal Register** Office's e-CFR site at *https://www.ecfr.gov/current/title=40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0014 in the subject line on the first page of your submission. All objections and requests for a hearing

must be in writing and must be received by the Hearing Clerk on or before August 21, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0014, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerances

In the **Federal Register** of October 24, 2022 (87 FR 64196) (FRL–9410–06–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E8960) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.473 be amended to establish tolerances for residues of the herbicide glufosinate ammonium, determined by measuring the sum of glufosinate ammonium, butanoic acid, 2-amino-4-(hydroxymethylphosphinyl) monoammonium salt, and its metabolites, 2-(acetylamino)-4-(hydroxymethyl phosphinyl)butanoic acid, and 3-(hydroxymethylphosphinyl) propanoic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the following raw agricultural commodities: tropical and subtropical, medium to large fruit, edible peel, subgroup 23B at 0.07 parts per million (ppm); tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B at 0.2 ppm; and tropical and subtropical, small fruit, inedible peel, subgroup 24A at 0.03 ppm. The petition also requested that 40 CFR 180.473 be amended to establish tolerances with regional registrations for residues of glufosinate ammonium in or on grass, forage at 0.15 ppm; and grass, hay at 0.2 ppm. Upon the establishment of those tolerances, the petition also requested that EPA remove the following tolerances from 40 CFR 180.473: avocado at 0.03 ppm; banana at 0.30 ppm; banana, pulp at 0.20 ppm; and fig at 0.07 ppm. The Notice of Filing referenced a summary of the petition prepared by IR–4, which is available in the docket at *https://regulations.gov.* No comments were received in response to the Notice of Filing.

Based upon review of the data supporting the petition, EPA is establishing two tolerances at a different level than the petitioner requested. In addition, EPA is establishing tolerances for glufosinate rather than glufosinate ammonium. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for glufosinate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with glufosinate follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published in tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking. EPA has previously published tolerance rulemakings for glufosinate in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to glufosinate and established tolerances for residues of that chemical. In this rulemaking, EPA is incorporating previously published sections from the September 21, 2022, rulemaking (87 FR 57621) (FRL–9521–01–OCSPP) as described further below, as they remain unchanged.

Toxicological Profile. For a discussion of the Toxicological Profile of glufosinate, see Unit III.A. of the September 21, 2022, rulemaking.

Toxicological Points of Departure/Levels of Concern. For a summary of the Toxicological Points of Departure/Levels of Concern used for the human risk assessment, see Unit III.B. of the September 21, 2022, rulemaking and pages 12–13 of the document titled ''Glufosinate. Human Health Risk Assessment for Proposed New Use on tropical and subtropical, medium to large fruit, edible peel, subgroup 23B; tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B; tropical and subtropical, small fruit, inedible peel, subgroup 24A; and a new regional use on grass (seed crop)'' (hereinafter ''Glufosinate Human Health Risk Assessment'') in docket ID number EPA–HQ–OPP–2022–0014.

Exposure Assessment. Much of the exposure assessment remains the same, although updates have occurred to account for exposures from the petitioned-for tolerances. These updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, please reference Unit III.C. of the September 21, 2022, rulemaking.

EPA's dietary exposure assessments have been updated to include the additional exposures from the new uses

of glufosinate on tropical and subtropical, medium to large fruit, edible peel, subgroup 23B; tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B; and tropical and subtropical, small fruit, inedible peel, subgroup 24A; and a new regional use on grass (forage and hay). In conducting the acute dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food and Commodity Intake Database (DEEM–FCID) Version 4.02. This software uses the 2005–2010 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The acute dietary exposure assessment is unrefined, assuming tolerance level residues and 100 percent crop treated (PCT) for all crop and livestock commodities.

The chronic dietary exposure assessment also uses the DEEM–FCID Version 4.02 software with the NHANES/WWEIA data. The chronic dietary exposure assessment is refined and uses the same assumptions as Unit III.C.1.ii. in the September 21, 2022, rulemaking; specifically, anticipated residues based on average field trial residue levels for plant raw agricultural commodities, PCT information where available, and experimentally determined processing factors where available. Anticipated residues for livestock commodities were also calculated and incorporated into the assessment.

Anticipated residue and PCT information. For a discussion of the FFDCA requirements regarding use of anticipated residue and PCT information and the PCT assumptions used in the chronic dietary exposure assessment, see Unit III.C.1.iv. of the September 21, 2022, rulemaking.

Drinking Water Exposure. The new uses do not result in an increase in the estimated residue levels in drinking water, so EPA used the same estimated drinking water concentrations in the acute and chronic dietary exposure assessments as identified in Unit III.C.2. of the September 21, 2022, rulemaking.

Non-Occupational Exposure. There are no new proposed residential (non-occupational) uses for glufosinate at this time; however, glufosinate is currently registered for uses that could result in residential handler and post-application exposures, including use on lawn and turf as well as recreational sites such as golf courses. For a summary of those exposures, see Unit III.C.3. of the September 21, 2022, rulemaking.

Cumulative Exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to glufosinate and any other substances, and glufosinate does not appear to produce a toxic metabolite produced by other substances. For purposes of this tolerance action, therefore, EPA has not assumed that glufosinate has a common mechanism of toxicity with other substances.

Safety Factor for Infants and Children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor to 1X for acute dietary exposure. For all other exposure scenarios, EPA is retaining a 10X FQPA safety factor. See Unit III.D. of the September 21, 2022, rulemaking for a discussion of the Agency's rationale for that determination.

Aggregate Risk and Determination of Safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the acute population adjusted dose (aPAD) and the chronic population adjusted dose (cPAD). Short-, intermediate-, and chronic term aggregate risks are evaluated by comparing the estimated total food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists.

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are 26% of the aPAD for females 13–49 years old, the only population subgroup for which an acute toxic effect was identified. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 66% of the cPAD for all infants, the most highly exposed population subgroup.

The short-term aggregate exposure assessment includes dietary (food and drinking water) and dermal exposure from high contact lawn activity on treated lawns for adults and dermal plus incidental oral exposure from high contact lawn activity on treated lawns for children 1 to less than 2 years old. The short-term aggregate MOE for adults is 4,600 and is not of concern because it is equal to or greater than the Agency's level of concern of 1,000. The short-term aggregate MOE for children 1 to less than 2 years old is 1,000. This is also not of concern because an MOE equal to or greater than the level of concern of 1,000 is not of concern.

Glufosinate is classified as ''Not Likely To Be Carcinogenic to Humans'' based on the lack of evidence of a treatment-related increase in tumors in two adequate rodent carcinogenicity studies.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to glufosinate residues. More detailed information on this action can be found in the Glufosinate Human Health Risk Assessment in docket ID EPA–HQ–OPP–2022–0014.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method for various crops, see Unit IV.A. of the September 21, 2022, rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The U.S. tolerance for glufosinate residues in or on tropical and subtropical, medium to large fruit, edible peel, subgroup 23B is harmonized with the corresponding Codex MRL at 0.1 ppm and the U.S. tolerance for glufosinate residues in or on tropical and subtropical, small fruit, inedible peel, subgroup 24A is harmonized with the corresponding Codex MRL at 0.1 ppm. Additionally, the U.S. tolerance for glufosinate residues in or on tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B is harmonized with the established Codex MRLs for banana and plantain at 0.2 ppm. The Codex MRLs for the other commodities in subgroup 24B are at 0.1 ppm. It is not possible to harmonize with the lower Codex MRLs for these commodities because doing so would put U.S. growers at risk of having violative residues despite legal use of the pesticide according to the label.

There are no Codex MRLs for grass commodities.

C. Revisions to Petitioned-For Tolerances

A tolerance of 0.1 ppm is being established for tropical and subtropical, medium to large fruit, edible peel, subgroup 23B rather than 0.07 ppm as requested. A tolerance of 0.1 ppm is being established for tropical and subtropical, small fruit, inedible peel, subgroup 24A rather than 0.03 ppm as requested. EPA is establishing these tolerances at different levels than requested to harmonize with the Codex MRL.

In addition, EPA is establishing tolerances for glufosinate, rather than glufosinate ammonium as requested. As explained in Unit III.V. of the September 21, 2022, rulemaking, EPA revised the tolerance expressions for glufosinate in 40 CFR 180.473 to clarify that the tolerance for the active ingredient will be referred to as glufosinate (*i.e.,* the racemic mixture). Glufosinate is a racemic mixture of the D- and L-enantiomers, with the L-enantiomer being responsible for its herbicidal activity. Glufosinate can exist in multiple forms, including the acid, ammonium, and sodium forms; other salt forms of glufosinate may be possible as well. While there are presently only registrations for the ammonium form of glufosinate, future registration requests may be submitted for the acid, sodium, or other forms. The tolerances for glufosinate established in this action would cover all these forms.

D. International Trade Considerations

In this rule, EPA is establishing a tolerance for glufosinate residues in or on tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B at 0.2 ppm, which is lower than the established tolerance for banana at 0.30 ppm. The subgroup 24B tolerance of 0.2 ppm is supported by residue data provided by the petitioner at a new proposed use pattern/rate that is different than the use pattern/rate that supported the established tolerance of 0.30 ppm.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures (SPS) Agreement, EPA intends to notify the WTO of the changes to these tolerances in order to satisfy its obligations under the Agreement. In addition, the SPS Agreement requires that Members provide a ''reasonable interval'' between the publication of a regulation subject to the Agreement and its entry into force to allow time for producers in exporting Member countries to adapt to the new requirement. Accordingly, EPA is establishing an expiration date for the existing banana tolerances to allow this tolerance to remain in effect for a period of six months after the effective date of this final rule. At the end of the six-month period, the banana tolerance will expire, as indicated in the regulatory text, and residues on banana must conform to the tolerance for tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B. This reduction in tolerance level is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods. The new tolerance level is supported by available residue data.

V. Conclusion

Therefore, tolerances are established for residues of glufosinate, (2-amino-4-(hydroxymethylphosphinyl)butanoic acid) and its metabolites, 2-(acetylamino)-4-(hydroxymethyl phosphinyl) butanoic acid, and 3-(hydroxymethylphosphinyl) propanoic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on tropical and subtropical, medium to large fruit, edible peel, subgroup 23B at 0.1 ppm; tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B at 0.2 ppm; and tropical and subtropical, small fruit, inedible peel, subgroup 24A at 0.1 ppm. Tolerances with regional registrations are being established for residues of glufosinate in or on grass, forage at 0.15 ppm; and grass, hay at 0.2 ppm.

Tolerances are also removed for the following commodities due to the establishment of tolerances for the above commodities: avocado at 0.1 ppm; banana at 0.30 ppm, which will expire six months after the effective date of this final rule, as explained above; banana, pulp at 0.20 ppm; and fig at 0.1 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 13, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.473:

■ a. Amend Table 1 to Paragraph (a) by:

■ i. Removing the entry for ''Avocado'';

■ ii. Revising the entry for ''Banana'';

■ iii. Removing the entries for ''Banana, pulp'' and ''Fig''; and

■ iv. Adding in alphabetical order the entries ''Tropical and subtropical, medium to large fruit, edible peel, subgroup 23B''; ''Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B''; and ''Tropical and subtropical, small fruit, inedible peel, subgroup 24A'';

■ b. Revising paragraph (c); and

■ c. Amending paragraph (d) by designating the table as table 3.

The additions and revisions read as follows:

§ 180.473 Glufosinate; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * * * *	
Banana [1]	0.30
* * * * * * *	
Tropical and subtropical, medium to large fruit, edible peel, subgroup 23B	0.1
Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B	0.2
* * * * * * *	
Tropical and subtropical, small fruit, inedible peel, subgroup 24A	0.1
* * * * * * *	

[1] This tolerance expires on December 20, 2023.

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registrations are established for residues of glufosinate, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring the sum of glufosinate, (2-amino-4-(hydroxymethylphosphinyl)butanoic acid) and its metabolites, 2-(acetylamino)-4-(hydroxymethyl phosphinyl) butanoic acid, and 3-(hydroxymethylphosphinyl) propanoic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents.

TABLE 2 TO PARAGRAPH (c)

Commodity	Parts per million
Grass, forage	0.15
Grass, hay	0.2

* * * * *

[FR Doc. 2023–12926 Filed 6–16–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0853; FRL–10967–01–OCSPP]

Sulfoxaflor; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of sulfoxaflor in or on coffee, green bean. Corteva Agriscience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 20, 2023. Objections and requests for hearings must be received on or before August 21, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0853, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0853 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before August 21, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0853, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 24, 2023 (88 FR 17778) (FRL–10579–02–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E8945) by Corteva Agriscience, 9330 Zionsville Rd., Indianapolis, IN 46268. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide sulfoxaflor in or on the raw agricultural commodity coffee, green bean at 0.3 parts per million (ppm) and in or on coffee, instant at 0.5 ppm. That document referenced a summary of the petition, which is available in the docket, *https://www.regulations.gov.* There were no comments submitted in response to the notice of filing. This notice supersedes the previous notice of August 30, 2022 (87 FR 52868) (FRL–9410–04–OCSPP). One comment was received but was unrelated to pesticides.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is not establishing the tolerance for coffee, instant as proposed because it is covered by the tolerance being established on coffee, green bean. For details, see Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for sulfoxaflor including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with sulfoxaflor follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published tolerance rulemakings for sulfoxaflor in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to sulfoxaflor and established tolerances for residues of that chemical. EPA is incorporating previously published sections from these rulemakings as described further in this rulemaking, as they remain unchanged.

Toxicological profile. For a discussion of the Toxicological Profile of sulfoxaflor, see Unit III.A. of the sulfoxaflor tolerance rulemaking published in the **Federal Register** of May 17, 2013 (78 FR 29041) (FRL–9371–4).

Toxicological points of departure/Levels of concern. For a summary of the Toxicological Points of Departure/Levels of Concern for sulfoxaflor used for human health risk assessment, see Unit III.B. of the sulfoxaflor tolerance rulemaking published in the **Federal Register** of July 24, 2019 (84 FR 35546) (FRL–9995–63).

Exposure assessment. EPA's dietary exposure assessments have been updated to include the additional

exposure from the requested tolerance for residues of sulfoxaflor in or on coffee, green bean and were conducted with Dietary Exposure Evaluation Model software using the Food Commodity Intake Database (DEEM–FCID) Version 4.02, which uses the 2005–2010 food consumption data from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). Both the acute and the chronic dietary assessments relied primarily on residue data from supervised crop field trials. For the acute assessment, the Agency used maximum field trial residue values. For the chronic assessment, EPA used mean field trial residue values. Several residue estimates were based on tolerance levels. The acute and chronic assessments used empirical processing factors, where available, and EPA's default processing factors in all other cases. Empirical processing factors were translated to similar commodities per standard Agency practice. Tolerance-level residue estimates were used for livestock commodities and the Agency assumed 100 percent crop treated (PCT) for the acute and chronic assessments.

Anticipated residue information. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Drinking water and non-occupational exposures. Because the requested tolerance for residues of sulfoxaflor in or on coffee, green bean does not include registrations for use on coffee in the U.S., the estimated drinking water concentrations have not changed. For a detailed summary of the drinking water analysis for sulfoxaflor used for the human health risk assessment, see Unit III.C.2. of the July 24, 2019, rulemaking.

No residential uses and no commercial/professional uses at residential sites are registered or proposed for sulfoxaflor; therefore, no residential risk assessments are needed. Sulfoxaflor is not proposed or registered for any specific use patterns that would result in residential exposure.

Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to sulfoxaflor and any other substances and sulfoxaflor does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that sulfoxaflor has a common mechanism of toxicity with other substances.

Safety factor for infants and children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.D. of the July 24, 2019, rulemaking for a discussion of the Agency's rationale for that determination.

Aggregate risks and determination of safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary (food and drinking water) exposure estimates to the acute population-adjusted dose (aPAD) and chronic population-adjusted dose (cPAD). Short- and intermediate-term risks are evaluated by comparing the estimated total food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists.

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are 27% of the aPAD for females 13 to 49 years old and 25% of the aPAD for children 1 to 2 years old, the groups with the highest exposure. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 38% of the cPAD for children 1 to 2 years old, the group with the highest exposure.

Sulfoxaflor is not registered for any use patterns that would result in either short- or intermediate-term residential exposure. Therefore, the aggregate risk estimates are equivalent to the dietary risk estimates and are not of concern.

Sulfoxaflor is classified as ''Suggestive Evidence of Carcinogenic Potential.'' Quantification of risk using a non-linear approach (*i.e.,* reference dose (RfD)) adequately accounts for all chronic toxicity, including carcinogenicity, that could result from exposure to sulfoxaflor. As the chronic dietary endpoint and dose are protective of potential cancer effects, sulfoxaflor is not expected to pose an aggregate cancer risk.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to sulfoxaflor residues. More detailed information on this action can be found in the document titled ''Sulfoxaflor. Human Health Risk Assessment for the Proposed Tolerance Without a U.S. Registration on Coffee'' in docket ID EPA–HQ–OPP–2021–0853.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the July 24, 2019, rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

Codex is in the process of establishing an MRL for sulfoxaflor in/on coffee at a level of 0.3 mg/kg. The proposed U.S. tolerance for sulfoxaflor in/on coffee green bean will be harmonized with Codex's MRL.

C. Revisions to Petitioned-For Tolerance

EPA is not establishing the tolerance for coffee, instant as requested because instant coffee is covered by the tolerance being established on coffee, green bean. EPA considers instant coffee to be a blended commodity; therefore, the average raw agricultural commodity (RAC) value is used to calculate residues in processed commodities. When the mean concentration for the RAC (0.047 ppm) is multiplied by the average processing factor for instant coffee (2.4x), the anticipated residue is 0.11 ppm, which is covered by the tolerance for coffee, green bean.

As a housekeeping measure, EPA is removing tolerances that have expired. Specifically, EPA is removing the general tolerances for residues of sulfoxaflor in or on arugula at 6 ppm; cress, garden at 6 ppm; and cress,

upland at 6 ppm from paragraph (a) of 40 CFR 180.668 because they expired on January 24, 2020. Additionally, EPA is removing the time-limited tolerances for residues of sulfoxaflor in or on sorghum, forage at 0.4 ppm; sorghum, grain at 0.3 ppm; and sorghum, stover at 0.9 ppm from paragraph (b) of 40 CFR 180.668 because they expired on December 31, 2020.

V. Conclusion

Therefore, a tolerance is established for residues of sulfoxaflor in or on coffee, green bean at 0.3 ppm. In addition, EPA is removing the expired general tolerances for residues of sulfoxaflor in or on arugula at 6 ppm; cress, garden at 6 ppm; and cress, upland at 6 ppm and the expired time-limited tolerances for residues of sulfoxaflor in or on sorghum, forage at 0.4 ppm; sorghum, grain at 0.3 ppm; and sorghum, stover at 0.9 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides, and pests, Reporting and recordkeeping requirements.

Dated: June 9, 2023.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter 1 as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.668:
■ a. Amend the table in paragraph (a) by:
■ i. Adding a heading for the table.
■ ii. Removing the entry for ''Arugula [1]''.
■ iii. Adding alphabetically the commodity ''Coffee, green bean''.
■ iv. Removing the entries for ''Cress, garden [1]'' and ''Cress, upland [1]''.
■ v. Revising footnote 1.
■ b. Remove and reserve paragraph (b).

The additions read as follows:

§ 180.668 Sulfoxaflor; tolerances for residues.

* * * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Coffee, green bean [1]	0.3
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[1] There are no U.S. registrations as of June 20, 2023.

(b) [Reserved]

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[FR Doc. 2023–12720 Filed 6–16–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 21–456; FCC 23–29; FR ID 147653]

Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or we) revises its rules governing spectrum sharing among a new generation of broadband satellite constellations to promote market entry, regulatory certainty, and spectrum efficiency. The Commission adopts rules clarifying protection obligations between non-geostationary satellite orbit, fixed-satellite service (NGSO FSS) systems authorized through different processing rounds, subjects those protections to a sunset period, and requires all NGSO FSS operators licensed or granted market access in the United States to coordinate with each other in good faith.

DATES: Effective July 20, 2023, except for the amendment to § 25.261 in

amendatory instruction 4, which is delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date of § 25.261 in instruction 4.

FOR FURTHER INFORMATION CONTACT: Clay DeCell, 202–418–0803.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 23–29, adopted April 20, 2023, and released April 21, 2023. The full text is available online at *https://docs.fcc.gov/public/attachments/FCC-23-29A1.pdf.* The document is also available for inspection and copying during business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Procedural Matters

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this document on small entities. The FRFA is set forth in Section IV below.

Paperwork Reduction Act

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, other Federal agencies, and the general public will be invited to comment on the modified information collection requirements contained in this document.

In this document, we have assessed the effects of requiring later-round NGSO FSS grantees to submit compatibility showings with respect to earlier-round grantees with whom coordination has not yet been reached. We find that doing so will serve the public interest and is unlikely to directly affect businesses with fewer than 25 employees.

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Introduction

1. In this document, we revise Commission rules governing spectrum sharing among a new generation of broadband satellite constellations to promote market entry, regulatory certainty, and spectrum efficiency through good-faith coordination. Specifically, we adopt rules clarifying protection obligations between non-geostationary satellite orbit, fixed-satellite service (NGSO FSS) systems authorized through different processing rounds by using a degraded throughput methodology, and subject those protections to a sunset period. After the sunset period, new entrants authorized in later processing rounds will share spectrum on an equal basis with earlier-round incumbents. We also clarify that all NGSO FSS operators licensed or granted market access in the United States must coordinate with each other in good faith, regardless of their processing round status, and we explain our expectations for information sharing during this good-faith coordination. This document will continue the Commission's efforts to promote development and competition in broadband NGSO satellite services made possible by the new space age.

II. Background

2. This proceeding continues the Commission's recent efforts to update and refine its rules governing NGSO FSS systems. Constellations of NGSO FSS satellites traveling in low- and medium-Earth orbit may provide broadband services to industry, enterprise, and residential customers with lower latency and wider coverage than has previously been available via satellite. The number of applications filed in recent years for NGSO FSS system authorizations, and the number of satellites launched, are unprecedented.

3. *Processing Round Procedure Overview.* Applications for NGSO FSS system licenses and petitions for declaratory ruling seeking U.S. market access for non-U.S.-licensed NGSO FSS systems are considered in groups based on filing date, under a processing round procedure. Pursuant to the Commission's rules, a license application for ''NGSO-like'' satellite operation, including operation of an NGSO FSS system, that satisfies the acceptability for filing requirements is reviewed to determine whether it is a ''competing application'' or a ''lead application.'' A competing application is one filed in response to a public notice initiating a processing round. Any other application is a lead application. Competing applications are placed on public notice to provide interested parties an opportunity to file pleadings in response to the application. Lead applications are also placed on public notice. The public notice for a lead application initiates a processing round, establishes a cut-off date for competing NGSO-like satellite system applications, and provides interested parties an opportunity to file pleadings in response to the application.

4. The Commission reviews each application in the processing round and all the pleadings filed in response to each application. Based upon this review and consideration of such other matters as it may officially notice, the Commission will grant all the applications for which the Commission finds that the applicant is legally, technically, and otherwise qualified, that the proposed facilities and operations comply with all applicable rules, regulations, and policies, and that grant of the application will serve the public interest, convenience and necessity. The Commission will deny the other applications.

5. *NGSO FSS System Spectrum Sharing Overview.* The Commission has adopted rules for spectrum sharing among NGSO FSS systems. NGSO FSS space station applications granted with a condition to abide by these sharing rules are exempt from frequency band segmentation procedures that otherwise apply to applications for NGSO-like satellite operation. Instead, NGSO FSS operators must coordinate with one another in good faith the use of commonly authorized frequencies. If two or more NGSO FSS satellite systems fail to complete coordination, a default spectrum-splitting procedure applies.

6. Under the default spectrum-splitting procedure, whenever the percentage increase in system noise temperature of an earth station receiver, or a space station receiver for a satellite with on-board processing, of either system, $\Delta T/T$, exceeds 6% due to interference from emissions originating in the other system in a commonly authorized frequency band, such

frequency band will be divided among the affected satellite networks (*i.e.,* individual links) in accordance with the following: (1) Each of n (number of) satellite networks involved must select 1/n of the assigned spectrum available in each of these frequency bands; (2) the affected station(s) of the respective satellite systems may operate in only the selected (1/n) spectrum associated with its satellite system while the ΔT/T of 6% threshold is exceeded; and (3) all affected station(s) may resume operations throughout the assigned frequency bands once the ΔT/T of 6% threshold is no longer exceeded. The spectrum selection order for each satellite network is determined by the date that the first space station in each satellite system is launched and capable of operating in the frequency band under consideration.

7. In the NGSO FSS Report and Order, the Commission stated that it will ''initially limit'' sharing under the ΔT/T of 6% threshold to qualified applicants in a processing round. The Commission explained that treatment of later applicants would be case-by-case based on the situation at the time and considering both the need to protect existing expectations and investments and provide for additional entry, as well as any comments filed by incumbent operators and reasoning presented by the new applicant.

8. *NPRM.* The NPRM sought comment on rule changes that would clarify the relative obligations between NGSO FSS systems approved in different processing rounds. Specifically, the Commission proposed to limit the existing NGSO FSS spectrum-splitting procedure in section 25.261 to those systems approved in the same processing round, and to require systems approved in a later processing round to coordinate with, or demonstrate they will protect, earlier-round systems. The Commission invited comment on how to quantify inter-round protection and whether it should sunset after a period of time. The Commission also proposed to require all NGSO FSS grantees, regardless of their processing round status, to coordinate with each other in good faith and sought comment on specific information sharing obligations that could facilitate operator-to-operator coordination. In response to the NPRM, seventeen comments, fifteen reply comments, and numerous *ex partes* were filed.

III. Discussion

9. After review of the record, we adopt rule changes that will promote market entry, regulatory certainty, and spectrum efficiency among a new generation of broadband NGSO satellite constellations. Specifically, we adopt three proposals in the NPRM that received broad support: (1) limiting the default spectrum-splitting procedure in section 25.261 to NGSO FSS systems approved in the same processing round, before sunsetting; (2) requiring NGSO FSS systems approved in a later processing round to coordinate with, or demonstrate they will protect, earlier-round systems; and (3) requiring all NGSO FSS grantees to coordinate with each other in good faith. We also address three issues that produced a diverse record. After reviewing the proposed options for inter-round protection, we conclude that an interference analysis based on a degraded throughput methodology offers the most technically promising path for NGSO FSS inter-round sharing and require later-round systems to use such a methodology when demonstrating that they will protect earlier-round systems. On information sharing requirements, we clarify our expectations as to the necessary exchanges of information that will take place as part of the universal NGSO FSS good-faith coordination requirement we are adopting in this Order. We also conclude that protection of earlier-round NGSO FSS systems must ensure a stable environment for continued service and investment but should not hinder later-round systems indefinitely. Accordingly, we adopt a sunsetting provision. NGSO FSS systems will be entitled to protection from systems approved in a subsequent processing round until ten years after the first authorization or market access grant in that subsequent processing round. After that date, all systems in both processing rounds will be treated on an equal basis with respect to spectrum sharing in the absence of a coordination agreement, and the default spectrum-splitting procedure in section 25.261 will also apply between systems in the two rounds. Finally, we apply the rule changes adopted in this final rule to all current NGSO FSS licensees and market access grantees as well as pending and future applicants and petitioners.

A. Limiting the Default Spectrum-Splitting Procedure to Systems Approved Through the Same Processing Round, Before Sunsetting

10. In the NPRM, the Commission noted that, while it stated in the 2017 NGSO FSS Report and Order that it would ''initially limit'' the default spectrum-splitting procedure in section 25.261 to qualified NGSO FSS applicants in the same processing round, there is no such limitation in the current rule text. Nonetheless, recent NGSO FSS system licenses and grants of market access have included a requirement to apply the spectrum-splitting procedure only among NGSO FSS systems approved within the same processing round. To provide greater regulatory certainty, the Commission proposed to codify this limitation. Doing so would eliminate general ''case-by-case'' consideration of how to treat later NGSO FSS applicants relative to approved systems, except when considering waiver requests.

11. Commenters broadly welcome the Commission's proposal, which we adopt to provide greater regulatory stability and predictability to NGSO FSS operators as they deploy their initial constellations, subject to the sunsetting provision described below. The purpose of the Commission's recent NGSO FSS processing rounds has been to establish a sharing environment among authorized systems to provide a measure of certainty in lieu of adopting an open-ended requirement to accommodate all future applicants. NGSO FSS operators have planned, invested, and begun deploying thousands of satellites in their initial constellations based in part on their assessment of the specific characteristics of other participants in their processing round, which allows them to estimate the amount of spectrum likely to be available during a situation governed by the spectrum-splitting procedure. Limiting the spectrum-splitting procedure to systems approved within the same processing round is therefore an important element of regulatory stability for NGSO FSS grantees as they deploy their initial constellations, reflected in the licensing decisions taken under the current, case-by-case approach. Over time, this anticipated NGSO FSS sharing environment will change as system authorizations granted in the same processing round are surrendered or not ultimately built out, new entrants are approved in later processing rounds and coordinate with existing systems, and operators' own system designs are updated for later-generation constellations. Therefore, while we do expect that the need for the stability and predictability offered by limiting the default spectrum-splitting procedure to systems approved through the same processing round will diminish over time and should be counterbalanced with the benefits of promoting new entry, as addressed through the sunsetting provision discussed below, we conclude that the establishment of an initial sharing environment will

promote the development of NGSO FSS systems.

12. While no commenter suggests the Commission grant every new NGSO FSS application filed after a processing round cut-off date on an equal basis with applications filed within the processing round, some parties nonetheless encourage the Commission to retain discretion when considering later-filed NGSO FSS applications. We always retain such discretion in the context of a rule waiver upon a finding of good cause, although we expect such circumstances to be rare. We believe the waiver standard is the appropriate threshold for considering whether an NGSO FSS application submitted after a relevant processing round cut-off date should be treated as if it had been filed within the processing round window and therefore given equal access to spectrum, through the default spectrum-splitting procedure, with timely filed applications.

B. Protection of Earlier-Round Systems From Later-Round Systems

13. Another important element of regulatory stability for NGSO FSS grantees is the knowledge that they will be protected from harmful interference that might be caused by later-authorized systems. In the NPRM, the Commission proposed to codify an inter-round protection requirement consistent with licensing decisions. The rule would require that, prior to commencing operations, an NGSO FSS licensee or market access recipient must either certify that it has completed a coordination agreement with any operational NGSO FSS system licensed or granted U.S. market access in an earlier processing round, or demonstrate that it will not cause harmful interference to any such system with which coordination has not been completed.

14. Commenters broadly support, and none oppose, a requirement for later-round NGSO FSS grantees to protect earlier-round grantees, which we adopt herein. As explained in the NPRM, the protection of an NGSO FSS system from systems approved through a subsequent processing round goes to the heart of the stability of interference environment the Commission intended to create through use of the processing round procedure. Accordingly, to clarify the obligations of later-round grantees and to provide greater regulatory certainty, we codify a requirement that, prior to commencing operations, an NGSO FSS licensee or market access recipient must either submit in the International Communications Filing System (ICFS) a certification that it has completed a coordination agreement with any operational NGSO FSS system licensed or granted U.S. market access in an earlier processing round, or submit for Commission approval a showing that it will not cause harmful interference to any such system with which coordination has not been completed. If an earlier-round system becomes operational after a later-round system has commenced operations, the later-round licensee or market access recipient must submit a certification of coordination or a compatibility showing with respect to the earlier-round system no later than 60 days after the earlier-round system commences operations as notified under section 25.121(b) or otherwise. Notices of commencement of operations for NGSO FSS systems subject to section 25.261 will be placed on public notice as informative to facilitate the filing of these certifications and showings. Compatibility showings will be placed on public notice for comment by interested parties before action by the Commission. Further, to address the possibility that a later-round system may need to significantly limit its operations to protect a large, planned, earlier-round system of which only one or a few satellites have been launched and are operating, we will allow later-round systems to operate on an unprotected, non-interference basis with respect to an earlier-round system after they have submitted a required compatibility showing for the earlier-round system and while it remains pending with the Commission. By requiring this technical showing before operations on a non-interference basis may begin, we will allow the affected earlier-round operator, and any other interested parties, to provide the Commission with their views on the sufficiency of the showing. At the same time, we guard against an incentive for earlier-round grantees to use Commission processes to delay service by the later-round system by vigorously opposing all compatibility showings by grantees that have not yet completed coordination with them.

C. Level of Protection for Earlier-Round Systems

15. The NPRM identified three principal methods, suggested by satellite operators, by which the Commission could quantify a required level of protection for earlier-round NGSO FSS systems from later-round systems or otherwise ensure their compatible operations. First, the Commission could develop and adopt an interference-to-noise (I/N) limit. The I/N limit could incorporate a standard reference antenna mask and standard noise temperature and specify a percentage of time during which the limit may be exceeded. Applicants in a later processing round could be required to demonstrate that their proposed systems would comply with the I/N limit based on a probabilistic analysis. Second, the Commission could adopt interference protection criteria based upon the percentage of degraded throughput experienced by the earlier-round NGSO FSS system. A degraded throughput method would recognize that most, if not all, modern NGSO systems will use adaptive coding and modulation (ACM) and may be designed to meet performance objectives stated as either the packet error ratio or the spectral efficiency (bit/s/Hz) as a function of carrier-to-noise ratio (C/N). Satellite systems using ACM can maintain a satellite connection despite signal degradation, but at lower throughput rates. Third, the Commission could adopt a modified spectrum-splitting procedure for inter-round sharing. Under this option, when a 6% $\Delta T/T$ threshold is passed, the earlier-round system would be entitled to use 75% of the commonly authorized spectrum and the later-round system 25% of the available spectrum, instead of the 50%/50% split applicable to NGSO FSS systems approved through the same processing round.

16. Commenters are divided on their preference for an I/N limit, a degraded throughput methodology, or a modified band-splitting option. Supporters of an I/N limit argue that it is easily administrable, familiar to operational NGSO systems engaged in coordination, and less susceptible to misapplication based on subjective carrier characteristics. Commenters that favor a degraded throughput methodology note that it takes into account the design and objectives of modern NGSO systems, including the use of ACM. Proponents of a modified band-splitting option argue that it would encourage both parties to coordinate because both would have to reduce their spectrum use when the interference trigger is reached. Several commenters request the Commission seek further comment on the development of an inter-round protection criteria before it is adopted, and specifically argue that no reference values currently exist for quantifying proposed new criteria.

17. After review of the record in response to the NPRM, we believe that pursuing a degraded throughput approach to quantify the level of protection for earlier-round systems from later-round systems is the most technically promising option as it would account for the realities of

modern NGSO systems and be based on a key design consideration for such systems. As they transit through the view of an earth station, NGSO satellites operate across a range of path distances, elevation angles, and antenna scan angles. Atmospheric conditions, such as rain attenuation, can also cause link degradations and outages, especially in higher frequency bands and modern NGSO systems use ACM, uplink and downlink power control, and network protocols to provide continuous data services in the face of these varying environmental effects. A degraded throughput methodology would recognize that the mechanisms NGSO FSS systems use to tolerate signal degradation due to path-loss changes and link outages due to weather effects, and would also provide resilience to certain interference from other NGSO FSS systems. Further, degraded throughput analyses submitted on the record demonstrate that the analysis can be performed using widely available satellite system operational information, such as contained in an ITU filing or Commission space station application, and is not unduly difficult to perform. With respect to the issues of potential synchronization loss and taking into account GSO interference and aggregate interference from multiple NGSO FSS constellations, these will be explored through the Further Notice of Proposed Rulemaking and can be addressed within the framework of a degraded throughput methodology. Accordingly, we will require an NGSO FSS licensee or market access recipient that has not yet reached a coordination agreement with an earlier-round system to use a degraded throughput methodology in its demonstration that it will protect earlier-round systems.

18. In contrast, we are concerned that adopting an I/N limit for the protection of earlier-round systems, rather than as a band-splitting trigger for systems in the same processing round, may overprotect earlier-round systems by not taking into account ACM and other methods used by modern NGSO systems to tolerate certain amounts of interference while continuing to provide reliable service to consumers, and therefore weaken their incentives to complete coordination with new entrants. In addition, while a 75%/25% band-splitting procedure between earlier- and later-round systems would provide some incentive to both parties to coordinate, this option may not ensure the continuity of earlier-round operations with existing customer bases if the earlier-round operator were required to reduce its spectrum usage by 25% during an event surpassing the ΔT/T threshold with a later-round system with which it has not yet found an appropriate accommodation.

19. While we adopt a requirement to use a degraded throughput methodology in demonstrations of compatibility with earlier-round systems because it accounts for ACM and other techniques used by modern NGSO systems and holds the best potential proposed on the record to protect earlier-round systems without unduly burdening later-round systems, we recognize that certain details of its implementation may benefit from further comment, such as the final percentage criteria to be used. The Further Notice of Proposed Rulemaking is dedicated to finalizing these issues. However until the particular issues in the Further Notice are resolved, we conclude that using the degraded throughput methodology as a basis for inter-round protection is more promising than an I/N protection criteria or modified spectrum-splitting option proposed on the record for the reasons discussed above.

D. Good-Faith Coordination

20. Although the Commission has adopted default rules for spectrum sharing among NGSO FSS systems, it has consistently affirmed that coordination among NGSO FSS operators in the first instance offers the best opportunity for efficient spectrum sharing. Accordingly, the NPRM proposed to adopt a rule providing that the good-faith coordination requirement applies among all NGSO FSS grantees, including those approved through different processing rounds.

21. All commenters on this issue support the Commission's proposal to require good-faith coordination among all NGSO FSS grantees, which we adopt. With this requirement, we make clear that all NGSO FSS operators approved by the Commission must engage in good faith when discussing and accommodating the shared use of spectrum with other NGSO FSS operators. We will review any allegations that an NGSO FSS operator has not met the good-faith coordination requirement and may take enforcement actions, including monetary forfeitures, modification, or termination of the NGSO FSS authorization. We discuss expectations for information sharing in the context of good-faith coordination below.

E. Information Sharing During Good-Faith Coordination

22. In addition to the overall need for good-faith coordination, the Commission has emphasized that information sharing among NGSO FSS operators is essential to their efficient use of spectrum. In the NPRM, the Commission invited comment on whether to require sharing of certain types of information, such as beam-pointing information, that may be necessary for the implementation of any spectrum-sharing solution or protection criteria between NGSO FSS systems. The NPRM also sought comment on any practical concerns associated with such information sharing, and how best to address any associated, potential, competitive harms. More broadly, the Commission inquired as to whether it should add a definition of ''good faith'' coordination in our rules and how it may better encourage efficiency among NGSO FSS systems.

23. The record produced a variety of views regarding information sharing requirements. Commenters generally recognize that more detailed technical discussions may assist parties in reaching an operator-to-operator coordination agreement, but diverge on whether the types of information to be shared should be agreed to by the coordinating parties, or whether the Commission should specify types of information that must be shared in all coordination discussions. Some commenters recommend the development of a third-party clearinghouse or industry-run database to facilitate sharing of NGSO FSS operational information. Commenters raise particular concern that a requirement to share real-time beam-pointing information may be impracticable for systems that use dynamic beam pointing and reveal confidential and proprietary traffic trends whose competitive harm may be difficult to address by means such as non-disclosure agreements. Some commenters argue that information sharing requirements should be limited to operational NGSO FSS systems, or make other proposals.

24. We decline to codify specific information sharing requirements as part of good-faith NGSO FSS coordination at this time. As an initial matter, we are encouraged that some first-round and second-round NGSO FSS systems have already completed coordination agreements under the Commission's existing regulatory framework, and this demonstrates that systems can effectively coordinate, even absent a third-party clearinghouse or other database to facilitate information sharing. We expect that number will grow as systems proceed in development and deployment. For systems approved in the same processing round, we believe the

prospect of splitting spectrum under the default sharing mechanism provides significant incentive for both parties to share the necessary technical information to conclude an agreement that ensures beneficial and stable access to spectrum. For systems approved in different processing rounds, the prospect of a later-round system operating on a non-interference basis after submitting a compatibility showing, which can be made using publicly available information, also may provide an incentive to the earlier-round operator to share additional technical information to ensure its ongoing operations are in fact protected. Beyond these incentives, we expect that certain essential NGSO operating parameters and other information that is typically publicly available, such as the maximum number of satellites that can provide service simultaneously at the same location (Nco), exclusion angle to the GSO arc, minimum earth station elevation angle, and location of gateway earth stations, will not be withheld during good-faith coordination. We also recognize that satellite selection information, revealing which satellites will be transmitting in a given situation, can be especially important to efficient spectrum sharing between larger and smaller constellations to ensure the smaller constellation is not unnecessarily restricted. When evaluating whether an NGSO FSS operator has acted in good faith in refusing to provide information in coordination, we will consider the relative benefit of the information to the other party, which may increase if the other party is already operational, as well as the relative competitive or other risks to providing the information. However, coordination discussions typically do not begin only once the two systems are operational. With respect to sharing of real-time beam information, we note the practical difficulties raised in the record for advanced systems with dynamically repointable beams which, in addition to competitive concerns, may not be overcome by use of a third-party clearinghouse or industry-run database because introducing a third-party database between the operator that has changed its beam pointing plans in real time could only further delay the time until other operators receive the updated beam pointing data, adjust their own operations to reflect these changes, and then further de-conflict any interference issues that may arise from the other operators having adjusted their operations which must also be circulated via the third-party database. However, we will monitor the progress of NGSO FSS systems as they proceed in coordination and deployment and may revisit this issue in the future if ongoing coordination difficulties among operational systems suggest that more information sharing requirements are required. We note that the potential benefits for spectrum efficiency of dynamic beam pointing would appear to require some level of information sharing in order to be realized by more than one system so that other operators are not required to protect links that could be used, but are not used at a given time. When earlier round systems do not share certain non-public information, later round systems may have to make assumptions regarding the operations of earlier round systems in order to plan operations and submit a compatibility showing.

25. Beyond a general good-faith coordination requirement, and any related information sharing requirements, OneWeb argues the Commission should adopt a definition of ''good faith'' that mandates, inter alia, ''that both parties to the coordination agree to utilize all inherent flexibility and capabilities in the operation of their respective systems to avoid interference between the two systems.'' We believe good-faith coordination places obligations on both parties to promote spectral efficiency. OneWeb's proposed definition, however, could disincentivize investments in more advanced, spectrally efficient systems by requiring all those efficiencies to be used to accommodate systems that have been built with more limited sharing capabilities. We decline to require such a sharing outcome in all cases and therefore do not adopt the proposed definition. As noted above, we intend to monitor compliance with the foregoing requirements and will address the need for further steps in light of our experience.

F. Sunsetting of Inter-Round Protection Requirement

26. In conjunction with the proposal in the NPRM to require later-round NGSO FSS systems to protect earlier-round systems absent a coordination agreement, the Commission also inquired as to whether this inter-round protection requirement should sunset after a period of time, and what protection should apply to an NGSO FSS system after any sunsetting. We sought specific comment on how any sunset provision may affect investment in NGSO FSS systems and ongoing operations of earlier-round systems as well as competition and new market entry.

27. Commenters suggest a variety of sunset periods. Several oppose any sunsetting. Some commenters also encourage a further notice of proposed rulemaking on this issue. Proponents of sunsetting argue that it would encourage innovation and new entry, promote coordination by time limiting the advantages of incumbency, and is consistent with the iterative and dynamic approach of NGSO FSS operators upgrading and modifying their own systems. Opponents argue that any sunsetting provision would jeopardize quality and continuity of service by operational earlier-round systems, incentivize coordination delays by later-round systems until after an earlier round system's priority expires, and discourage investment by introducing regulatory uncertainty.

28. The proposed sunset periods are: 6 years after the application cut-off date in a processing round; 6 years after grant of the earlier-round system; at the 6-year, 50% deployment milestone of an earlier-round system if the milestone is not met, otherwise at the 9-year, full deployment milestone; less than 10 years after grant of the earlier-round system; less than the 15-year license term of the earlier-round system; at the expiration of the 15-year license term of the earlier-round system; 10 or 12 years after grant of the first application in a subsequent processing round; or 15 years commencing from release of this Order for the current Ku-/Ka-band processing rounds, and 15 years from the first authorization or market access grant in a subsequent processing round for future processing rounds. Commenters propose that after the sunset period has run, both earlier- and later-round systems would share spectrum on an equal basis under the spectrum-splitting procedure in section 25.261.

29. After review of the record and consideration of furthering development and competition in NGSO FSS systems, we adopt a sunset provision of 10 years after the first grant in a subsequent processing round. As the Commission has repeatedly stated, the purpose of the recent NGSO FSS processing rounds has been to establish a stable sharing environment among authorized systems. But earlier-round advantages should not continue indefinitely.

30. We believe that the protection afforded to an earlier-round system by a later-round system should work in concert with our deployment milestones for NGSO systems to relieve earlier-round grantees of the uncertainty of near-term, equal sharing with new entrants while also giving later-round systems an equal opportunity after they

have demonstrated their commitment to provide service and completed their final deployment milestone. To accomplish these goals, the sunset date should be tied to the date of authorization of systems in a subsequent processing round, and define the period during which they will be required to protect any earlier-round systems. With each new processing round, therefore, incumbents will be ensured of a period of time during which they will be protected by systems approved in that processing round, and may plan to accommodate those systems as they proceed through deployment, before the time that they will be required to share spectrum on an equal basis in the absence of a coordination agreement. Fixing a sunset date dependent on the authorization date of the earlier-round system could mean that after the sunset date, any approved later-round system would automatically be afforded equal spectrum sharing with existing, earlier-round systems, without the same lead time that would enable earlier-round systems to assess their likely sharing requirements with the systems that will actually proceed to deployment, and adjust accordingly. In addition, fixing a single date to sunset the protection between systems in two processing rounds simplifies the sharing expectations for all operators in both rounds. By fixing the sunset date at 10 years after the first grant in a subsequent processing round, many later-round systems will be near, or have already passed, their 9-year full deployment milestone depending on their grant date. Thus, later-round systems will be afforded equal spectrum sharing opportunities under the spectrum-splitting procedure once their full service constellations are operational, while earlier-round systems will have had time to adjust to the constellations ultimately deployed by later-round grantees. We believe this period appropriately balances the need for stability for incumbent operations and the possibility for new entrants to compete on an equal footing once they have built out their systems.

31. The length of this sunset period also addresses several concerns on the record. First, we do not expect the sunset period to introduce significant coordination delays because the period is long enough that a later-round grantee would not wish to operate for years, including at near its full constellation size, without an agreement with earlier-round grantees. Second, the iterative nature of NGSO FSS systems, and relatively shorter lifetime of NGSO satellites when compared to GSO satellites, undermines arguments that sunsetting would jeopardize existing services. Rather than maintaining a fixed system design, our experience has been that NGSO FSS operators have proposed to modify and expand their NGSO FSS systems. As earlier-round grantees propose to expand and update their constellations, including through participation in subsequent processing rounds, any burden imposed by sunsetting their inter-round protection rights should be offset by benefits to the later-generations of their systems. Sunsetting also will not upset existing expectations of interference protection because, under Commission policy in effect prior to this Order, later-round applicants were considered on a case-by-case basis as to whether they will be entitled to share spectrum on an equal basis with earlier-round systems—as such there was never a guarantee that earlier-round grantees would be entitled to protection from all later-round systems. Nor do we believe that sunsetting will discourage overall investment in NGSO FSS systems or hamper efforts to promote broadband in underserved areas—on the contrary, we expect that increased competition facilitated by sunsetting inter-round protections will spur investment and development of new systems while providing appropriate returns for earlier-round systems initial constellations. Finally, the iterative development of NGSO FSS systems and evolving spectrum sharing requirements counsels in particular in favor of a sunsetting provision in this instance, as compared to other instances where the Commission has preferred to maintain incumbent protections indefinitely. As noted, many earlier-round grantees have proposed updated, second-generation systems filed in a later processing round that will enhance the services these grantees intend to provide. Therefore, incumbents themselves will benefit from sunsetting for their second-generation systems. The nature of NGSO FSS systems, which must be designed to endure changing environmental effects, also renders them more capable of sharing spectrum than other system designs. After sunsetting, incumbents will be subject to co-equal spectrum sharing with the new entrants; but they will have had a significant period of time during which to reach a coordination agreement through good faith discussions that improves both operators' spectrum usage possibilities. Given the dynamic nature of NGSO FSS systems and the benefits of competition and new entry, we conclude that a 10-year sunset period beginning on the date of the first grant in a subsequent processing round appropriately balances the interests involved.

G. Application of Rule Changes

32. The NPRM invited comment on whether to apply all, or some, of the rule changes adopted in this proceeding to existing grantees and pending applicants or only to new license applications, license modification applications, application amendments, and market access petitions filed after the new rules go into effect.

33. Most commenters on this issue support the general applicability of rule changes in this proceeding to existing grantees and applicants as well as future applicants. Some argue that applying certain rule changes to already approved systems would be onerous, as it may require reconsideration of the design and operation of the systems.

34. We will apply all rule changes adopted in this final rule to current NGSO FSS licensees and market access grantees, pending applicants and petitioners, as well as future applicants and petitioners. With respect to pending applications, applicants do not gain any vested right merely by filing an application, and the simple act of filing an application is not considered a ''transaction already completed'' for purposes of this analysis. Applying our new rules and procedures to pending space station applications will not impair the rights any applicant had at the time it filed its application. Nor will doing so increase an applicant's liability for past conduct. Similarly, with respect to current NGSO FSS licensees and market access grantees, none of the actions we take here (that is, limiting the default spectrum-splitting procedure to NGSO FSS systems approved in the same processing round (subject to a sunset), requiring later-round systems to coordinate with or protect earlier-round systems, and requiring all NGSO FSS grantees to coordinate with each other in good faith), increase liability for past conduct, impair rights a party possessed when he acted, or impose new duties with respect to transactions already completed. Rather, all of these actions take effect in the future, after the rules become effective. While some commenters claim that some of the rule changes here, such as the sunsetting of interference protections, upset their expectations, NGSO FSS grants have been conditioned upon the outcome of future rulemakings and thus licensees and grantees have been on notice that the regulatory environment in which they are operate was subject to change. Moreover, even under the rules in effect prior to this Order, first round systems

were not guaranteed protection from later round systems; rather, this issue was to be considered on a ''case-by-case'' basis. Accordingly, applying these rule changes to existing licenses and grants of market access will not upset any grantee's reasonable expectations. Further, we have crafted the sunset provision to provide incumbent NGSO FSS grantees sufficient time to evaluate and adapt to the eventual, equal sharing environment with systems ultimately deployed in each subsequent processing round. Not applying the sunset provision to existing grantees, while applying the other rule changes to them, would substantially frustrate the purpose of sunsetting by locking in incumbent protections that are not assured under the current, case-by-case regime. Sunsetting the inter-round protection requirement, and allowing later-round systems an opportunity to share spectrum on an equal basis with earlier-round systems after the sunset period, removes a barrier to entry and therefore promotes competition and will favor technological innovation among earlier-round systems that facilitates their sharing with new entrants. Whereas exempting first-round systems from sunsetting, which includes some large constellations, would destroy these benefits for all new entrants in second and later processing rounds for as long as the first-round systems remain active.

H. Digital Equity and Inclusion

35. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invited comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed in the NPRM.

36. Commenters support the Commission's ongoing efforts to bridge the digital divide and highlight the role of satellite services in providing broadband access to underserved communities. They support technology inclusive policies that ensure regulatory certainty and spectrum access for satellite operators. We believe that the rule amendments in this Report and Order will encourage a more stable and competitive environment for the development of NGSO FSS systems well suited to reaching underserved areas with new broadband capacity, and therefore that this rulemaking will enhance digital equity and inclusion.

I. Other Issues Raised in Comments

37. Some commenters also suggest the Commission pursue broader rule changes regarding NGSO FSS systems to tackle a variety of issues, including addressing orbital debris concerns, verifying NGSO compliance with equivalent power-flux density limits for the protection of GSO networks, revisiting the spectrum-splitting procedure in section 25.261, updated in 2017, or the NGSO milestone requirements, revised in 2015 and 2017, or taking up other suggestions not treated in the NPRM. Other commenters caution against expanding the scope of the current proceeding. Given the complexity and diversity of issues raised and their differing procedural statuses, some reiterating arguments in petitions for reconsideration or petitions for rulemaking, we decline to create an ''omnibus'' NGSO rulemaking at this time and instead move immediately in a Further Notice of Proposed Rulemaking to propose to finalize the remaining key issue raised in the NPRM.

IV. Final Regulatory Flexibility Analysis

38. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems, Notice of Proposed Rulemaking (NPRM) in December 2021 in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Final Rule

39. In recent years, the Commission has received an unprecedented number of applications for non-geostationary satellite orbit (NGSO) space station licenses, including for NGSO fixed-satellite service (FSS) systems. Traveling closer to the Earth than a traditional GSO satellite, low- and medium-orbit NGSO FSS satellite constellations are capable of providing broadband services to industry, enterprise, and residential customers with lower latency and wider coverage than was previously available via satellite. This final rule continues to facilitate the deployment of NGSO FSS systems capable of providing broadband and other services on a global basis, and will promote competition among NGSO FSS system proponents, including the market entry of new competitors.

40. The Order amends the Commission's rules governing the treatment of NGSO FSS systems filed in different processing rounds. In particular, the Order adopts rules specifying that the Commission's existing spectrum sharing mechanism for NGSO FSS systems will be limited to those systems approved in the same processing round. The Order also adopts a rule providing that later-round NGSO FSS systems will have to protect earlier-round systems by using a degraded throughput methodology. In addition, the Order adopts a sunset provision after which earlier-round grantees and later-round grantees will share spectrum on an equal basis under the existing spectrum sharing mechanism for NGSO FSS systems.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

41. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Legal Basis

42. The proposed action is authorized under sections 4(i), 7(a), 303, 308(b), and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303, 308(b), 316.

D. Response to Comments by the Chief Counsel for Advocacy of the Small Business

43. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

E. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

44. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern''

under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we describe and estimate the number of small entities that may be affected by the adoption of the final rules.

45. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

46. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts of less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

F. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

47. The final rule amends rules that are applicable to space station operators requesting a license or authorization from the Commission, or entities requesting that the Commission grant a request for U.S. market access. Specifically, the final rule adopts changes to the spectrum sharing requirements among NGSO FSS satellite systems and requires space station licensees and market access grantees that were authorized through a later processing round to submit a technical demonstration that they will not cause harmful interference to space station licensees and market access grantees that were authorized through an earlier processing round, prior to the sunsetting period, if the later-round grantees have not certified that they have reached a coordination agreement with the earlier-round grantees. The technical demonstration of compatibility between the later-round system and the earlier-round system is based on a degraded throughput methodology that consists of three steps. The first step is to establish a baseline of performance. To do this, an operator models the earlier-round NGSO system's performance without any additional interference by computing the earlier-round NGSO system's probabilistic carrier-to-noise (C/N) level using its published system parameters and a rain-attenuation model. This provides the baseline: (1) the earlier-round system's time-weighted average throughput (derived by computing the spectral efficiency from the C/N results), and (2) the earlier-round system's link unavailability time percentage (*i.e.,* the percentage of time when the earlier-round system's expected C/N will fall below its minimum usable level). The second step is to repeat the analysis above, adding in the effect of the later-round system's interference into the earlier-round system. This produces a second measurement of time-weighted average throughput and link unavailability time-percentage. The third step is to compare these two sets of figures to measure the effect of any additional interference. If the resulting performance impact exceeds the permissible limits, then the later-round system must adjust its operations to mitigate interference to a permissible level.

48. Because of the costs involved in developing and deploying an NGSO FSS satellite constellation, we anticipate that few NGSO FSS operators affected by this rulemaking would qualify under the definition of ''small entity.''

G. Steps Taken To Minimize the Significant Economic Impact on Small Entities

49. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

50. The final rule adopts a requirement for NGSO FSS systems authorized through a later processing round to either complete a coordination agreement with, or submit a technical demonstration using a degraded throughput methodology that they will not interfere with, NGSO FSS systems authorized through an earlier processing round. The Commission adopted this requirement to ensure that earlier-round NGSO FSS systems will continue to have their services protected as new entrants deploy their systems. The Commission selected a degraded throughput methodology as the basis for the technical demonstration because it offers the most promising technical path for protection of earlier-round systems without unduly burdening the operations of later-round systems. The Commission also considered use of an interference-to-noise ratio (I/N) as a protection criteria for earlier-round systems, or use of a modified band-splitting approach in which earlier-round systems and later-round systems would have to operate in different spectrum bands, with the earlier-round system entitled to more spectrum than the later-round system, in the event that an interference threshold is surpassed. The Commission did not adopt an I/N protection criteria because it may unduly burden the operations of later-round systems, and did not adopt a modified band-splitting approach

because the Commission preferred a technically grounded inter-round sharing solution. While a technical demonstration using a degraded throughput methodology might be more burdensome to produce than a demonstration using an I/N level, the record demonstrated the feasibility of degraded throughput analyses and their superior ability to model contemporary NGSO FSS systems and more precisely account for the likelihood of harmful interference.

51. As noted above, because of the high costs typically involved in the development of NGSO FSS constellations, we anticipate that few small entities will be required to submit such technical demonstrations. However, for small entities seeking to operate NGSO FSS systems, adoption of a sunset provision combined with use of a degraded throughput methodology will provide operators incentive to innovate and to coordinate with other systems, which will increase spectral efficiency and permit entities to implement newer socially-valuable technologies.

H. Report to Congress

52. The Commission will send a copy of the Report and Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

53. *It is ordered,* pursuant to Sections 4(i), 7(a), 10, 303, 308(b), and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 160, 303, 308(b), 316, that the Report and Order *is adopted,* the policies, rules, and requirements discussed herein *are adopted,* and Part 25 of the Commission's rules *is amended* as set forth below.

54. *It is further ordered* that the Report and Order *shall be* effective 30 days after publication in the **Federal Register**, except § 25.261(d) which contains new or modified information collection requirements and will be submitted for approval by the Office of Management and Budget under the Paperwork Reduction Act and shall become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

55. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center will send a copy of the Report and Order to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

56. *It is further ordered* that the Commission *shall send* a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 25

Administrative practice and procedure, Satellites.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 2. Effective July 20, 2023, amend § 25.151 by revising paragraphs (a)(10) through (12) and adding paragraph (a)(13) to read as follows:

§ 25.151 Public notice.

(a) * * *

(10) The receipt of space station application information filed pursuant to § 25.110(b)(3)(iii);

(11) The receipt of notifications of non-routine transmission filed pursuant to § 25.140(d);

(12) The receipt of EPFD input data files from an NGSO FSS licensee or market access recipient, submitted pursuant to § 25.111(b) or § 25.146(c)(2); and

(13) The receipt of NGSO FSS compatibility showings filed pursuant to § 25.261(d).

* * * * *

■ 3. Effective July 20, 2023, amend § 25.261 by revising paragraph (b) and the first sentence in paragraph (c)(1), adding reserved paragraph (d), and adding paragraph (e) to read as follows:

§ 25.261 Sharing among NGSO FSS space stations.

* * * * *

(b) *Coordination.* NGSO FSS licensees and market access recipients must coordinate in good faith the use of commonly authorized frequencies regardless of their processing round status.

(c) * * *

(1) Each of n (number of) satellite networks involved that were licensed or granted market access through the same processing round, except as provided in paragraph (e) of this section, must select 1/n of the assigned spectrum available in each of these frequency bands. * * * * * * * *

(d) [Reserved]

(e) *Sunsetting.* Ten years after the first authorization or grant of market access in a processing round, the systems approved in that processing round will no longer be required to protect earlier-rounds systems, and instead will be required to share spectrum with earlier-round systems under paragraph (c) of this section.

■ 4. Delayed indefinitely, further amend § 25.261 by adding paragraph (d) and revising paragraph (e) to read as follows:

§ 25.261 Sharing among NGSO FSS space stations.

* * * * *

(d) *Protection of earlier-round systems.* Prior to commencing operations, an NGSO FSS licensee or market access recipient must either certify that it has completed a coordination agreement with any operational NGSO FSS system licensed or granted U.S. market access in an earlier processing round, or submit for Commission approval a compatibility showing which demonstrates by use of a degraded throughput methodology that it will not cause harmful interference to any such system with which coordination has not been completed. If an earlier-round system becomes operational after a later-round system has commenced operations, the later-round licensee or market access recipient must submit a certification of coordination or a compatibility showing with respect to the earlier-round system no later than 60 days after the earlier-round system commences operations as notified pursuant to § 25.121(b) or otherwise.

(1) Compatibility showings will be placed on public notice pursuant to § 25.151(a)(13).

(2) While a compatibility showing remains pending before the Commission, the submitting NGSO FSS licensee or market access recipient may commence operations on an unprotected, non-interference basis with respect to the operations of the system that is the subject of the showing.

(e) *Sunsetting.* Ten years after the first authorization or grant of market access in a processing round, the systems approved in that processing round will no longer be required to protect earlier-rounds systems under paragraph (d) of this section, and instead will be required to share spectrum with earlier-round systems under paragraph (c) of this section.

[FR Doc. 2023–12803 Filed 6–16–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221223–0282; RTID 0648–XD051]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From MD to NJ

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

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the State of Maryland is transferring a portion of its 2023 commercial summer flounder quota to the State of New Jersey. This adjustment to the 2023 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2023 commercial quotas for Maryland and New Jersey.

DATES: Effective June 20, 2023 through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2023 allocations were published on January 3, 2023 (88 FR 11).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan (FMP), as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: The transfer or combinations would not preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act. The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

Maryland is transferring 4,598 lb (2,086 kg) to New Jersey through a mutual agreement between the states. This transfer was requested to repay landings made by an out-of-state permitted vessel under a safe harbor agreement. The revised summer flounder quotas for 2023 are Maryland, 896,511 lb (406,651 kg), and New Jersey, 2,310,420 lb (1,047,989 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: June 14, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–13070 Filed 6–16–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 117
Tuesday, June 20, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1215; Project Identifier MCAI–2023–00196–T]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Support and Services (Formerly Known as Saab AB, Saab Aeronautics) 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 certain Saab AB, Support and Services Model 340A (SAAB/SF340A) and SAAB 340B airplanes. This proposed AD was prompted by reports of a high number of events related to stall warnings upon landing, following introduction of the ice speed function within the stall warning system. This proposed AD would require modification of the stall warning/identification system, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 August 4, 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–2023–1215; 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 EASA material that is proposed for IBR in this NPRM, 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.* It is also available at *regulations.gov* under Docket No. FAA–2023–1215.
- 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: Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email *Shahram.Daneshmandi@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–2023–1215; Project Identifier MCAI–2023–00196–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email *Shahram.Daneshmandi@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 2022–0216R1, dated February 1, 2023; corrected February 2, 2023 (EASA AD 2022–0216R1) (also referred to as the MCAI), to correct an unsafe condition for SAAB SF340A and SAAB 340B airplanes, all serial numbers, except those that have SAAB modification number 2650 (Canada Ice Speed Configuration) embodied. The MCAI states that following the introduction of the ice speed function within the SAAB 340 stall warning system, a high number of events have been reported related to stall warnings upon landing. Subsequent investigation determined that the margin to stall warning is lower when ice speed is ON than with ice speed OFF. This condition, if not corrected, could lead to inappropriate stall warnings during the landing phase

and result in increased pilot workload during a critical phase of flight.

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–2023–1215.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0216R1 specifies procedures for modifying the stall warning/identification system to introduce an ice speed cancel logic. 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**.

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, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0216R1 described previously, except for any differences identified as exceptions in the regulatory text of this proposed 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, the FAA proposes to incorporate EASA AD 2022–0216R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0216R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0216R1 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 2022–0216R1. Service information required by EASA AD 2022–0216R1 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1215 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 79 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 30 work-hours × $85 per hour = $2,550	$7,900	Up to $10,450	Up to $825,550.

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:

Saab AB, Support and Services (Formerly Known as Saab AB, Saab Aeronautics): Docket No. FAA–2023–1215; Project Identifier MCAI–2023–00196–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 4, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Support and Services (formerly known as Saab AB, Saab Aeronautics) Model 340A (SAAB/SF340A) and SAAB 340B airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0216R1, dated February 1, 2023; corrected February 2, 2023 (EASA AD 2022–0216R1).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of a high number of events related to stall warnings upon landing, following introduction of the ice speed function within the stall warning system. The FAA is issuing this AD to address a margin to stall warning that is lower when ice speed is ON than with ice speed OFF. The unsafe condition, if not addressed, could lead to inappropriate stall warnings during the landing phase and result in increased pilot workload during a critical phase of flight.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0216R1.

(h) Exceptions to EASA AD 2022–0216R1

(1) Where EASA AD 2022–0216R1 refers to November 16, 2022 (the effective date of EASA AD 2022–0216), this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0216R1 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 EASA; or Saab AB, Support and Services' 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 Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3220; email *Shahram.Daneshmandi@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0216R1, dated February 1, 2023; corrected February 2, 2023.

(ii) [Reserved]

(3) For EASA AD 2022–0216R1, 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 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 June 12, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–12927 Filed 6–16–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1217; Project Identifier MCAI–2023–00477–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–200 series; A330–200 Freighter series; A330–300 series; A330–800 series; A330–900 series; A340–200 series; and A340–300 series airplanes. This proposed AD was prompted by reports of cracks found in the scroll housing assembly of Honeywell GTCP331–350 auxiliary power units (APUs). This proposed AD would require replacing each affected APU or re-identifying certain APU scroll housing assemblies, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit the installation of affected parts under certain conditions. 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 August 4, 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–2023–1217; 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 EASA material that is proposed for IBR in this NPRM, 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.* It is also available at *regulations.gov* under Docket No. FAA–2023–1217.
- For Honeywell service information identified in this NPRM, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; fax: (602) 365–5577; website: *myaerospace.honeywell.com/wps/portal.*
- 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: Timothy Dowling, Aviation Safety

Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@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–2023–1217; Project Identifier MCAI–2023–00477–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@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 2023–0056, dated March 16, 2023 (EASA AD 2023–0056) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model 330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, –941, and –743L airplanes, and Model A340–211, –212, –213, –311, –312, and –313 airplanes. Model A330–743L airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that cracks were found in the scroll housing assembly of Honeywell GTCP331–350 APUs. This condition, if not addressed, could lead to hot air leakage and consequent damage to the APU compartment and loss of the APU doors, possibly resulting in damage to the airplane.

The FAA is proposing 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–2023–1217.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0056 specifies procedures for replacing each affected APU or re-identifying certain APU scroll housing assemblies (those having part number (P/N) 5053–181–001–501 or P/N 0331207990 and 'SR–1' next to the part number marking). EASA AD 2023–0056 also prohibit the installation of affected parts under certain conditions.

Honeywell Service Bulletin 5053–181–49–7895, dated July 21, 2006, specifies procedures for, among other actions, re-identifying affected APU scroll housing assemblies. While Honeywell distributes this document, Aeronamic develops the technical content.

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**.

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 and service information referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0056 described previously, except for any differences identified as exceptions in the regulatory text of this proposed 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, the FAA proposes to incorporate EASA AD 2023–0056 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0056 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0056 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 2023–0056. Service information required by EASA AD 2023–0056 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1217 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 18 work-hours × $85 per hour = $1,530 (replace APU)	$1,612,820	Up to $1,614,350 ...	(*)
Up to 20 work-hours × $85 per hour = $1,700 (re-identify APU scroll housing assembly)	3,141	Up to $4,841	(*)

*Operators have the option to replace the APU or re-identify the APU scroll housing assembly. Replacement or re-identification is only required if an affected part is installed on an airplane. The FAA has no way of knowing how many affected parts are installed on U.S.-registered airplanes or which option an operator will choose for a given airplane with an affected part. Therefore, the FAA has no definitive data on which to provide a fleet cost estimate for the required actions specified in this proposed AD.

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:

Airbus SAS: Docket No. FAA–2023–1217; Project Identifier MCAI–2023–00477–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 4, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (7) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(6) Model A340–211, –212, and –213 airplanes.

(7) Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 49, Airborne auxiliary power.

(e) Unsafe Condition

This AD was prompted by reports of cracks found in the scroll housing assembly of Honeywell GTCP331–350 auxiliary power units (APUs). The FAA is issuing this AD to address such cracks. The unsafe condition, if not addressed, could result in hot air leakage and consequent damage to the APU compartment and loss of the APU doors, possibly resulting in damage to the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0056, dated March 16, 2023 (EASA AD 2023–0056).

(h) Exceptions to EASA AD 2023–0056

(1) Where EASA AD 2023–0056 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 2023–0056.

(3) Where EASA AD 2023–0056 specifies to re-identify an SR–1 affected part ''in accordance with the instructions of the SB,'' for this AD, operators must use Honeywell Service Bulletin 5053–181–49–7895, dated July 21, 2006.

Note 1 to paragraph (h)(3): Honeywell distributes this document; Aeronamic develops the technical content.

(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 Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's

maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email *Timothy.P.Dowling@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0056, dated March 16, 2023.

(ii) Honeywell Service Bulletin 5053–181–49–7895, dated July 21, 2006.

Note 2 to paragraph (k)(2)(ii): Honeywell distributes this document; Aeronamic develops the technical content.

(3) For EASA AD 2023–0056, 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) For Honeywell service information identified in this AD, contact Honeywell service information identified in this AD, contact Honeywell International, Inc., 111 South 34th Street, Phoenix, AZ 85034; phone: (800) 601–3099; fax: (602) 365–5577; website: *myaerospace.honeywell.com/wps/portal.*

(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 June 13, 2023.

Michael Linegang,

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

[FR Doc. 2023–13011 Filed 6–16–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0456]

RIN 1625–AA00

Safety Zone; Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish an annually recurring safety zone for certain waters of Lake Erie. This action is necessary to provide for the safety of life on these navigable waters near Cleveland, OH, during the Tri CLE Rock and Roll Run. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 20, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0456 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Jared Stevens, Waterways Management Division, MSU Cleveland, U.S. Coast Guard; telephone 216–937–0124, email *Jared.M.Stevens@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On April 19, 2023, Tri CLE Rock Roll Run notified the Coast Guard that it will be sponsoring a triathlon on August 11 and 12, 2023, and then again annually on or around the second or third weekend in August every year after. The triathlon is to take place in the North Coast Harbor and into the West Basin Channel in Cleveland, OH. The Captain of the Port Buffalo (COTP) has determined that a safety zone covering navigable waters and tributaries of Lake Erie within the North Coast Harbor and the West Basin Channel in Cleveland, OH, is needed to protect participants during the swimming portion of the triathlon.

The purpose of this rulemaking is to ensure the safety of participants and the navigable waters within the course of the swimming portion of the triathlon before, during, and after the scheduled marine event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a permanent safety zone in order to protect participants during the swimming portion of the triathlon. The safety zone would cover all navigable waters and tributaries of Lake Erie within the North Coast Harbor and immediately adjacent waters in Cleveland, OH; the boundaries of the safety zone would form a rectangle with the four corners of the polygon located in the following positions: (1) 41°30′41″ N, 081°42′01″ W; (2) 41°30′47″ N, 081°41′53″ W; (3) 41°30′32″ N, 081 41′39″ W; (4) 41° 30′27″ N, 081°41′47″ W. The duration of the zone is intended to ensure the safety of participants in these navigable waters before, during, and after the swim portion of the Tri CLE Rock Roll Run triathlon. The event will then reoccur on an annual basis on or around the second or third weekend in August. Exact dates and times of enforcement will be made public via notice of enforcement prior to the event date. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a

''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, location, and duration of the proposed rule. This safety zone would restrict navigation through the swimming area for 7.5 hours on one day.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have Tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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. If you believe this proposed rule has implications for federalism or Indian Tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves the establishment of a safety zone lasting 7.5 hours that would prohibit entry in, out or through North Coast Harbor on August 11 and 12, 2023, and then again annually on or around the second or third weekend in August thereafter. Normally such actions are categorically excluded from further review under paragraph L63(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0456 in the search box and click ''Search.'' Next, look for this document in the ''Search Results'' column, and click on it. Then click on the ''Comment'' option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked

Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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 is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.939, amend the table by revising its heading and adding entry (c)(7) to read as follows:

§ 165.939 Safety Zones; Annual Events in the Captain of the Port Buffalo Zone.

* * * * *

TABLE 1 TO § 165.939

Event	Location [1]	Enforcement date and time [2]
(c) August Safety Zones		
* *	* * * * *	* *
(7) Tri CLE Rock Roll Run	Cleveland, OH. All U.S. waters of Lake Erie; Cleveland Harbor, from position (1) 41°30′41″ N 081°42′01″ W, to (2) 41°30′47″ N 081°41′53″ W, to (3) 41°30′32″ N 081 41′39″ W, to (4) 41°30′27″ N 081°41′47″ W, then return to original position (NAD 83).	On or around the 2nd or 3rd weekend of August.
* *	* * * * *	* *

[1] All coordinates listed in Table 165.xxx reference Datum NAD 1983.

[2] As noted in paragraph (a)(3) of this section, the enforcement dates and times for each of the listed safety zones are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariner.]

Dated: May 31, 2023.

M.I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2023–12364 Filed 6–16–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2023–0279; FRL–10989–01–R7]

Air Plan Approval; Missouri; Revisions to the Cross-State Air Pollution Rule SO_2 Group 1 Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of revisions to the State Implementation Plan (SIP) submitted on November 29, 2021, by the State of Missouri. Missouri requests EPA approve revisions to a state regulation related to the Cross-State Air Pollution Rule SO_2 Group 1 Trading Program. These revisions include reallocating SO_2 emission allowances from a recently retired emission unit to the original emission unit for which they were designated. Additionally, the revisions clarify rule language by condensing a list of provisions excluded from incorporation by reference. Approval of these revisions will not impact air quality and ensures Federal enforceability of the State's rules. The EPA is proposing to approve these SIP revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before July 20, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2023–0279 to *www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gerald McIntyre, Environmental Protection Agency, Region 7 Office, Air Permitting and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 608–8349; email address: *mcintyre.gerald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2023–0279, at *www.regulations.gov.* 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, 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.*

II. Background

The Cross-State Air Pollution Rule (CSAPR) addresses air pollution from upwind states that crosses state lines and affects air quality in downwind states. CSAPR requires fossil fuel-fired electric generating units at coal-, gas-, and oil-fired facilities in 27 states, including Missouri, to reduce emissions to help downwind areas attain fine particle and/or ozone National Ambient Air Quality Standards (NAAQS).

EPA sets a pollution limit (emission budget) for each of the states covered by CSAPR. Authorizations to emit pollution, known as allowances, are allocated to affected sources based on these state emissions budgets. The rule provides flexibility to affected sources, allowing sources in each state to determine their own compliance path. This includes adding or operating control technologies, upgrading or improving controls, switching fuels, and using allowances. Sources can buy and sell allowances and bank (save) allowances for future use as long as each source holds enough allowances to account for its emissions by the end of the compliance period. Allowance transfers between sources within the CSAPR SO_2 Group 1 Trading Program are allowed with the approval of the Administrator, subject to the procedures and requirements of 40 CFR part 97.

Missouri adopted EPA's SO_2 Group 1 Trading Program in 40 CFR 97.604 through 40 CFR 97.628, with certain exceptions, in 10 Code of State Regulations (CSR) 10–6.376. EPA finalized its approval of 10 CSR 10–6.376 into Missouri's SIP on December 4 2019, thereby granting Missouri the responsibility to implement the CSAPR SO_2 Annual Trading Program in Missouri (see 84 FR 66316). 10 CSR 10–6.376 includes a list of CSAPR SO_2 Group 1 units and their corresponding allowances that have been allocated to each unit.

Iatan Generating Station Unit 1 (Iatan Unit 1) is owned by two electric utility companies: Evergy, formerly Kansas City Power and Light Company; and Liberty Utilities, formerly Empire District Electric. Asbury Power Plant (Asbury) is owned by Liberty Utilities. These sources have been allocated CSAPR SO_2 Group 1 allowances in 10 CSR 10–6.376. In 2015, Missouri revised 10 CSR 1—6.376 to reallocate 1,300 SO_2 emission allowances from Iatan Unit 1 to Asbury based on ownership share. Asbury was retired in March 2020. Therefore, Missouri revised 10 CSR 10–6.376 to transfer Asbury's 1,300 SO_2 emission allowances back to Iatan Unit 1, and has requested that EPA approve the revision to 10 CSR 10–6.376 into Missouri's SIP.

III. What is being addressed in this document?

The EPA is proposing to approve a SIP revision submitted by the State of Missouri on November 29, 2021. Missouri requests the EPA to approve revisions to 10 CSR 10–6.376 in the Missouri SIP. The state has revised the rule to reallocate 1,300 SO_2 emission allowances from the Asbury Power Plant, which was retired in March 2020, to Iatan Unit 1, which is the original emission unit for which the SO_2 allowances were allocated. This revision will only reverse the 2015 reallocation of the 1,300 SO_2 emission allowances from Iatan Unit 1 to Asbury. The total SO_2 allowances for Iatan Unit 1 will increase from 9,833 to 11,133. The total SO_2 allowances for Asbury will decrease from 4,480 to 3,180. Asbury's remaining 3,180 allowances will be transferred to the new unit set-aside and redistributed, as is the case for any unit that retires under CASPR.

Missouri has also clarified rule language by removing redundant language concerning provisions excluded from incorporation by reference. This revision also removes a provision that excluded incorporation by reference of any requirements imposed on any unit in Indian country within the borders of any state in 40 CFR 97.602 through 40 CFR 97.635. These revisions are administrative in nature and does not impact the stringency of the SIP or air quality.

IV. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from April 15, 2021 to May 27, 2021 and received no comments.

In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The EPA proposes to find that the changes to the SIP do not reduce the stringency of the SIP or negatively affect air quality. As such, in accordance with section 110(l) of the CAA, this proposed revision does not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. Therefore, the EPA is proposing to approve Missouri's revisions to 10–6.376.

V. What action is the EPA taking?

The EPA is proposing to amend the Missouri SIP by approving the State's request to revise 10 CSR 10–6.376 ''Cross-State Air pollution Rule Annual SO_2 Group 1 Trading Program.'' We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

VI. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Missouri 10 CSR 10–6.376, discussed in section III of this preamble and as set forth below in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. 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 Clean Air Act and applicable Federal regulations. 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 Clean Air Act. 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); 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;

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. 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.''

Missouri did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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: June 9, 2023.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

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 AA-Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–6.376'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6-Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.376	Cross-State Air Pollution Rule SO_2 Group 1 Trading Program.	7/29/2021	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2023–12747 Filed 6–16–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2023–0245; FRL–10985–01–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (23–2.5e)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for certain chemical substances that were the subject of premanufacture notices (PMNs) and are also subject to an Order issued by EPA pursuant to TSCA. The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is proposed as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: Comments must be received on or before July 20, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0245, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit II.

B. What action is the Agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) for certain chemical substances that were the subject of PMNs. These proposed SNURs would require persons to notify EPA at least 90 days before commencing the manufacture or processing of any of these chemical substances for an activity proposed as a significant new use. Receipt of such notices would allow EPA to assess risks and, if appropriate, to regulate the significant new use before it may occur.

The docket for these proposed SNURs, identified as docket ID number EPA–HQ–OPPT–2023–0245, includes information considered by the Agency in developing these proposed SNURs.

C. Why is the Agency taking this action?

The Agency is proposing these SNURs to ensure that EPA receives timely advanced notice of any future manufacturing (including importing) or processing of the chemical substances subject to these proposed SNURs for uses identified as significant new uses, and to ensure that an appropriate determination (relevant to the potential risks associated with such manufacturing (including importing), processing, distribution in commerce, use and disposal) has been issued prior to the commencement of such manufacturing (including importing) or processing. The proposed SNURs are necessary to ensure that manufacturing (including import) or processing for significant new uses cannot proceed until EPA has responded to the planned new use circumstances by taking the required actions under TSCA sections 5(e) or 5(f) in the event that EPA determines that: (1) The significant new use presents an unreasonable risk under the conditions of use (without consideration of costs or other nonrisk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation (PESS) identified as relevant by EPA); (2) The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the significant new use; (3) In the absence of sufficient information, the manufacturing (including importing), processing, distribution in commerce, use, or disposal of the substance, or any combination of such activities, may present an unreasonable risk (without consideration of costs or other nonrisk factors, and including an unreasonable risk to a PESS identified as relevant by EPA); or (4) There is substantial production and sufficient potential for environmental release or human exposure (as defined in TSCA section 5(a)(3)(B)(ii)(II)). For manufacturing (including importing) or processing for the significant new use to proceed after EPA has made one of these four determinations, EPA must take actions under TSCA sections 5(e) or 5(f) to protect health and the environment. However, EPA may also determine that the significant new use is not likely to present an unreasonable risk under TSCA section 5(a)(3)(C), after which manufacturing (including importing) or processing for the significant new use may proceed.

The rationale and objectives for this proposed SNUR are further explained in Unit II.B.

D. Does this action apply to me?

1. General applicability.

This action may apply to you if you manufacture (defined by statute to include import), process, or use the chemical substances addressed in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

2. Applicability to importers and exporters.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions promulgated at 19 CFR 12.118 through 12.127 (see also 19 CFR 127.28), and the EPA policy in support of import

certification at 40 CFR part 707, subpart B. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA, including regulations issued under TSCA sections 5, 6, 7 and Title IV.

In addition, pursuant to 40 CFR 721.20, this action may also apply to any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after July 20, 2023 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers (including importers) and processors of the chemical substances included in this proposed rule. This analysis, which is available in the docket, is briefly summarized here.

1. Estimated costs for SNUN submissions.

If a SNUN is submitted, costs are an estimated $26,700 per SNUN submission for large business submitters and $11,000 for small business submitters. These estimates include the cost to prepare and submit the SNUN (including registration for EPA's Central Data Exchange (CDX)), and the payment of a user fee. Businesses that submit a SNUN would be subject to either a $19,020 user fee required by 40 CFR 700.45(c)(2)(ii) and (d), or, if they are a small business as defined at 13 CFR 121.201, a reduced user fee of $3,300 (40 CFR 700.45(c)(1)(ii) and (d)) per fiscal year 2022. The costs of submission for SNUNs will not be incurred by any company unless a company decides to pursue a significant new use as defined in this proposed SNUR. Additionally, these estimates reflect the costs and fees as they are known at the time of this rulemaking.

2. Estimated costs for export notifications.

EPA has also evaluated the potential costs associated with the export notification requirements under TSCA section 12(b) and the implementing regulations at 40 CFR part 707, subpart D, which require exporters to notify EPA if they export or intend to export a chemical substance or mixture for which, among other things, a rule has been proposed or promulgated under TSCA section 5. For persons exporting a substance that is the subject of a SNUR, a one-time notice to EPA must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical, depending on the number of required notifications (*i.e.,* the number of countries to which the chemical is exported). While EPA is unable to make any estimate of the likely number of export notifications for the chemical substances covered by these proposed SNURs, as stated in the accompanying economic analysis, the estimated cost of the export notification requirement on a per unit basis is approximately $106.

F. What should I consider as I prepare my comments for EPA?

1. Submitting CBI.

Do not submit this information to EPA through *https://www.regulations.gov* or email. If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments.

When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

A. Significant New Use Determination

1. Determination factors.

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to the factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

2. Scientific standards, evidence, and available information.

EPA has used reasonably available information, as well as technical procedures, measures, methods, protocols, methodologies, and models consistent with the best available science, as applicable. These information sources supply information relevant to whether a particular use would be a significant new use, based on relevant factors including those listed under TSCA section 5(a)(2).

The clarity and completeness of the data, assumptions, methods, quality assurance, and analyses employed in EPA's decision are documented, as applicable and to the extent necessary for purposes of the proposed SNURs, in the references cited throughout the preamble of this proposed rule. The extent to which the various information, procedures, measures, methods, protocols, methodologies or models used in EPA's decision have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for a significant new use rule.

3. Determination for these chemical substances.

In determining what would constitute a significant new use for the chemical substances that are the subject of these proposed SNURs, EPA considered relevant information about the toxicity of the chemical substances and potential human exposures and environmental releases that may be associated with possible uses of these chemical substances, in the context of the four TSCA section 5(a)(2) factors listed in Unit II.A.1.

These proposed SNURs include PMN substances that are subject to Orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). The TSCA Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The proposed SNURs identify significant new uses as any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

The 18 proposed rules also identify as an additional significant new use, manufacturing or processing of the chemical substances using feedstocks that contain any amount of contaminants listed in the proposed rules. This preamble also identifies the sources of data documenting the presence or absence of such contaminants in pyrolysis products

derived from plastic waste. The 18 proposed rules identify as an additional significant new use the manufacturing or processing of the chemical substances using feedstocks that contain any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(i) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(ii) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(iii) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

By identifying this additional significant new use, EPA is ensuring these substances cannot be manufactured or processed using feedstocks that contain these substances, without additional Agency review. EPA is determining that this is a significant new use because subsequent to issuance of the TSCA section 5(e) orders for these substances EPA became aware that the precursor chemicals for the PMN substances may contain contaminants of concern that were not previously identified. See the following references to sources of these chemical substances in this unit:

- US EPA (2016). ''State of the Science White Paper: A Summary of Literature on the Chemical Toxicity of Plastics Pollution to Aquatic Life and Aquatic-Dependent Wildlife.'' Document ID No. EPA–822–R–16–009 (2016). See *https://www.epa.gov/sites/default/files/2016-12/documents/plastics-aquatic-life-report.pdf*.
- European Chemicals Agency (August 2021), entitled ''Chemical Recycling of Polymeric Materials from Waste in the Circular Economy Final Report.'' See *https://echa.europa.eu/documents/10162/1459379/chem_recycling_final_report_en.pdf/887c4182-8327-e197-0bc4-17a5d608de6e*.
- Environmental Defense Fund Supply Chain Solutions Center (2022). Understanding Packaging Scorecard as referenced by the Environmental Defense Fund entitled ''Key chemicals of concern in food packaging and food handling equipment.'' See *https://supplychain.edf.org/files/downloadable-TABLE-CoCs-in-Food-Packaging.pdf*.
- Whitehead, Heather et al. (2023). ''Directly Fluorinated Containers as a Source of Perfluoroalkyl Carboxylic Acids.'' Environ. Sci. Technol. Lett. 2023, 10, 4, 350–355, Publication Date: March 6, 2023. See *https://doi.org/10.1021/acs.estlett.3c00083*.
- US EPA (2021). Research BRIEF: ''Potential PFAS Destruction Technology: Pyrolysis and Gasification.'' January 2021. See *https://www.epa.gov/sites/default/files/2021-01/documents/pitt_research_brief_pyrolysis_final_jan_27_2021_508.pdf*.
- Thoma, Eben et al. (2022). ''Pyrolysis processing of PFAS-impacted biosolids, a pilot study.'' Journal of the Air and Waste Management Association. February 2022. See *https://doi.org/10.1080/10962247.2021.2009935*.
- Turner et al. (2021). ''Hazardous metal additives in plastics and their environmental impacts.'' Environment International, Volume 156, November 2021, 106622. See *https://www.sciencedirect.com/science/article/pii/S0160412021002476*.

For each of the 18 proposed SNURs containing significant new uses not based on the Order requirements, EPA is also proposing to make the general reporting exemption described in 40 CFR 721.45(i) inapplicable to each SNUR to ensure that persons subject to the Order would also be subject to the significant new use notification requirements in this proposed rule, including those that are not based on Order requirements. 40 CFR 721.45(i) provides that the notification requirements of 40 CFR 721.25 do not apply, unless otherwise specified in a specific SNUR, if: ''The person is operating under the terms of a consent order issued under TSCA section 5(e) applicable to that person. If a provision of such TSCA section 5(e) order is inconsistent with a specific significant new use identified in subpart E of 40 CFR part 721, abiding by the provision of the TSCA section 5(e) order exempts the person from submitting a significant new use notice for that specific significant new use.'' EPA is now proposing these SNURs to require notice to and review by EPA before these chemicals are used in new ways that might create concerns due to increases in exposures or environmental releases.

B. Rationale and Objectives of This Proposed Rule

1. Rationale.

During review of the PMNs submitted for the chemical substances that are subject to these proposed SNURs, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit III. Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow the TSCA Orders with a SNUR that identifies the absence of those protective measures as significant new uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

Subsequent to the issuance of TSCA section 5(e) orders for these substances EPA became aware that the precursor chemicals for the PMN substances may contain contaminants not previously identified, whose presence might indicate a risk that needs to be addressed.

2. Objectives.

EPA is proposing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants:

- To identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).
- To identify as an additional significant new use, manufacturing or processing of the chemical substances using feedstocks that contain any amount of the chemicals listed in proposed rules.
- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination before the described significant new use of the chemical substance.

C. Applicability of General Provisions to These Proposed SNURs

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons required to submit a Significant New Use Notice (SNUN), recordkeeping requirements, and exemptions to reporting requirements, among other things.

Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons submitting a SNUN are subject to the same requirements and regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). These include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720, except where modified in part 721.

Once EPA receives a SNUN, and before the manufacture or processing for the significant new use can commence, EPA must either determine that the use addressed in the SNUN is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

D. Applicability of the Proposed SNURs to Uses Occurring Before the Effective Date of the Final Rule

Any use that EPA determines, in the final rule, was ongoing as of the date of publication of this proposal and did not cease prior to issuance of the final rule, will not be designated as a significant new use in the final rule. EPA has no information to suggest that any of the significant new uses identified in this proposed rule are ongoing and, as explained below, has information indicating that none of the chemical substances subject to the SNURs proposed in this document are being manufactured or processed in the United States for commercial purposes.

The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance is not on the TSCA Inventory, no person may commence any activities without first submitting a PMN. Therefore, when EPA has received a PMN for a chemical substance but has not received a NOC for that same substance, the fact that a NOC has not been received is evidence that no manufacturing or processing of the chemical substance is occuring in the United States. EPA has not received a notice of commencement for any of the chemical substances in this proposed SNUR, which indicates that the substances have not been manufactured for commercial purposes, with or without the chemical substances that would constitute a significant new use.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376 (FRL–3658–5)), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. The objective of EPA's approach is to ensure that a person cannot impede finalization of a SNUR by initiating a significant new use after publication of the proposed rule but before the effective date of the final rule. Uses arising after the publication of the proposed rule are distinguished from uses that are identified in the final rule as having been ongoing on the date of publication of the proposed rule. The former would be new uses, the latter ongoing uses, except that uses that are identified as ongoing as of the publication of the proposed rule would not be considered ongoing uses if they have ceased by the date of issuance of a final rule.

In the unlikely event that before a final rule becomes effective a person begins commercial manufacturing (including importing) or processing of the chemical substances for a use that is designated as a significant new use in that final rule, such a person would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until all TSCA prerequisites for the commencement of manufacture or processing have been satisfied.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

E. Important Information About SNUN Submissions

1. SNUN submissions.

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

2. Development and submission of information with the SNUN.

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is otherwise required to submit information for a chemical substance subject to the SNUR pursuant to a rule, TSCA Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known or reasonably ascertainable (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency may determine under TSCA section 5(e) that it is necessary to require appropriate testing. Unit IV. lists potentially useful information for the SNURs listed in this document. Descriptions of this information is provided for informational purposes. The potentially useful information identified in Unit III. will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use.

EPA strongly encourages persons to consult with the Agency before performing any testing. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages dialog with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce*.

The potentially useful information listed in Unit III. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action

under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

III. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for certain chemical substances in 40 CFR part 721, subpart E. EPA provides the following information for each chemical substance that is identified in this unit as subject to this proposed rule:

- PMN number (the proposed CFR citation assigned in the regulatory text section of the proposed rule).
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Effective date of and basis for the TSCA Section 5(e) Order.
- Potentially Useful Information.

The chemicals subject to these proposed SNURs are as follows:

PMN Numbers (proposed 40 CFR citation): P–21–144 (40 CFR 721.11781), P–21–145 (40 CFR 721.11782), P–21–146 (40 CFR 721.11783), P–21–147 (40 CFR 721.11784), P–21–148 (40 CFR 721.11785), P–21–149 (40 CFR 721.11786), P–21–150 (40 CFR 721.11787), P–21–152 (40 CFR 721.11788), P–21–153 (40 CFR 721.11789), P–21–154 (40 CFR 721.11790), P–21–155 (40 CFR 721.11791), P–21–156 (40 CFR 721.11792), P–21–157 (40 CFR 721.11793), P–21–158 (40 CFR 721.11794), P–21–160 (40 CFR 721.11795), P–21–161 (40 CFR 721.11796), P–21–162 (40 CFR 721.11797), and P–21–163 (40 CFR 721.11798).

Chemical Names: Naphtha, heavy catalytic cracked (generic) (P–21–144), Naphtha, heavy alkylate (generic) (P–21–145), Naphtha, full range alkylate, butane–contg. (generic) (P–21–146), Naphtha, hydrotreated heavy (generic) (P–21–147), Naphtha, light catalytic cracked (generic) (P–21–148), Naphtha, light alkylate (generic) (P–21–149), Naphtha, hydrotreated light (generic) (P–21–150), Clarified oils, catalytic cracked (generic) (P–21–152), Distillates, hydrotreated heavy (generic) (P–21–153), Gas Oils hydrotreated vacuum (generic) (P–21–154), Distillates, light catalytic cracked (generic) (P–21–155), Distillates, clay-treated middle (P–21–156), Distillates, hydrotreated middle (generic) (P–21–157), Distillates, hydrotreated light (generic) (P–21–158), Gases, C4-rich (generic) (P–21–160), Gases, catalytic cracking (generic) (P–21–161), Residues, butane splitter bottoms (generic) (P–21–162), and Tail gas, saturate gas plant mixed stream, C4-rich (generic) (P–21–163).

CAS Numbers: Not available.

Effective Date of TSCA Order: August 25, 2022.

Basis for TSCA Order: The PMNs state that the uses will be as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting). Based on analogous mixtures and constituents of the PMN substances, EPA has identified concerns for skin and eye irritation, acute toxicity, systemic toxicity (neurotoxicity, body weight effects, and liver, kidney, blood, spleen, and other organ effects), reproductive and developmental toxicity, oral and inhalation portal entry effects, genetic toxicity, and carcinogenicity. Based on the petroleum chemical composition, EPA has also identified concerns for hydrocarbon pneumonia/aspiration hazard and respiratory tract irritation. Based on comparison to analogous fuel streams, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 0.03 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No manufacture, processing, or use of the PMN substances other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures. Additionally, the proposed SNUR would designate the following as a significant new use:

- Manufacture of the PMN substances using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(i) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(ii) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(iii) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, eye irritation, respiratory depression/irritation, hydrocarbon pneumonia/aspiration hazard, reproductive developmental toxicity, systemic toxicity, genetic toxicity, carcinogenicity, aquatic toxicity, and consumer inhalation exposure at gas station testing may be potentially useful to characterize the health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Orders 12866: Regulatory Planning and Review and 14094: Modernizing Regulatory Review

This action is exempt from review under Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), because it will establish SNURs for several new chemical substances that were the subject of PMNs.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing SNUR regulations under OMB Control No. 2070–0038 (EPA ICR No. 1188.13). If an entity were to submit a SNUN to the Agency, the annual burden is estimated to be less than 100 hours per response, and the estimated burden for export notifications is less than 1.5 hours per notification. In both cases, if the firm submitting either a SNUN or export notification is already registered in CDX, the burden would be lower than the presented estimates.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Consistent with the PRA, EPA is interested in comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden or improving the automated collection techniques.

C. Regulatory Flexibility Act (RFA)

I certify this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are potential future manufacturers (defined by statute to include importers), processors, and exporters of one or more subject chemical substances for a significant new use designated in the proposed SNURs. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, the Agency has determined that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was 10 in Federal fiscal year (FY) FY2016, 14 in FY2017, 16 in FY2018, five in FY2019, seven in FY2020, and 13 in FY2021, and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $19,020 to $3,330. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $11,164 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandates as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Based on EPA's experience with proposing and finalizing SNURs, state, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any state, local, or tribal government will be impacted by this action. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action would not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This action will not significantly nor uniquely affect the communities of tribal governments, nor would it involve or impose any requirements that affect Indian tribes.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to regulatory actions considered significant under section 3(f)(1) of Executive Order 12866 and that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of Executive Order 13045. Since this is not a ''covered regulatory action,'' Executive Order 13045 does not apply. However, the EPA Policy on Children's Health does apply to the consideration of the SNUNs submitted to EPA in response to a SNUR.

SNURs do not address an existing children's environmental health concern because the chemical uses involved in the SNUR are not ongoing uses. SNURs require that persons notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing the chemical substances for an activity that is designated as a significant new use by this rule. This notification allows EPA to assess the intended uses to identify potential risks and take appropriate actions before the activities commence, which includes the consideration of potentially exposed or susceptible subpopulations identified as relevant for the chemical under the intended uses identified in the SNUN.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a ''significant regulatory action'' under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any technical standards under the NTTAA section 12(d) (15 U.S.C. 272 note).

J. Executive Orders 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations. This action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

EPA believes that this action is not likely to result in new disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples because the chemical uses addressed in these SNURs are not ongoing uses. In addition, the notification required by these SNURs allows EPA to evaluate the SNUN to assess the intended uses to identify potential risks and take appropriate actions before the activities addressed in the SNUN commence, which includes the consideration of potentially exposed or susceptible subpopulations identified as relevant for the chemical under the intended uses identified in the SNUN.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 13, 2023.

Denise Keehner,

Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add §§ 721.11781 through 721.11798 to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

* * * * *

721.11781 Naphtha, heavy catalytic cracked (generic).
721.11782 Naphtha, heavy alkylate (generic).
721.11783 Naphtha, full range alkylate, butane-contg. (generic).
721.11784 Naphtha, hydrotreated heavy (generic).
721.11785 Naphtha, light catalytic cracked (generic).
721.11786 Naphtha, light alkylate (generic).
721.11787 Naphtha, hydrotreated light (generic).
721.11788 Clarified oils, catalytic cracked (generic).
721.11789 Distillates, hydrotreated heavy (generic).
721.11790 Gas oils hydrotreated vacuum (generic).
721.11791 Distillates, light catalytic cracked (generic).
721.11792 Distillates, clay-treated middle (generic).
721.11793 Distillates, hydrotreated middle (generic).
721.11794 Distillates, hydrotreated light (generic).
721.11795 Gases, C4-rich (generic).
721.11796 Gases, catalytic cracking (generic).
721.11797 Residues, butane splitter bottoms (generic).
721.11798 Tail gas, saturate gas plant mixed stream, C4-rich (generic).

* * * * *

§ 721.11781 Naphtha, heavy catalytic cracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as naphtha, heavy catalytic cracked (PMN P–21–144) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11782 Naphtha, heavy alkylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as naphtha, heavy alkylate (PMN P–21–145) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11783 Naphtha, full range alkylate, butane-contg. (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as naphtha, full range alkylate, butane-contg. (PMN P–21–146) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11784 Naphtha, hydrotreated heavy (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as naphtha, hydrotreated heavy (PMN P–21–147) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium,

chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11785 Naphtha, light catalytic cracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as naphtha, light catalytic cracked (PMN P–21–148) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11786 Naphtha, light alkylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as naphtha, light alkylate (PMN P–21–149) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11787 Naphtha, hydrotreated light (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as naphtha, hydrotreated light (PMN P–21–150) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11788 Clarified oils, catalytic cracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as clarified oils, catalytic cracked (PMN P–21–152) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11789 Distillates, hydrotreated heavy (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as distillates, hydrotreated heavy (PMN P–21–153) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace

policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11790 Gas oils hydrotreated vacuum (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as gas oils hydrotreated vacuum (PMN P–21–154) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) Limitation or revocation of certain notification requirements. The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11791 Distillates, light catalytic cracked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as distillates, light catalytic cracked (PMN P–21–155) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a

chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11792 Distillates, clay-treated middle (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as distillates, clay-treated middle (PMN P–21–156) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R' can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11793 Distillates, hydrotreated middle (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as distillates, hydrotreated middle (PMN P–21–157) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11794 Distillates, hydrotreated light (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as distillates, hydrotreated

light (PMN P–21–158) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11795 Gases, C4-rich (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as gases, C4-rich (PMN P–21–160) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through ((i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11796 Gases, catalytic cracking (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as gases, catalytic cracking (PMN P–21–161) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and

use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′, and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11797 Residues, butane splitter bottoms (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as residues, butane splitter bottoms (PMN P–21–162) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″, where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

§ 721.11798 Tail gas, saturate gas plant mixed stream, C4-rich (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as tail gas, saturate gas plant mixed stream, C4-rich (PMN P–21–163) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a fuel, fuel additive, fuel blending stock, or use as a refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a).

(iii) *Industrial, commercial, and consumer use.* It is a significant new use to manufacture, process, or use the substance other than for processing and use as a fuel, fuel additive, fuel blending stock, or refinery feedstock (including, but not limited to cracking, coking, hydroprocessing, distillation, or deasphalting) subject to 40 CFR part 79 or 1090. It is a significant new use to manufacture the substance using feedstocks containing any amount of heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP). For purposes of this SNUR *PFAS* or *per- and poly-fluoroalkyl substance* means a chemical substance that contains at least one of these three structures:

(A) R-(CF2)-CF(R′)R″, where both the CF2 and CF moieties are saturated carbons;

(B) R-CF2OCF2-R′, where R and R′ can either be F, O, or saturated carbons; or

(C) CF3C(CF3)R′R″ where R′ and R″ can either be F or saturated carbons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i), are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Exemptions.* The exemption of § 721.45(i) does not apply to this section.

[FR Doc. 2023–13012 Filed 6–16–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1600 and 6100

[LLHQ230000.23X.L117000000.PN0000]

RIN 1004–AE92

Conservation and Landscape Health: Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 3, 2023, the Bureau of Land Management (BLM) published in the **Federal Register** a proposed rule that, pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and other relevant authorities, would advance the BLM's mission to manage the public lands for multiple use and sustained yield by prioritizing the health and resilience of ecosystems across those lands. To ensure that health and resilience, the proposed rule provides that the BLM will protect intact landscapes, restore degraded habitat, and make wise management decisions based on science and data. The BLM has determined that it is appropriate to extend the comment period for the docket until July 5, 2023, to allow for additional public comment.

DATES: The comment period for the proposed rule originally published on April 3, 2023, at 88 FR 19583. Comments must be submitted on or before July 5, 2023. The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed in the **ADDRESSES** section.

ADDRESSES: *Mail, personal, or messenger delivery:* U.S. Department of the Interior, Director (HQ–630), Bureau of Land Management, Room 5646, 1849 C St. NW, Washington, DC 20240, Attention: Regulatory Affairs: 1004–AE–92 or 1004–AE92. *Federal eRulemaking Portal: https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE–92'' and click the ''Search'' button. Follow the instructions at this website.

FOR FURTHER INFORMATION CONTACT: Patricia Johnston, project manager, Division of Wildlife Conservation, Aquatics, and Environmental Protection at *pjohnsto@blm.gov,* for information on the rule. For information on procedural matters or the rulemaking process, you may contact Chandra Little, Regulatory Analyst for the Office of Regulatory Affairs, at 202–912–7403. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of contact in the United States.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

If you wish to comment on this proposed rule, you may submit your comments to the BLM, marked with the number RIN 1004–AE–92 or 1004–AE92, by mail, personal or messenger delivery, or through *https://www.regulations.gov* (see the **ADDRESSES** section). Please note that comments on this proposed rule's information collection burdens should be submitted to the OMB as described in the **ADDRESSES** section. Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and

2. Those that include citations to, and analyses of, the applicable laws and regulations. The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: Mail, personal, or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m. EST), Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Background

The proposed rule was published on April 3, 2023 (88 FR 19583), with a 75-day comment period closing on June 20, 2023. Since publication, the BLM has received requests for extension of the comment period on the proposed rule. The BLM has determined that it is appropriate to extend the comment period for the docket until July 5, 2023, to allow for additional public comment.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2023–13050 Filed 6–16–23; 8:45 am]

BILLING CODE 4331–27–P

Notices

Federal Register
Vol. 88, No. 117
Tuesday, June 20, 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 has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 20, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Department of Agriculture

Office of the Chief Information Officer

Title: USDA eAuthentication Service Customer Registration.

OMB Control Number: 0503–0014.

Summary of Collection: The USDA Office of the Chief Information Officer (OCIO) has developed the eAuthentication system as a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process requires a voluntary one-time electronic self-registration to obtain an eAuthentication account for each USDA customer desiring access to online services or applications that require user eAuthentication. The information collected through the electronic self-registration process is necessary to enable the electronic authentication of users and grant them access to only those resources for which they are authorized. The authority to collect this information as well as the new Online Identity Proofing function can be found in section 2(c), of the Freedom to E-File Act (Pub. L. 106–222), the Government Paperwork Elimination Act (GPEA, Pub. L. 105–277), the Electronic Signatures in Global and National Commerce Act (E-Sign, Pub. L. 106–229), the E-Government Act of 2002 (H.R. 2458), and Gramm-Leach Bliley Act (Pub. L., 106–102, 502–504).

Need and Use of the Information: The USDA eAuthentication Service provides public and government businesses single sign-on capability for USDA applications, management of user credentials, and verification of identity, authorization, and electronic signatures. USDA eAuthentication obtains customer information through an electronic self-registration process provided through the eAuthentication website. The voluntary online self-registration process applies to USDA Agency customers, as well as employees who request access to protected USDA web applications and services via the internet. Users can register directly from the eAuthentication website located at *www.eauth.egov.usda.gov.* The information collected through the online self-registration process will be used to provide an eAuthentication account that will enable the electronic authentication of users. The users will then have access to authorized resources without needing to reauthenticate within the context of a single internet session. If the information is not ever collected, the user must continue to conduct business with USDA through the existing paper-based processes.

Description of Respondents: Farms; individuals or households; business or other for-profit; not-for-profit institutions; State, local or Tribal government.

Number of Respondents: 235,092.

Frequency of Responses: Reporting: On occasion; Third party disclosure.

Total Burden Hours: 27,270.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–12997 Filed 6–16–23; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2023–0001]

Best Practices Guidance for Controlling Listeria Monocytogenes in Retail Delicatessens

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice of availability.

SUMMARY: FSIS is announcing the availability of its updated *Best Practices Guidance for Controlling Listeria monocytogenes (Lm) in Retail Delicatessens.* The best-practices guidance discusses steps that retailers can take to prevent certain ready-to-eat (RTE) foods that are prepared or sliced in retail delicatessens (delis) and consumed in the home, such as deli meats and deli salads, from becoming contaminated with *Lm* and thus a source of listeriosis. FSIS encourages retailers to review the guidance and evaluate the effectiveness of their retail practices and intervention strategies in reducing the risk of listeriosis to consumers from RTE meat and poultry deli products.

ADDRESSES: A downloadable version of the guide is available to view and print at: *https://www.fsis.usda.gov/policy/fsis-guidelines.* No hard copies of the

best-practices guidance have been published.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 937–4272.

SUPPLEMENTARY INFORMATION:

Background

Lm is a bacterium that is found in moist environments, soil, and decaying vegetation and can persist along the food continuum. Transfer of the bacterium from the environment (*e.g.,* deli cases, slicers, and utensils), employees, or contaminated food products is a particular hazard of concern in RTE foods, including meat and poultry products, because they generally receive no further processing that would kill *Lm* before consumption. Listeriosis is a serious infection with a high mortality rate, usually caused by eating food contaminated with *Lm.*

In 2013, FSIS and the U.S. Food and Drug Administration (FDA) conducted an interagency risk assessment on *Lm* to better understand the risk of foodborne illness associated with eating certain RTE foods prepared in retail delis and developed recommendations for changes in current practices that may improve the safety of those products. FSIS and FDA made their findings available to the public in the *Interagency Risk Assessment—Listeria monocytogenes in Retail Delicatessens* (Interagency Retail *Lm* Risk Assessment) (79 FR 22082). FSIS also published its *FSIS Best Practices Guidance for Controlling Listeria monocytogenes (Lm) in Retail Delicatessens.*

FSIS is announcing that it has revised its best practices guidance in response to FSIS focus group findings [1] and recommendations from the National Advisory Committee on Meat and Poultry Inspection (NACMPI).[2] FSIS has also made changes to incorporate more recent scientific knowledge, update references to the FDA Food Code, and improve consistency, clarity, and overall content. For example, FSIS replaced the summary of findings from the Interagency Retail *Lm* Risk Assessment with a hyperlink to the risk assessment. FSIS also removed the recommendation that retailers should rotate sanitizers. FSIS relocated the Deli Self-Assessment Tool to the Appendices and added a glossary to the Appendices. Finally, FSIS added the following new sections: *Sources of Listeria in Retail Firms, Active Managerial Control,* and *Risk Mitigation of Listeria monocytogenes (Lm) in Retail Firms.* The updated best practices guidance is available at: *https://www.fsis.usda.gov/guidelines/2015-0014.*

The guidance continues to provide practical recommendations that retailers can follow to control *Lm* contamination and outgrowth in the deli. Retailers can use the best practices guidance to help ensure that RTE meat and poultry products in the deli area are handled under sanitary conditions and are not adulterated under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) (*see* 21 U.S.C. 623(d) and 464(e)). While these practices are specifically designed to control *Lm*, they also may help control other foodborne pathogens that may be introduced into the retail deli environment and other facilities where consumers purchase food.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS provides information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/forms/electronic-forms,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Done at Washington, DC.

Theresa Nintemann,

Deputy Administrator, FSIS.

[FR Doc. 2023–12994 Filed 6–16–23; 8:45 am]

BILLING CODE 3410–DM–P

[1] Retail Listeria monocytogenes (Lm) Focus Group Findings (*usda.gov*).

[2] Available at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-02/Best-Practices-Guidance-Controlling-LM-Retail.pdf.*

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Foreign Agricultural Service to request an extension from the Office of Management and Budget (OMB) of a currently approved information collection for the Quality Samples Program.

DATES: Comments on this notice must be received by August 21, 2023 to be assured of consideration.

ADDRESSES: You may send comments, identified by the OMB Control number 0551–0047, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This portal enables respondents to enter short comments or attach a file containing lengthier comments.
- *Email: PODadmin@usda.gov.* Include OMB Control number 0551–0047 in the subject line of the message.
- *Mail, Courier, or Hand Delivery:* Curt Alt, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW, Room 6512, Washington, DC 20250.

Instructions: All submissions received must include the agency name and OMB Control Number for this notice.

FOR FURTHER INFORMATION CONTACT: Curt Alt, (202) 690–4784, *PODAdmin@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Quality Samples Program.

OMB Number: 0551–0047.

Expiration Date of Approval: January 31, 2024.

Type of Request: Extension of a currently approved information collection.

Abstract: Under the USDA Quality Samples Program, information will be gathered from applicants desiring to receive grants under the program to determine the viability of requests for resources to implement activities in foreign countries. Recipients of grants under the program must submit written evaluation reports as set forth in the annual Notices of Funding Availability for the Quality Samples Program. Submitted information is used to develop effective grant agreements and assure that statutory requirements and program objectives are met.

Estimate of Burden: The public reporting burden for each respondent resulting from information collection under the USDA Quality Samples Program varies in direct relation to the number and type of agreements entered into by such respondent. The estimated average reporting burden for the USDA Quality Samples Program is 4.4 hours per response.

Type of Respondents: Government agencies, private organizations, agricultural cooperatives, and export trade associations.

Estimated Number of Respondents: 10 per annum.

Estimated Number of Responses per Respondent: 25 per annum.

Estimated Total Annual Burden of Respondents: 1,200 hours.

Copies of this information collection may be obtained from Dacia Rogers, the Agency Information Collection Coordinator, at *Dacia.Rogers@usda.gov.*

Requests for Comments: Send comments regarding (a) whether the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be available without change, including any personal information provided, for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Comments will be summarized and included in the submission for OMB approval.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact *RARequest@usda.gov.*

Clay Hamilton,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2023–12993 Filed 6–16–23; 8:45 am]

BILLING CODE 3410–10–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of a virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Arizona Advisory Committee (Committee) to the Commission will hold a virtual business meeting via ZoomGov on Friday, July 7, 2023, from 11:15 a.m.–1:15 p.m. Arizona Time, for the purpose of debriefing testimony received from Panel I and discuss/potentially vote on panelists for Panel II.

DATES: The meeting will take place on:

- Friday, July 7, 2023, from 11:15 a.m.–1:15 p.m. Arizona Time

ADDRESSES:

Registration for Link (Audio/Visual): https://www.zoomgov.com/j/1618097593?pwd=UXJRR2Q0UTk5NTU2cXpGSWljbDBpUT09.

Join by Phone (Audio Only): 1–833–435–1820 (US Toll-free); Meeting ID: 161 809 7593#.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, Designated Federal Officer, (DFO), at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are

deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *kfajota@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to Kayla Fajota (DFO) at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (434) 515–2395.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl2AAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Prior Minutes
III. Debrief Panel I
IV. Discussion and Potential Vote on Panelists for Panel II
V. Public Comment
VI. Adjournment

Dated: June 14, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–13123 Filed 6–16–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Data Security Requirements for Accessing Confidential Data

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 10, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau and U.S. Bureau of Economic Analysis, Commerce.

Title: Data Security Requirements for Accessing Confidential Data.

OMB Control Number: 0607–XXXX.

Form Number(s):

- Form BC–1759, Special Sworn Status—U.S. Census Bureau
- Fair Credit Release—U.S. Census Bureau
- Selective Service Form—U.S. Census Bureau
- Foreign National Residence History—U.S. Census Bureau
- Initial Information Sheet—U.S. Census Bureau
- Researcher Semi-Annual Contact Information and Travel History Update—U.S. Census Bureau
- Form I–9, Employment Eligibility Verification (OMB No. 1615–0047)—U.S. Census Bureau
- OF–306, Declaration for Federal Employment (OMB No. 3206–0182)—U.S. Census Bureau
- SF85P, Questionnaire for Public Trust Positions (OMB No. 3206–0258)—U.S. Census Bureau
- Sworn Statement (Affirmation) of Nondisclosure for Consultant to BEA—U.S. Bureau of Economic Analysis
- Annual Census Bureau Data Handling University Training, including:
  - Data Stewardship & Controlled Unclassified Information (CUI)
  - Title 13 Awareness Course
  - Title 26 Awareness Training
  - Cybersecurity Awareness & Protection Course
- Annual Census Bureau Records Management Training
- Annual Bureau of Economic Analysis Title 26 Awareness Training
- Annual Bureau of Economic Analysis Data Stewardship and IT Security Training
- Annual Bureau of Economic Analysis Records Management 101 Training
- Annual Bureau of Economic Analysis Active Shooter Training
- Annual Bureau of Economic Analysis Employees Safety Training

Type of Request: Regular submission, new information collection request.

Number of Respondents: 640.

Average Hours per Response: 6 hours for the U.S. Census Bureau and 3 hours for the U.S. Bureau of Economic Analysis. This estimate includes completion of paperwork and training requirements.

Burden Hours: 3,501.

Needs and Uses: Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (44 U.S.C. 3583; hereafter referred to as the Evidence Act) mandates that OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access certain confidential data assets held by a Federal statistical agency or unit for the purposes of developing evidence.

The SAP Portal is to be a single web-based common application designed to collect information from individuals requesting access to confidential data assets from federal statistical agencies and units. When an application for confidential data is approved through the SAP Portal, the U.S. Census Bureau and the U.S. Bureau of Economic Analysis will collect information to fulfill their statutory confidentiality and data security requirements. This is a required step before providing the individual with access to restricted use microdata for the purpose of evidence building. The U.S. Census Bureau's and the U.S. Bureau of Economic Analysis's data security forms and other paperwork, along with the corresponding security protocols, allow the U.S. Census Bureau and the U.S. Bureau of Economic Analysis to maintain controls on confidentiality, as required by the law governing the data-owning agency. The U.S. Census Bureau's and the U.S. Bureau of Economic Analysis's collection of data security information will occur outside of the SAP Portal.

In the instance of a positive determination for an application requesting access to a U.S. Census Bureau and/or U.S. Bureau of Economic Analysis-owned confidential data asset through the SAP process, the U.S. Census Bureau and/or the U.S. Bureau of Economic Analysis will contact the applicant(s) to initiate the process of collecting information to fulfill their

statutory confidentiality and data security requirements. These forms are necessary for the U.S. Census Bureau and/or the U.S. Bureau of Economic Analysis to place the applicant(s) to protect the confidentiality of the data they collect.

Affected Public: Members of the public who are seeking a security clearance with either the U.S. Census Bureau or the U.S. Bureau of Economic Analysis in order to obtain access to confidential data.

Frequency: Annual.

Respondent's Obligation: Mandatory.

Legal Authority: 13 U.S.C. 9 and 23(c) for Census; 22 U.S.C. 3104 and 15 CFR part 80 for BEA.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–13044 Filed 6–16–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–40–2023]

Foreign-Trade Zone (FTZ) 255, Notification of Proposed Production Activity; Lenox Corporation; (Kitchenware, Tableware, Home Décor Sets); Hagerstown, Maryland

The Board of County Commissioners of Washington County, Maryland, grantee of FTZ 255, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Lenox Corporation, located in Hagerstown, Maryland within FTZ 255. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on June 8, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include sets of cookware, servingware, dinnerware, organizers, flatware, tableware, drinkware, home décor, stemware, cutlery, and kitchenware (duty rate ranges from duty-free to 26%).

The proposed foreign-status materials and components include: silicone straws; wood cutting boards; wax filled candles; plastic cookware; plastic trays; plastic dinnerware; plastic drinkware; wood utensil organizers; wood eating utensils; wood tableware caddies; wood servingware; wood flatware chests; paperboard gift boxes; thermal travel mugs; porcelain dinnerware; porcelain hotel and restaurant dinnerware; porcelain servingware; porcelain drinkware; porcelain steins; porcelain paper towel holders; ceramic pet bowls; ceramic steins; ceramic dinnerware; ceramic restaurant and hotel dinnerware; ceramic servingware; ceramic bakeware; ceramic cookie jar; ceramic utensil crocks; ceramic teapots; ceramic drinkware; ceramic shaker sets; ceramic ornaments; ceramic picture frames; ceramic vases; ceramic figurines; glass stemware; crystal flute sets; crystal stemware; crystal drinkware; glass drinkware; glass decanters; glass servingware; crystal ring holders; glass picture frames; glass figurines; silver jewelry boxes; pearl picture frames; stainless steel servingware; stainless steel teakettles; stainless steel coated containers; stainless steel food storage boxes; copper food storage containers; aluminum drinkware; zinc coin banks; stainless steel blade sharpeners; stainless steel wine openers; mechanical kitchen appliances; stainless steel knives; stainless steel knife sets; stainless steel kitchen shears; nonmechanical metal blades; stainless steel kitchenware sets including items such as spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs; silver-plated metal servingware sets; silver-plated metal flatware sets; stainless steel flatware; stainless steel servingware; stainless steel dinnerware; silver-plated metal statuettes; silver-plated metal picture frames; electric toasters; music boxes; steel display trays; brass candle holders; porcelain figurines; stainless steel cake toppers; and, stainless steel insulated flasks (duty rate ranges from duty-free to 28%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is July 31, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: June 13, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–13015 Filed 6–16–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–803]

Large Diameter Welded Pipe From Greece: 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 the sole producer/exporter subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), May 1, 2021, through April 30, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable June 20, 2023.

FOR FURTHER INFORMATION CONTACT: Nathan Araya, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3401.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2022, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the

antidumping duty order [1] on large diameter welded line pipe from Greece.[2] This administrative review covers one producer/exporter of the subject merchandise, Corinth Pipeworks Pipe Industry S.A. (CPW).

On January 6, 2023, Commerce extended the preliminary results by 120 days, until May 31, 2023.[3] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is attached as an 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 *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 the *Order* is large diameter welded carbon and alloy steel line pipe from Greece. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

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). Constructed export price is calculated in accordance with section 772 of the Act. Normal value 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

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period May 1, 2021, through April 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Corinth Pipeworks Pipe Industry S.A	6.95

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 deadline 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] and must be served on interested parties.[10] Executive summaries should be limited to five pages total, including footnotes. 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 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.[12] 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.[13] 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 established deadline.

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, unless otherwise extended.[14]

Assessment Rates

Upon completion of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[15] Pursuant to 19 CFR 351.212(b)(1), if CPW's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales. CPW's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by CPW for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (*i.e.,* 10.26 percent) if there is no rate for the intermediate company(ies) involved in the transaction.[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

[1] *See Large Diameter Welded Pipe from Greece: Amended Final Affirmative Antidumping Determination and Antidumping Duty Order,* 84 FR 18769 (May 2, 2019) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 42144 (July 14, 2022).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2021–2022 Antidumping Duty Administrative Review,'' dated January 6, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Large Diameter Welded Pipe from Greece,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[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* 19 CFR 351.303(f).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See* section 751(a)(3)(A) of the Act.

[15] *See* 19 CFR 351.212(b).

[16] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

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 reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 10.26 percent, the all-others rate established in the LTFV investigation.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: May 31, 2023.

Lisa W. Wang,

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. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[17] *See Order.*

[FR Doc. 2023–13060 Filed 6–16–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–807]

Sulfanilic Acid From India: Rescission of Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on sulfanilic acid from India, covering the period January 1, 2022, through December 31, 2022.

DATES: Applicable June 20, 2023.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, 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) 482–5848.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on sulfanilic acid from India,[1] covering the period January 1, 2022, through May 8, 2022.[2] We received no requests for administrative review. However, on May 9, 2023, Commerce inadvertently initiated a review of the *Order,* covering the period January 1, 2022, through December 31, 2022.[3]

Rescission of Review

Because we did not receive any requests for review of the *Order,* the initiation of the administrative review was in error. Therefore, we are rescinding the administrative review of the *Order* covering the period January 1, 2022, through December 31, 2022.

Assessment

Commerce intends to instruct U.S. Customs and Border Protection to assess antidumping or countervailing duties on any entries made during the period January 1, 2022, through May 8, 2022, at a rate equal to the cash deposit of estimated countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption.

Cash Deposit Requirements

Because the *Order* has been revoked,[4] there are no cash deposit requirements currently in effect.

Administrative Protective Order

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of the APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a violation, which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 7, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–13061 Filed 6–16–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–834]

Paper File Folders From the Socialist Republic of Vietnam: Amended Preliminary Determination of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the preliminary affirmative antidumping

[1] *See Countervailing Duty Order: Sulfanilic Acid from India,* 58 FR 12026 (March 2, 1993) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 13091 (March 2, 2023). The *Order* was revoked, effective May 9, 2022. *See Antidumping Duty Orders on Sulfanilic Acid from India and the People's Republic of China and Countervailing Duty Order on Sulfanilic Acid from India: Final Results of Sunset Reviews and Revocation of Orders,* 87 FR 35968 (June 14, 2022) (*Revocation*).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 29881 (May 9, 2023).

[4] *See Revocation.*

duty determination on paper file folders from the Socialist Republic of Vietnam (Vietnam) to correct a significant ministerial error.

DATES: Applicable June 20, 2023.

FOR FURTHER INFORMATION CONTACT: Janaé Martin or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0238 or (202) 482–4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2023, Commerce published its preliminary affirmative determination in the less-than-fair-value investigation of paper file folders from Vietnam.[1] On May 16, 2023, we received a timely ministerial error allegation from Three-Color Stone Stationary (Viet Nam) Company Limited (TCS) that Commerce made significant ministerial errors in the *Preliminary Determination* with respect to TCS's weighted-average dumping margin.[2] On May 18, 2023, the petitioner [3] submitted timely rebuttal comments to TCS's ministerial error allegation.[4]

Period of Investigation

The period of investigation (POI) is April 1, 2022, through September 30, 2022.

Scope of the Investigation

The products covered by this investigation are paper file folders from Vietnam. For a complete description of the scope of this investigation, *see* Appendix.

Analysis of Significant Ministerial Error Allegation

Commerce will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination according to 19 CFR 351.224(e). A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' [5] A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero (or *de minimis*) and a weighted-average dumping margin greater than *de minimis,* or vice versa.[6]

Amended Preliminary Determination

Pursuant to 19 CFR 351.224(e) and (g)(1), Commerce is amending the *Preliminary Determination* to reflect the correction of a ministerial error made in the calculation of the weighted-average dumping margin for TCS.[7] Specifically, when calculating surrogate value expenses for TCS, we inadvertently failed to convert the unit of measure for movement expenses. Commerce finds that this ministerial error is a significant ministerial error within the meaning of 19 CFR 351.224(g), because correction of this error decreases TCS's weighted-average dumping margin of 324.70 to 93.64 percent, which is a change that is at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated for TCS in the original *Preliminary Determination.* Furthermore, as TCS's amended preliminary weighted-average dumping margin is now below the highest petition margin of 233.93 percent,[8] we compared this petition rate to TCS's highest individual dumping margins and found the petition rate to be within the range of the highest calculated individual dumping margins. Accordingly, we assigned to the Vietnam-wide entity a dumping margin of 233.93 percent. For a complete discussion of the alleged ministerial errors, *see* the Preliminary Ministerial Error Memo.

Amended Preliminary Determination

As a result of correcting this ministerial error, Commerce determines the following weighted-average dumping margins exist:

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Three-Color Stone Stationary (Viet Nam) Company Limited ..	Three-Color Stone Stationary (Viet Nam) Company Limited	93.64
Vietnam-Wide Entity		233.93

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised according to the rates calculated in this amended preliminary determination, in accordance with section 733(d) of the Act. Because the amended rates for TCS and the Vietnam-wide entity result in decreased cash deposits, they will be effective retroactively to May 17, 2023, the date of publication of the *Preliminary Determination.* We will also instruct U.S. Customs and Border Protection (CBP) to issue instructions for requesting a refund of the difference between the amount of cash deposits paid as a result of the application of the original preliminary determination rates and the amount due as a result of the amended preliminary determination rates.

[1] *See Paper File Folders from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 88 FR 31488 (May 17, 2023) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* TCS's Letter, ''Three-Color Stone Stationery (Viet Nam) Company Limited: Request for Correction of Ministerial Error in the Preliminary Results, including Customs Instructions,'' dated May 16, 2023 (TCS Ministerial Error Comments).

[3] The petitioner in this investigation is the Coalition of Domestic File Folders Manufacturers.

[4] *See* Petitioner's Letter, ''Petitioner's Rebuttal to Ministerial Error Comments,'' dated May 18, 2023 (Petitioner Ministerial Error Rebuttal Comments).

[5] *See* section 735(e) of the Tariff Act of 1930, as amended (the Act).

[6] *See* 19 CFR 351.224(g).

[7] *See* Memorandum, ''Less Than Fair Value Investigation of Paper File Folders from the Socialist Republic of Vietnam: Allegation of Significant Ministerial Errors in the Preliminary Determination,'' dated concurrently with this notice (Preliminary Ministerial Error Memo).

[8] *See Paper File Folders from the People's Republic of China, India, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 67441, 67445 (November 8, 2022) (*Initiation Notice*).

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the amended preliminary determination, in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the International Trade Commission of our amended preliminary determination.

Notification to Interested Parties

This amended preliminary determination is issued and published pursuant to sections 733(d) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: June 12, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The products within the scope of the investigation are file folders consisting primarily of paper, paperboard, pressboard, or other cellulose material, whether coated or uncoated, that has been folded (or creased in preparation to be folded), glued, taped, bound, or otherwise assembled to be suitable for holding documents. The scope includes all such folders, regardless of color, whether or not expanding, whether or not laminated, and with or without tabs, fasteners, closures, hooks, rods, hangers, pockets, gussets, or internal dividers. The term ''primarily'' as used in the first sentence of this scope means 50 percent or more of the total product weight, exclusive of the weight of fasteners, closures, hooks, rods, hangers, removable tabs, and similar accessories, and exclusive of the weight of packaging.

Subject folders have the following dimensions in their folded and closed position: lengths and widths of at least 8 inches and no greater than 17 inches, regardless of depth.

The scope covers all varieties of folders, including but not limited to manila folders, hanging folders, fastener folders, classification folders, expanding folders, pockets, jackets, and wallets.

Excluded from the scope are:

- mailing envelopes with a flap bearing one or more adhesive strips that can be used permanently to seal the entire length of a side such that, when sealed, the folder is closed on all four sides;
- binders, with two or more rings to hold documents in place, made from paperboard or pressboard encased entirely in plastic;
- binders consisting of a front cover, back cover, and spine, with or without a flap; to be excluded, a mechanism with two or more metal rings must be included on or adjacent to the interior spine;
- non-expanding folders with a depth exceeding 2.5 inches and that are closed or closeable on the top, bottom, and all four sides (*e.g.,* boxes or cartons);
- expanding folders that have (1) 13 or more pockets, (2) a flap covering the top, (3) a latching mechanism made of plastic and/or metal to close the flap, and (4) an affixed plastic or metal carry handle;
- folders that have an outer surface (other than the gusset, handles, and/or closing mechanisms, if any) that is covered entirely with fabric, leather, and/or faux leather;
- fashion folders, which are defined as folders with all of the following characteristics: (1) plastic lamination covering the entire exterior of the folder, (2) printing, foil stamping, embossing (*i.e.,* raised relief patterns that are recessed on the opposite side), and/or debossing (*i.e.,* recessed relief patterns that are raised on the opposite side), covering the entire exterior surface area of the folder, (3) at least two visible and printed or foil stamped colors (other than the color of the base paper), each of which separately covers no less than 10 percent of the entire exterior surface area, and (4) patterns, pictures, designs, or artwork covering no less than thirty percent of the exterior surface area of the folder;
- portfolios, which are folders having (1) a width of at least 16 inches when open flat, (2) no tabs or dividers, and (3) one or more pockets that are suitable for holding letter size documents and that cover at least 15 percent of the surface area of the relevant interior side or sides; and
- report covers, which are folders having (1) no tabs, dividers, or pockets, and (2) one or more fasteners or clips, each of which is permanently affixed to the center fold, to hold papers securely in place.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) category 4820.30.0040. Subject imports may also enter under other HTSUS classifications. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2023–13014 Filed 6–16–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 220208–0264]

National Cybersecurity Center of Excellence (NCCoE) Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide letters of interest describing products and technical expertise to support and demonstrate security platforms for the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project. Participation in the project is open to all interested organizations.

DATES: Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than July 20, 2023.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *water_nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Interested parties can access the letter of interest request by visiting *www.nccoe.nist.gov/projects/securing-water-and-wastewater-utilities* and completing the letter of interest webform. NIST will announce the completion of the selection of participants and inform the public that it is no longer accepting letters of interest for this project at *www.nccoe.nist.gov/projects/securing-water-and-wastewater-utilities.* Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign an NCCoE consortium Cooperative Research and Development Agreement (CRADA) with NIST. An NCCoE consortium CRADA template can be found at: *https://www.nccoe.nist.gov/publications/other/nccoe-consortium-crada-example.*

FOR FURTHER INFORMATION CONTACT: James McCarthy via telephone at 301–975–0228; by email at *water_nccoe@nist.gov;* or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project are available at *https://www.nccoe.nist.gov/projects/securing-water-and-wastewater-utilities.*

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) and Operational Technology (OT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT and OT assets, the NCCoE will enhance trust in U.S. IT and OT communications, data, and storage systems; reduce risk for companies and individuals using IT and OT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into an NCCoE Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project. The full project can be viewed at: *www.nccoe.nist.gov/projects/securing-water-and-wastewater-utilities.*

Interested parties can access the request for a letter of interest template by visiting the project website at *www.nccoe.nist.gov/projects/securing-water-and-wastewater-utilities* and completing the letter of interest webform. On completion of the webform, interested parties will receive access to the letter of interest template, which the party must complete, certify as accurate, and submit to NIST by email or hardcopy. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the project objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this project. When the project has been completed, NIST will post a notice on the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project website at *www.nccoe.nist.gov/projects/securing-water-and-wastewater-utilities* announcing the next phase of the project and informing the public that it will no longer accept letters of interest for this project. There may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into an NCCoE consortium CRADA with NIST (for reference, see **ADDRESSES** section above).

Project Objective: This project will develop example cybersecurity solutions to protect the infrastructure in the operating environments of Water and Wastewater Systems (WWS) sector utilities. The increasing adoption of network-enabled technologies by the sector merits the development of best practices, guidance, and solutions to ensure that the cybersecurity posture of facilities is safeguarded.

Critical infrastructure issues in the WWS sector present several unique challenges. Utilities in the sector typically cover a wide geographic area regarding piped distribution networks and infrastructure together with centralized treatment operations. The supporting operational technologies (OT) underpinning this infrastructure are likely reliant on supervisory control and data acquisition (SCADA) systems which provide data transmission across the enterprise, sending sensor readings and signals in real time. These systems also control the automated processes in the production environment which is linked to the distribution network. Additionally, many OT devices are converging upon information technology (IT) capability with the advent of Industrial internet-of-Things (IIoT) devices and platforms, such as cloud-based SCADA and smart monitoring. This project will develop a reference design that demonstrates practical solutions for water and wastewater utilities of all sizes. The reference design will use commercially available products and services to address four WWS cybersecurity challenges: asset management, data integrity, remote access, and network segmentation. The commercial products and services will be integrated into a demonstration of the reference design. The project also initiates a broad discussion with WWS sector stakeholders to identify commercial solution providers.

This project will result in a publicly available NIST Cybersecurity Practice Guide which will include a detailed implementation guide of the practical steps needed to implement a cybersecurity reference design that addresses these challenges.

Requirements for Letters of Interest: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section 3 of the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project description available at: *www.nccoe.nist.gov/projects/securing-water-and-wastewater-utilities.*

Requested Capabilities

This project will employ products, provided by collaborating vendors, that provide the following cybersecurity capabilities to address the four scenarios described in section 2 of the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* Project Description.

- *Asset Management:* Asset management capabilities discover and identify physical and virtual assets in the OT environment. These assets may be geographically distributed and may be cloud-based. In addition to network-connected assets, these capabilities should provide a means to discover and identify assets connected by low-bandwidth communications channels and disconnected assets. The asset management capability maintains an inventory of known assets which contains information such asset type, product version, and communication protocols used. Asset management capabilities may provide automation to establish and enforce a baseline security posture.
- *Data Integrity:* Data integrity capabilities protect data and communications within the OT environment against improper modification or destruction. Additionally, these capabilities monitor the OT environment to detect potential integrity violations and generate alerts to initiate any needed responses.
- *Remote Access:* Remote access capabilities provide entities (people and systems) controlled access to OT assets from outside the OT environment. These capabilities authenticate any entity seeking access, allow only explicitly authorized access, control which actions are allowed for each authorized entity, and maintain a record of all actions attempted and completed by each entity.
- *Network Segmentation:* Network segmentation capabilities provide logically isolated network subsets that can be managed more efficiently and

effectively. Segmentation allows for a more detailed level of authorization and access, visibility into network flows among critical assets and infrastructure, and control of device management, and minimizes the potential harm from threats by isolating them to a limited part of the network.

In their letters of interest, responding organizations need to acknowledge the importance of and commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components.

2. Support for development and demonstration of the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project, which will be conducted in a manner consistent with the following standards and guidance: FIPS 200, FIPS 201, SP 800–82 and SP 800–53, the NIST Cybersecurity Framework, and the NIST Privacy Framework.

Additional details about the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project are available at *www.nccoe.nist.gov/projects/securing-water-and-wastewater-utilities.*

NIST cannot guarantee that all the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the NCCoE consortium CRADA in the development of the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project. These descriptions will be public information. Under the terms of the NCCoE consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project capability will be announced on the NCCoE website at least two weeks in advance at *https://nccoe.nist.gov/.* The expected outcome will demonstrate how the components of the *Cybersecurity for the Water and Wastewater Sector: A Practical Reference Design for Mitigating Cyber Risk in Water and Wastewater Systems* project architecture can provide security capabilities to mitigate identified risks related to data throughout its lifecycle. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *https://nccoe.nist.gov/.*

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–13043 Filed 6–16–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD084]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before July 5, 2023.

ADDRESSES: You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''NEFSC On-Demand Gear EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, *Laura.Deighan@noaa.gov,* (978) 281–9184.

SUPPLEMENTARY INFORMATION: The NOAA Northeast Fisheries Science Center submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the regulations would otherwise restrict to expand trials of on-demand fishing gear that uses one or no surface buoys and to test the ability of gear marking systems to consistently locate gear. This EFP would exempt the participating vessels from the gear marking requirements at 50 CFR 697.21(b)(2) to allow the use of trawls of more than three traps with no more than one surface marking and § 648.84(b) to allow the use of gillnet gear with no more than one surface marking. Exempted fishing activities would take place between August 21, 2023, and August 20, 2024.

The project is a continuation and expansion of the Center's efforts to trial on-demand fishing systems (also known as ropeless or buoyless) aimed at reducing entanglement risk to protected species, mainly the North Atlantic right whale, in trap/pot and gillnet fisheries. The Center's existing EFP will expire on August 21, 2023, and authorizes gear trials on up to 100 trap/pot vessels. As of March 2023, the Center had collected data from 707 hauls of on-demand gear in Federal waters under its current EFP. Of these, 267 hauls took place in Lobster Management Area (LMA) 3, 164 in LMA 2, and 276 in LMA 1. The Center reported two instances of gear loss or gear conflict. One incident involved a

gear conflict with a mobile fishing vessel, the second incident was related to a malfunction of the on-demand gear itself. The Center has increased outreach to encourage use of the Trap Tracker app by non-participant vessels. As of March 2023, approximately 42 fixed-gear and 5 mobile-gear vessels are using Trap Tracker.

This project would expand trials to allow up to 200 trap/pot vessels to replace up to 10 of their existing trawls (up to 2,000 trawls total) with modified trawls, including in Atlantic Large Whale Take Reduction Plan (ALWTRP) Restricted Areas. It would also add the opportunity to trial on-demand gear in gillnet fisheries, with up to 5 of the 200 vessels fishing up to 8 (40 total) modified gillnet strings. Modified gear would replace one or both traditional end lines with acoustic on-demand systems and other alternatives to static buoy lines (including, but not limited to, spooled systems, buoy and stowed rope systems, lift bag systems, and grappling).

The ultimate goal of this project is to enable the continuation of some of the region's most valuable and historically significant fisheries while also meeting the requirements set forth by the ALWTRP and section 118(f) of the Marine Mammal Protection Act, specifically reducing the level of serious injury and mortality of North Atlantic right, humpback, and fin whales in commercial fisheries. To achieve this, the project includes objectives to test the efficacy of fully on-demand trawls and the adequacy of gear marking systems that use data hubs and visualization platforms to share on-demand gear locations. The project is intended to address challenges and data needs associated with on-demand gear, including:

- Increasing availability of and standardizing participant training;
- Reducing operational interruptions (line snarls, gear breakage, acoustic response issues, *etc.*);
- Evaluating multiple prototypes under the range of fishing conditions;
- Evaluating retrieval times with through-hull transducers;
- Evaluating float modifications;
- Evaluating modifications to facilitate faster retrieval in low visibility conditions;
- Evaluating new prototypes;
- Improving stackability on deck;
- Improving gear detection by other fishermen and relevant stakeholders (*e.g.,* wind surveyors);
- Improving access to location data (*e.g.,* overlaying on digital charts);
- Improving the ability to upload data (*e.g.,* outside of cell data range);
- Increasing data to support regulatory analyses (*e.g.,* costs in time and landings; costs/savings associated with gear conflicts); and,
- Increasing performance of on-demand gear through feedback to manufacturers.

To ensure that on-demand fishing and gear marking technologies are adequately tested across the breadth of regional commercial fishing conditions, the Center requests the flexibility to test on-demand gear across the geographic range of the Federal American lobster and Jonah crab fishery (LMAs 1–5 and the Nearshore Outer Cape LMA), including testing fully on-demand gear (no persistent vertical lines) in ALTWRP Restricted Areas. It also requests the opportunity to trial on-demand gillnet gear on federally permitted monkfish, groundfish, spiny dogfish, and skate vessels from Maine to Virginia. To cover a greater area and target areas where data is needed, the Center has requested the flexibility to have greater than 200 participants during the one-year period (with only 200 fishing at one time) and would provide requested modifications to the active participants, general locations, and technologies to be tested one month in advance. Priority would be given to participants who are seasonally excluded from fishing in certain areas and/or participants in offshore fisheries that have limited entanglement mitigation options available. The Center is also specifically targeting increased wintertime data collection.

This permit would only exempt vessels from the specified Federal regulations in Federal waters. It would not exempt the vessels from any requirements imposed by any state, the Endangered Species Act, the Marine Mammal Protection Act, or any other applicable laws. The applicant would be responsible for obtaining all required state authorizations. Other than gear markings, all trap trawls and gillnet strings would be consistent with the regulations of the management area where the vessel is fishing and would be fished in accordance with the participating vessels' standard operations (number and length of trips, soak times, trap limits, *etc.*).

The use of on-demand trap/pot gear in the ALWTRP Restricted Areas is limited to gear without any persistent vertical lines. The Center would allow incremental expansion of on-demand trials in the Restricted Areas, depending on its capacity to provide gear and manage the activity. In recognition of industry's interest in grappling as a low-cost alternative to acoustic on-demand systems, this project would also allow up to 25 vessels to retrieve fewer than 10 buoyless trawls via grappling, including in ALWTRP Restricted Areas. This would enable the Center to collect data on the viability of grappling at a commercial scale. This would be consistent with what is authorized under the existing EFP, although no grappling trials have occurred to-date.

In the first phase of participation, staff from the Center and the gear manufacturers would provide training to ensure the system is working as intended and all participants have sufficient experience with the gear prior to borrowing from the gear cache library. In the second phase, participating vessels would rig an on-demand system to one end of a standard trawl or string and fish it as a hybrid (with one traditional surface marking) for at least 10 hauls per system. In phase three, participants would fish the gear as part of normal fishing operations, including fishing fully on-demand gear and in the ALTWRP Restricted Areas. In some cases, a scientific observer may be on board, and/or GoPro Systems (or equivalent) may record gear retrievals. The Center would provide standardized data collection sheets to all participants, but individually-identifiable data will only be made public with the express permission of the vessel owner.

The Center also plans to include targeted geolocation studies in areas with limited trawling and/or dredging to test new location-marking systems on the seafloor and automated location-marking when gear is set and retrieved. This EFP would support efforts to improve gear-marking and gear-conflict avoidance technologies, including testing the amount of effort to mark sub-surface gear location in the Trap Tracker app (vs. surface location where the gear is deployed) and other sub-surface gear marking technologies. This EFP would also test the use of the EarthRanger platform that displays gear locations from various gear-marking technologies. The Center would demonstrate and continue to encourage the adoption of these technologies with non-participant vessels.

The Center proposes the following best practices and risk reduction measures:

- All vessels would report all right whale sightings to NMFS via *ne.rw.survey@noaa.gov* or NOAA (866–755–6622) or the U.S. Coast Guard (Channel 16) and record sightings on data sheets;
- All vessels would retrieve on-demand vertical lines as quickly as possible to minimize time in the water column;

• All vessels would adhere to current approach regulations—a 500-yard (457.2-meter or 1,500-foot) buffer zone created by a surfacing right whale—and must depart immediately at a safe and slow speed, in accordance with current regulations. Hauling any lobster gear would immediately cease (by removal) to accommodate the regulation and be reinitiated only after it is reasonable to assume the whale has left the area;

• All vessels would provide mandatory, weekly gear loss reports;

• All vessels would operate within a 10-knot speed limit when transiting Restricted Areas or when whales are observed;

• For fully on-demand gear without traditional surface markings, participants would use the Trap Tracker or an equivalent technology for retrieval and set positioning details, which would be available to Federal, state, and corresponding enforcement personnel, as well as other fishermen;

• For fully on-demand gear without traditional surface markings, on-demand vertical lines would be marked with unique yellow/black/orange marks above the regional markings, in addition to ALWTRP regulations (per agreement with the NMFS Atlantic Large Whale Take Reduction Team Coordinator);

• When fishing in ALWTRP Restricted Areas, vessels would check real-time right whale sightings information (such as Right Whale Sightings Advisories and Whale Alert before setting any gear and avoid areas of high right whale abundance, and all vessels would be recommended to follow this process when setting gear outside the ALWTRP Restricted Areas;

• In the Restricted Areas, vessels would fly a unique flag for enforcement recognition;

• The Center would provide monthly updates on any gear conflicts to the Sustainable Fisheries Division at the Greater Atlantic Regional Fisheries Office; and,

• Sustainable Fisheries Division staff would be invited to recurring gear coordination calls with time dedicated to EFP discussion.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

All comments received are a part of the public record and will generally be posted for public viewing at *https://www.noaa.gov/organization/information-technology/foia-reading-room* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''anonymous'' as the signature if you wish to remain anonymous).

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

Dated: June 14, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–13064 Filed 6–16–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC936]

Pacific Island Fisheries; Marine Conservation Plan for the Pacific Insular Area for the Commonwealth of the Northern Mariana Islands; Western Pacific Sustainable Fisheries Fund

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of a Marine Conservation Plan (MCP) for the Commonwealth of the Northern Mariana Islands (CNMI).

DATES: This agency decision is effective from August 4, 2023, through August 3, 2026.

ADDRESSES: You may obtain a copy of the MCP, identified by NOAA–NMFS–2023–0058, from the Federal e-Rulemaking Portal, *https://www.regulations.gov/docket/NOAA-NMFS-2023-0058,* or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Keith Kamikawa, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–725–5177.

SUPPLEMENTARY INFORMATION: Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary), and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, Guam, or the CNMI. The Governor of the Pacific Insular Area to which the PIAFA applies must request the PIAFA. The Secretary of State may negotiate and enter the PIAFA after consultation with, and concurrence of, the applicable Governor.

Before entering into a PIAFA, the applicable Governor, with concurrence of the Council, must develop and submit to the Secretary a 3-year MCP providing details on uses for any funds collected by the Secretary under the PIAFA. NMFS is the designee of the Secretary for MCP review and approval. The Magnuson-Stevens Act requires payments received under a PIAFA to be deposited into the United States Treasury and then conveyed to the Treasury of the Pacific Insular Area for which funds were collected.

In the case of violations by foreign fishing vessels in the EEZ around any Pacific Insular Area, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act, including sums collected from the forfeiture and disposition or sale of property seized subject to its authority, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the EEZ in which the violation occurred, after direct costs of the enforcement action are subtracted. The Pacific Insular Area government may use funds deposited into the Treasury of the Pacific Insular Area for fisheries enforcement and for implementation of an MCP.

Federal regulations at 50 CFR 665.819 authorize NMFS to specify catch limits for longline-caught bigeye tuna for U.S. territories. NMFS may also authorize each territory to allocate a portion of that limit to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Payments collected under specified fishing agreements are deposited into the Western Pacific Sustainable Fisheries Fund, and any funds attributable to a particular territory may be used only for implementation of that territory's MCP. An MCP must be consistent with the Council's FEPs, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects.

At its 194th meeting held March 26–30, 2023, the Council reviewed and concurred with the MCP. On May 11, 2023, the Governor of the CNMI submitted the MCP to NMFS for review and approval. The MCP contains the following seven conservation and management objectives:

1. Improve fisheries data collection and reporting;
2. Conduct resource assessment, monitoring, and research to gain a better understanding of marine resources and fisheries;
3. Conduct enforcement training and monitoring activities to promote compliance with federal and local mandates;
4. Promote responsible domestic fisheries development to provide long-term economic growth, stability, and local food production;
5. Conduct education and outreach, enhance public participation, and build local capacity;
6. Promote an ecosystem approach to fisheries management, climate change adaptation and mitigation, and regional cooperation; and
7. Recognize the importance of island cultures and traditional fishing practices in managing fishery resources, and foster opportunities for participation.

Please refer to the MCP for projects and activities designed to meet each objective, the evaluative criteria, and priority rankings.

This notice announces that NMFS has reviewed the MCP, and has determined that it satisfies the requirements of the Magnuson-Stevens Act. Accordingly, NMFS has approved the MCP for the 3-year period from August 4, 2023, through August 3, 2026. This MCP supersedes the one approved previously for August 4, 2020, through August 3, 2023 (85 FR 29934, May 19, 2020).

Dated: June 13, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–13007 Filed 6–16–23; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0055]

Agency Information Collection Activities; Proposed Collection; Comment Request; Standard for the Flammability of Mattresses and Mattress Pads and Standard for the Flammability (Open Flame) of Mattress Sets

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of mattresses and mattress pads. The collection of information is set forth in the Standard for the Flammability of Mattresses and Mattress Pads and the Standard for the Flammability (Open Flame) of Mattress Sets. These regulations establish testing and recordkeeping requirements for manufacturers and importers subject to the standards. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0014. OMB's most recent extension of approval will expire on August 31, 2023. CPSC will consider all comments received in response to this notice, before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than August 21, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0055, by any of the following methods:

Electronic Submissions: CPSC encourages you to submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* insert the docket number, CPSC–2010–0055, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7791, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

CPSC promulgated the Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR part 1632 (part 1632 standard) under section 4 of the Flammable Fabrics Act (FFA), 15 U.S.C. 1193, to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The part 1632 standard prescribes requirements to test whether a mattress or mattress pad will resist ignition from a smoldering cigarette. The part 1632 standard also requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads and to obtain acceptable results from such testing. Manufacturers and importers must maintain the records and test results specified under the standard.

The Commission also promulgated the Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR part 1633 (part 1633 standard), under section 4 of the FFA to reduce deaths and injuries related to mattress fires, particularly those ignited by open-flame sources, such as lighters, candles, and matches. The part 1633 standard requires manufacturers to maintain certain records to document compliance with the standard, including maintaining records concerning prototype testing, pooling, and confirmation testing, and quality assurance procedures and any associated testing. The required records must be maintained for as long as mattress sets based on the prototype are in production and must be retained for 3 years thereafter. OMB previously approved the collection of information for 16 CFR parts 1632 and 1633, under control number 3041–0014, with an expiration date of August 31, 2023. The information collection requirements

under the part 1632 standard are separate from the testing and recordkeeping requirements under the part 1633 standard.

B. Burden Hours

16 CFR 1632: Commission staff estimates that there are 403 respondents that produce mattresses. It is estimated that each respondent will spend 26 hours for testing and record keeping annually for a total of 10,478 hours (403 establishments × 26 hours = 10,478). The hourly compensation for the time required for record keeping is $72.91 (for management, professional, and related occupations in goods-producing industries, Bureau of Labor Statistics, September 2022). The annualized cost to respondents would be approximately $763,950.98 (10,478 hours × $72.91 per hour).

16 CFR 1633: The standard requires detailed documentation of prototype identification and testing records, model and prototype specifications, inputs used, name and location of suppliers, and confirmation of test records, if establishments choose to pool a prototype. This documentation is in addition to documentation already conducted by mattress manufacturers to meet 16 CFR part 1632. Staff again estimates that there are 403 respondents. Based on staff estimates, the recordkeeping requirements are expected to require about 4 hours and 44 minutes per establishment, per qualified prototype. Although some larger manufacturers reportedly are producing mattresses based on more than 100 prototypes, most mattress manufacturers probably base their complying production on 15 to 20 prototypes, according to an industry representative contacted by staff. Assuming that establishments qualify their production with an average of 20 different qualified prototypes, recordkeeping time is about 94.6 hours (4.73 hours × 20 prototypes) per establishment, per year. (Note that pooling among establishments or using a prototype qualification for longer than 1 year will reduce the hours required). This translates to an estimated annual recordkeeping time cost to all mattress producers of 38,124 hours (94.6 hours × 403 establishments). The hourly compensation for the time required for record keeping is $72.91 (for management, professional, and related occupations in goods-producing industries, Bureau of Labor Statistics, September 2022). The annual total estimated costs for recordkeeping are approximately $2,779,606 (38,124 hours × $72.91 per hour).

The total estimated annual cost to the 403 establishments for the burden hours associated with both 16 CFR part 1632 and 16 CFR part 1633 is approximately $3.5 million (10,478 + 38,124 = 48,602 total hours; 48,602 × $72.91 = $3,543,571,182).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–13052 Filed 6–16–23; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0092]

Proposed Extension of Approval of Information Collection; Comment Request—Clothing Textiles, Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) invites comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of clothing, textiles and related materials intended for use in clothing under the Standard for the Flammability of Clothing Textiles and the Standard for the Flammability of Vinyl Plastic Film. These regulations establish requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties for products subject to these standards. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0024. OMB's most recent extension of approval will expire on August 31, 2023. The CPSC will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: The Office of the Secretary must receive comments not later than August 21, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0092, by any of the following methods:

Electronic Submissions: CPSC encourages you to submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov;* insert the docket number, CPSC–2009–0092, into the ''Search'' box; and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301)

504–7791, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Commission has promulgated several standards under section 4 of the Flammable Fabrics Act (FFA; 15 U.S.C. 1193) to prohibit the use of dangerously flammable textiles and related materials in wearing apparel. Clothing and fabrics intended for use in clothing (except children's sleepwear in sizes 0 through 14) are subject to the Standard for the Flammability of Clothing Textiles (16 CFR part 1610). Clothing made from vinyl plastic film and vinyl plastic film intended for use in clothing (except children's sleepwear in sizes 0 through 14) is subject to the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611). This standard prescribes a test to ensure that articles of wearing apparel, and fabrics and film intended for use in wearing apparel, are not dangerously flammable because of rapid and intense burning. (Children's sleepwear and fabrics and related materials intended for use in children's sleepwear in sizes 0 through 14 are subject to other, more stringent flammability standards codified at 16 CFR parts 1615 and 1616.)

Section 8 of the FFA (15 U.S.C. 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. The CPSC uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with flammable clothing and fabrics and vinyl film intended for use in clothing. In addition, the information helps the CPSC arrange corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public. Section 8 of the FFA requires that a guaranty must be based on ''reasonable and representative tests.'' The testing and recordkeeping requirements for firms that issue guaranties are set forth under 16 CFR part 1610, subpart B, and 16 CFR part 1611, subpart B.

B. Burden

The CPSC estimates that approximately 1,000 firms issue guaranties. Although the CPSC's records indicate that approximately 675 firms have filed continuing guaranties with the Commission, staff believes additional guaranties may be issued that are not filed with the Commission, because continuing guaranties are not required to be filed with the Commission. Accordingly, staff has rounded the estimated number of firms upwards to 1,000 to account for those additional guaranties. Staff has estimated the burden hours based on an estimate of the time for each firm to conduct testing, issue guaranties, and establish and maintain associated records.

- Burden Hours per Firm—An estimated 5 hours for each test series per firm, using either the test and conditioning procedures in the regulations or alternate methods. Although many firms are exempt from testing to support guaranties under 16 CFR 1610.1(d), CPSC staff does not know the proportion of those firms that are testing versus those that are exempt. Thus, staff has included testing for all firms in the burden estimates.
- Guaranties Issued per Firm—On average, 20 new guaranties are issued per firm per year for new fabrics or garments.
- Estimated Annual Testing Time per Firm—100 hours per firm (5 hours for testing × 20 guaranties issued = 100 hours per firm).
- Estimated Annual Recordkeeping per Firm—1 hour to create, record, and enter test data into a computerized dataset; 20 minutes (= 0.33 hours) for annual review/removal of records; 20 minutes (= 0.33 hours) to respond to one CPSC records request per year; for a total of 1.7 recordkeeping hours per firm (1 hour + .33 hours + .33 hours = 1.7 hours per firm).
- Total Estimated Annual Burden Hours per Firm—100 hours estimated annual testing time per firm + 1.7 estimated annual recordkeeping hours per firm = 101.7 hours per firm.
- Total Estimated Annual Industry Burden Hours—101.7 hours per firm × 1,000 firms issuing guaranties =101,700 industry burden hours. The total annual industry burden imposed by the flammability standards for clothing textiles and vinyl plastic film and enforcement regulations on manufacturers and importers of garments, fabrics, and related materials is estimated to be approximately 101,700 hours (101.6 hours per firm × 1,000 firms).
- Total Annual Industry Cost —The hourly wage for the testing and recordkeeping required by the standards is approximately $72.91 (for management, professional, and related occupations in goods-producing industries, Bureau of Labor Statistics, September 2022), for an estimated annual cost to the industry of approximately $7.4 million (101,700 × $72.91 per hour = $7,414,947).

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–13051 Filed 6–16–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0105]

Agency Information Collection Activities; Comment Request; Teacher Education Assistance for College and Higher Education Grant Program Obligation To Repay Grant Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 21, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0105. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the

Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Teacher Education Assistance for College and Higher Education Grant Program Obligation to Repay Grant Regulations.

OMB Control Number: 1845–0157.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 77,109.

Total Estimated Number of Annual Burden Hours: 13,131.

Abstract: The College Cost Reduction and Access Act (Pub. L. 110–84) (the CCRAA) established the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program under Part A of the Higher Education Act of 1965, as amended (the HEA). The regulations governing the TEACH Grant Program are in 34 CFR 686. The Department of Education (the Department) is requesting extension without change of this information collection for the TEACH Grant regulations under 34 CFR 686.43.

The TEACH Grant Program provides grants of up to $4,000 per year to undergraduate and graduate students who are completing, or who intend to complete, coursework necessary to begin a career in teaching. In exchange for receiving a TEACH Grant, a grant recipient must agree to complete a teaching service obligation and must regularly provide documentation of his or her progress toward satisfying the service obligation. If a grant recipient fails to complete the service obligation or does not meet requirements for documenting the service obligation, the TEACH Grants that the individual received are converted to a Direct Unsubsidized Loan that must be repaid, with interest charged from the date of each TEACH Grant disbursement.

The regulations govern when a TEACH Grant will be converted to a Direct Unsubsidized Loan, as well as provide for annual notifications from the Secretary to the recipient regarding the status of a recipient's TEACH Grant service obligation. Under the regulations, a TEACH Grant recipient can request conversion if the recipient decides not to fulfill the TEACH Grant obligations for any reason or if the recipient fails to begin or maintain qualifying teaching service within a timeframe to complete the service obligation in the requisite eight-year period. Additionally, the regulations describe the notifications the Secretary will annually send to all TEACH Grant recipients regarding the service obligation requirements.

Dated: June 14, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–13038 Filed 6–16–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0106]

Agency Information Collection Activities; Comment Request; Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 21, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0106. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms.

OMB Control Number: 1845–0059.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 8,700.

Total Estimated Number of Annual Burden Hours: 2,871.

Abstract: Sections 460 and 428J of the Higher Education Act of 1965, as amended (HEA) provide for teacher loan forgiveness in William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program. Borrowers who teach for five consecutive years at schools or educational service agencies serving low-income families and meet certain other requirements may receive up to $17,500 in loan forgiveness. The teacher loan forgiveness regulations at 34 CFR 685.217 (for the Direct Loan Program) and 34 CFR 682.216 (for the FFEL Program) require borrowers to provide their loan holders with documentation establishing their eligibility for teacher loan forgiveness and for teacher loan forgiveness forbearance. The U.S. Department of Education (ED) is requesting an extension of the currently approved forms. To reflect regulatory changes made by a final rule published on November 1, 2022 (87 FR 65904), we have updated language related to the capitalization of unpaid interest that accrues during periods of forbearance. ED is otherwise making no substantive changes to the language in either of the two currently approved forms, and there are no changes to the data elements.

Dated: June 14, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–13036 Filed 6–16–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0104]

Agency Information Collection Activities; Comment Request; Upward Bound (UB), Upward Bound Math Science (UBMS) Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before August 21, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0104. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Marie Julienne, (202) 987–1054.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Upward Bound (UB) Upward Bound Math Science (UBMS) Annual Performance Report.

OMB Control Number: 1840–0831.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments; private sector.

Total Estimated Number of Annual Responses: 1,264.

Total Estimated Number of Annual Burden Hours: 21,488.

Abstract: The purpose of the Upward Bound (UB) and Upward Bound Math Science (UBMS) Program is to generate in the program's participants the skills and motivation necessary to complete a program of secondary education and to enter and succeed in a program of postsecondary education.

Authority for this program is contained in title IV, part A, subpart 2,

chapter 1, section 402C of the Higher Education Opportunity Act of 2008. Eligible applicants include institutions of higher education, public or private agencies, or organizations, including community-based organizations with experience in serving disadvantaged youth, secondary schools, and combinations of institutions, agencies, organizations and secondary schools.

The UB and UBMS Program's participants must be potential first-generation college students, low-income individuals, or individuals who have high risk of academic failure and have a need for academic support in order to pursue successfully a program of education beyond high school. Required services of the UB–UBMS Program include: (1) academic tutoring; (2) advice and assistance in secondary and postsecondary course selection; (3) preparation for college entrance exams and completing college admission applications; (4) information on federal student financial aid programs including (a) Federal Pell grant awards, (b) loan forgiveness, and (c) scholarships; (5) assistance completing financial aid applications; (6) guidance and assistance in: (a) secondary school reentry, (b) alternative programs for secondary school drop outs that lead to the receipt of a regular secondary school diploma, (c) entry into general educational development (GED) programs or (d) entry into postsecondary education; and (7) education or counseling services designed to improve the financial and economic literacy of students or the students' parents, including financial planning for postsecondary education. (8) Also, projects funded for at least two years under the program must provide instruction in mathematics through pre-calculus; laboratory science; foreign language; composition; and literature.

Dated: June 14, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–13037 Filed 6–16–23; 8:45 am]

BILLING CODE 4000–01–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: PR23–55–000.

Applicants: Columbia Gas of Maryland, Inc.

Description: § 284.123 Rate Filing: CMD Rates Effective May 1 2023 to be effective 5/1/2023.

Filed Date: 6/13/23.

Accession Number: 20230613–5020.

Comment Date: 5 p.m. ET 7/5/23.

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: PR23–53–001.

Applicants: Public Service Company of Colorado.

Description: § 284.123(g) Rate Filing: Statement of Rates_5.1.23_Amendment to be effective 5/1/2023.

Filed Date: 6/9/23.

Accession Number: 20230609–5068.

Comment Date: 5 p.m. ET 6/23/23.

Docket Numbers: RP23–686–000.

Applicants: Tres Palacios Gas Storage LLC.

Description: Report Filing: Tres Palacios Informational Market Power Study Filing to be effective N/A.

Filed Date: 6/12/23.

Accession Number: 20230612–5168.

Comment Date: 5 p.m. ET 6/26/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13068 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–9–000]

New England Winter Gas-Electric Forum; Supplemental Notice of Second New England Winter Gas-Electric Forum

As announced in the Notice of Forum and the Supplemental Notices of Forum issued in this proceeding on February 16, 2023, April 13, 2023, and May 26, 2023, respectively, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led forum on Tuesday, June 20, 2023, to discuss possible solutions to the electricity and natural gas challenges facing the New England region. Attached to this notice are questions for the panelists; we request panelists file position statements addressing these questions in this docket. Written responses to these questions are voluntary and will be used to supplement the record for discussion at the forum.

Please note that the start time for the forum has been changed to 8:30 a.m. Eastern Time. The final agenda for this forum is attached, which includes updated panel times and a final list of forum panelists.

While the forum is not for the purpose of discussing any specific matters before the Commission, some forum discussions may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to, the cases listed below. Additions to the list appear in italics:

	Docket Nos.
Constellation Mystic Power LLC	ER18–1639–000, ER18–1639–014, ER18–1639–015, ER18–1639–018, ER18–1639–021, *ER18–1639–023, ER18–1639–024.*
ISO New England Inc	ER19–1428–000, ER19–1428–001, ER19–1428–002, ER19–1428–003, ER19–1428–004, ER19–1428–005, ER19–1428–006.
NextEra Energy Seabrook, LLC	EL21–3–000, EL21–3–001.
NECEC Transmission LLC and Avangrid, Inc. v. NextEra Energy Resources, LLC.	EL21–6–000, EL21–6–001.
ISO New England Inc	*ER23–1588–000.*

The forum will be open to the public and be held at the DoubleTree by Hilton Portland, 363 Maine Mall Rd., Portland, ME 04106. Registration for in-person attendance is required, and there is no fee for attendance. A link to attendee registration is available on the New England Winter Gas-Electric Forum event page on the Commission's website. Due to space constraints, seating for this event will be limited and registrants that get a confirmed space will be contacted via email. Only confirmed registrants will be admitted to the forum given the maximum occupancy limit at the venue (as required by fire and building safety code). Therefore, the Commission encourages members of the public who wish to attend this event in person to register at their earliest convenience. Online registration will be open until June 19, the day before the forum, or as long as attendance capacity is available. Once registration has reached capacity, registration will be closed. However, those interested in attending after capacity has been reached can join a waiting list (using the same registration link) and be notified if space becomes available. Those who are unable to attend in person may watch the free webcast.

The webcast will allow persons to listen and observe the forum remotely but not participate. Information on this forum, including a link to the webcast, will be posted prior to the event on this forum's event page on the Commission's website. A recording of the webcast will be made available after the forum in the same location on the Calendar of Events. The forum will be transcribed. Transcripts of the forum will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this forum, please contact *NewEnglandForum@ferc.gov* or *sarah.mckinley@ferc.gov* for technical or logistical questions.

Dated: June 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13077 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 77–316, 96–050, 137–216, 175–030, 233–245, 606–041, 619–175, 803–119, 1061–105, 1121–137, 1354–033, 1962–221, 1988–102, 2105–129, 2106–077, 2107–051, 2130–125, 2310–252, 2661–094, 2687–189, 2735–102, and 14531–002]

Pacific Gas & Electric Company, Pacific Generation, LLC; Notice of Application for Transfer of Licenses and Soliciting Comments, Motions To Intervene, and Protests

On December 13, 2022, as supplemented on April 10, 2023, Pacific Gas and Electric Company (PG&E or transferor) and Pacific Generation (Pacific or transferee) filed jointly an application for the transfer of license of the following projects:

Project name	Project No.	Location
Potter Valley	77	Eel and East Branch Russian rivers, Mendocino and Lake counties, California.
Kerckhoff	96	San Joaquin River, Fresno and Madera counties, California.
Mokelumne River	137	Mokelumne, North Fork Mokelumne, and Bear rivers and tributaries of the North Fork, Alpine, Amador, and Calaveras counties, California.
Balch	175	North Fork Kings River, Fresno County, California.
Pit 3, 4, and 5	233	Pit River, Shasta County, California.
Kilarc-Cow Creek	606	South Cow and Old Cow creeks, Shasta County, California.
Bucks Creek	619	Bucks, Grizzly, and Milk Ranch creeks and their tributaries, Plumas County, California.
DeSabla-Centerville	803	West Branch Feather River and Butte Creek tributaries, Butte County, California.
Phoenix	1061	South Fork of the Stanislaus River in Tuolumne County, California.
Battle Creek	1121	Mainstem, North Fork, and South Fork Battle Creek, Shasta and Tehama counties, California.
Crane Valley	1354	North Fork Willow, South Fork Willow, Chilkoot, and Chiquito creeks, Madera County, California.
Rock Creek-Cresta	1962	North Fork Feather River and its tributaries, Plumas and Butte counties, California.
Haas-Kings River	1988	North Fork Kings River, Fresno County, California.
Upper North Fork Feather River	2105	North Fork Feather River and on Butt Creek, Plumas County, California.
McCloud-Pit	2106	McCloud and Pit rivers, Shasta County, California.
Poe	2107	North Fork Feather River, Butte County, California.
Spring Gap-Stanislaus	2130	Middle and South Fork Stanislaus River, Calaveras and Tuolumne counties, California.
Upper Drum-Spaulding	2310	Yuba and Bear rivers, Nevada and Placer counties, California.
Hat Creek	2661	Hat Creek, Shasta County, California.
Pit 1	2687	Fall and Pit rivers, Shasta County, California.
Helms Pumped Storage Project	2735	Helms Creek and North Fork Kings River, Fresno County, California.

Project name	Project No.	Location
Lower Drum Spaulding	14531	Bear River, Nevada County, California.

The applicants seek Commission approval to transfer the licenses for the above projects from the transferor to the transferee. The transfer of licenses is part of a broader corporate restructuring to facilitate raising equity capital for PG&E's utility needs. The transferee will be required by the Commission to comply with all the requirements of the licenses as though it were the original licensee.

Applicant Contacts: For Transferor and Transferee: Kimberly Ognisty, Chief Counsel, Law Department, Pacific Gas and Electric Company, Oakland General Office, 300 Lakeside Avenue, Oakland, CA 94612, Phone: (510) 227–7060, Email: *Kimberly.ognisty@pge.com,* and Charles R. Sensiba, Elizabeth J. McCormick, Troutman Pepper Hamilton Sanders, LLP, 401 9th St. NW, Suite 1000, Washington, DC 20004, Phone (CS): (202) 274–2850, and Phone (EM): (202) 274–2993, Email: *Charles.sensiba@troutman.com* and *Elizabeth.mccormick@troutman.com.*

FERC Contact: Mrs. Anumzziatta Purchiaroni, (202) 502–6191 or *Anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

In lieu of electronic filing, you may submit a paper copy. Submissions sent via U.S. Postal Service must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to, Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include Project numbers 77–316, 96–050, 137–216, 175–030, 233–245, 606–041, 619–175, 803–119, 1061–105, 1121–137, 1354–133, 1962–221, 1988–102, 2105–129, 2106–077, 1107–051, 2130–125, 2310–252, 2661–094, 2687–189, 2735–102, and 14531–002. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13076 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15229–001]

Alabama Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of ILP Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for an Original License and Commencing Pre-filing Process.

b. *Project No.:* 15229–001.

c. *Dated Filed:* April 14, 2023.

d. *Submitted By:* Alabama Power Company (Alabama Power).

e. *Name of Project:* Chandler Mountain Pumped Storage Project.

f. *Location:* The proposed project would be located on Little Canoe Creek East and Chandler Mountain in Etowah and St. Clair Counties, near the town of Steele, Alabama. The project would entail the construction of a new 1,090-acre lower reservoir on Little Canoe Creek East and a 526-acre upper reservoir on Chandler Mountain, northwest of the existing Chandler Mountain Lake.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* Angie Anderegg, Chandler Licensing Project Manager, Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35203; (205) 257–2251; *arsegars@southernco.com.*

i. *FERC Contact:* Sarah Salazar at (202) 502–6863, or email at *sarah.salazar@ferc.gov.*

j. *Cooperating Agencies:* Federal, State, Tribal, and local agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations, thereunder, at 50 CFR part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Alabama Power as the Commission's non-Federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Alabama Power filed with the Commission a Pre-Application Document (PAD, including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy of the PAD is also

available for public inspection during normal business hours at the office of Alabama Power Company, 600 18th Street North, Birmingham, AL 35203. In addition, a copy of the PAD was distributed to the following public libraries near the project: Rainbow City Public Library in Etowah County and Steele Public Library in St. Clair County.

You may register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595, or at *OPP@ferc.gov.*

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, as well as study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: *Chandler Mountain Pumped Storage Project (P–15229–001).*

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by August 12, 2023.

p. *Scoping Process.* In accordance with the National Environmental Policy Act (NEPA), Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the ''NEPA document''). The NEPA document will consider both site-specific and cumulative environmental effects, and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission prepares an EA or EIS.

Scoping Meetings

Commission staff will hold two public scoping meetings to receive input on the scope of the environmental issues that should be analyzed in the NEPA document. The daytime scoping meeting will focus on resource agency, Native American Tribes, and non-governmental organization (NGO) concerns, while the evening scoping meeting will focus on receiving input from the public. We invite all interested agencies, Native American Tribes, NGOs, and individuals to attend one of these meetings to assist us in identifying the scope of environmental issues that should be analyzed in the NEPA document. Additionally, as noted below, Alabama Power will present a video tour of the proposed project area, using drone footage, at the scoping meetings. The dates, times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Monday, July 10, 2023.
Time: 2:00 p.m.–4:00 p.m. CDT.
Place: Rainbow City Community Center.
Address: 3702 Rainbow Drive, Rainbow City, Alabama 35906.

Evening Scoping Meeting

Date: Monday, July 10, 2023.
Time: 6:00 p.m.–8:00 p.m. CDT.
Place: Rainbow City Community Center.
Address: 3702 Rainbow Drive, Rainbow City, Alabama 35906.

Virtual Video Tour of the Chandler Mountain Project Area

A video tour using drone footage will be shown during both the Daytime and Evening Scoping Meetings.

Copies of SD1, outlining the subject areas to be addressed in the NEPA document, were distributed to the individuals and entities on the Commission's mailing list, as well as Alabama Power's distribution list, including 462 potentially interested landowners. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, based on the scoping process.

Environmental Site Review

The applicant and Commission staff will conduct an environmental site review of the proposed project. All interested agencies, Native American Tribes, NGOs, and individuals are invited to attend. All participants are responsible for their own transportation and must wear closed-toe shoes/boots for walking in uneven/sloped terrain around the proposed project area. If you plan to attend the environmental site review, please contact Dave Anderson with Alabama Power at (205) 257–1398, or via email at *chandlerpshlicensing@southernco.com,* on or before June 28, 2023. If calling to RSVP, stakeholders should provide their name, phone number, and an email address. The time and location of the environmental site review is as follows:

Chandler Mountain Project On-Site Environmental Site Review

Date: Tuesday, July 11, 2023
Time: 9:00 to 11:00 a.m. (CDT); meeting time will be 8:45 a.m.
Place: The location to meet for the Environmental Site Review will be provided to those that RSVP. Space is limited.

Meeting Objectives

At the scoping meetings, Commission staff will: (1) initiate scoping of the issues; (2) review and discuss existing conditions; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the

process plan and schedule for pre-filing activity that incorporates the time frames provided for in part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of Federal, State, and Tribal permitting and certification processes; and (5) discuss the potential of any Federal or State agency or Native American Tribe to act as a cooperating agency for development of an environmental document. Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n of this document.

Meeting Procedures

The meetings will be recorded by a court reporter and become part of the Commission's formal record on the project.

Agencies, Native American Tribes, NGOs, and individuals with environmental expertise and concerns are encouraged to attend the meetings and to assist Commission staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: June 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13072 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6115–016]

Pyrites Hydro, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 6115–016.

c. *Date filed:* August 31, 2021.

d. *Applicant:* Pyrites Hydro, LLC (Pyrites Hydro).

e. *Name of Project:* Pyrites Hydroelectric Project (Pyrites Project or project).

f. *Location:* On the Grass River near the Town of Canton, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Curtis Mooney, Manager, Regulatory Affairs, Patriot Hydro, LLC, 59 Ayers Island Road, Bristol, New Hampshire 03222; (603) 744–0846 or *cmooney@patriothydro.com*.

i. *FERC Contact:* Josh Dub at (202) 502–8138, or email at *joshua.dub@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: *Pyrites Hydroelectric Project P–6115–016.*

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that Federal agencies use to implement the National Environmental Policy Act (NEPA) (see National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23,453–70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. *The Pyrites Project consists of:* (1) a 170-foot-long and 12-foot-high concrete Ambursen overflow spillway with 1.5-foot-high flashboards, a 115-foot-long concrete auxiliary spillway, and a 208-foot-long non-overflow dam, which includes a 50-foot-wide intake structure; (2) a 6-foot-diameter, 700-foot-long steel penstock running from the intake structure to an upper powerhouse and a 10-foot-diameter, 2,160-foot-long penstock running from the intake structure to a lower powerhouse; (3) a 21-foot by 31-foot upper powerhouse located 700 feet downstream of the intake structure containing one 1.2-megawatt (MW) turbine/generator unit operating under a rated head of 76 feet and a 50-foot by 53-foot lower powerhouse located 1,200 feet downstream of the tailrace containing two 3.5–MW turbine/generator units operating under a rated head of 111 feet; (4) a 50-foot by 97-foot, 115/4.16/2.3-kilovolt (kV) switchyard and substation for use by both powerhouses; (5) a 470-foot-long 2.3-kV transmission line connecting the upper powerhouse to the switchyard; (6) a 1,150-foot-long 4.16-kV transmission line connecting the lower powerhouse to the switchyard; and (7) appurtenant facilities.

The Pyrites Project is operated in a run-of-river mode with an average annual generation of 27,865 megawatt-hours.

Pyrites Hydro proposes to continue to operate the project in a run-of-river mode and maintain a continuous minimum flow to the bypassed reach of 45 cubic feet per second or inflow to the impoundment, whichever is less.

m. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at FERCOnline *Support@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and

the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *The applicant must file no later than 60 days following the date of issuance of this notice:* (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Filing of Comments, Recommendations, Terms and Conditions, and Prescriptions.	August 2023.
Filing of Reply Comments	September 2023

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13079 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC23–125–000]

Western Power Pool; Notice of Petition for Waiver

Take notice that on June 9, 2023, Northwest Power Pool d/b/a Western Power Pool (WPP or Petitioner), filed a petition for waiver of the Federal Energy Regulatory Commission's (Commission) requirement to provide its FERC Form No. 3–Qs for 2023 on the basis that WPP was not a public utility until January 1, 2023 and requires additional time to align its accounting with the Commission's Uniform System of Accounts, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comments: 5:00 p.m. Eastern Time on July 13, 2023.

Dated: June 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13075 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3211–010]

Power Authority of the State of New York; Notice of Waiver Period for Water Quality Certification Application

On June 1, 2023, the Power Authority of the State of New York submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the New York State Department of Environmental Conservation (New York DEC), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 5.23(b) of the Commission's regulations,[1] we hereby notify the New York DEC of the following:

Date of Receipt of the Certification Request: May 26, 2023.

Reasonable Period of Time to Act on the Certification Request: One year (May 26, 2024).

If New York DEC fails or refuses to act on the water quality certification request

[1] 18 CFR 5.23(b).

on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: June 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13078 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15054–001, 15059–001, 15060–001]

Kinet, Inc.; Notice of Surrender of Preliminary Permit

Take notice that Kinet, Inc., permittee for the proposed Kentucky River Lock and Dams Nos. 5, 6, and 8, has requested that its preliminary permits be terminated. The permits were issued on June 9, 2021 [1] and would have expired on May 31, 2025. The projects would have been located at the Kentucky River Authority's Lock and Dams Nos. 5, 6, and 8 on the Kentucky River in Anderson, Garrard, Jessamine, Woodford, Madison, and Mercer Counties, Kentucky.

The preliminary permits for Project Nos. 15054, 15059, and 15060 will remain in effect until the close of business, thirty days from the date of this notice. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: June 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13073 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–96–000.

Applicants: Long Island Solar Farm, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Long Island Solar Farm, LLC.

Filed Date: 6/8/23.

Accession Number: 20230608–5178.

Comment Date: 5 p.m. ET 6/29/23.

Docket Numbers: EC23–97–000.

Applicants: Saint Solar, LLC, Saint Energy Storage II, LLC, Storey Energy Center, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Saint Solar, LLC, et al.

Filed Date: 6/12/23.

Accession Number: 20230612–5220.

Comment Date: 5 p.m. ET 7/3/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–194–000.

Applicants: Cascade Energy Storage, LLC.

Description: Cascade Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/13/23.

Accession Number: 20230613–5096.

Comment Date: 5 p.m. ET 7/5/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2125–000.

Applicants: Saint Solar, LLC.

Description: § 205(d) Rate Filing: Filing of Co-Tenancy Shared Facilities Agreement to be effective 12/31/9998.

Filed Date: 6/12/23.

Accession Number: 20230612–5170.

Comment Date: 5 p.m. ET 7/3/23.

Docket Numbers: ER23–2126–000.

Applicants: Bruce Power Inc.

Description: Tariff Amendment: Notice of Cancellation of Market-Based Rate Tariff to be effective 6/13/2023.

Filed Date: 6/12/23.

Accession Number: 20230612–5173.

Comment Date: 5 p.m. ET 7/3/23.

Docket Numbers: ER23–2127–000.

Applicants: Public Service Company of New Mexico.

Description: Tariff Amendment: Notices of Cancellation to be effective 8/11/2023.

Filed Date: 6/12/23.

Accession Number: 20230612–5181.

Comment Date: 5 p.m. ET 7/3/23.

Docket Numbers: ER23–2129–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–06–13_SA 4083 Duke Energy-Emerald Green GIA (J1481) to be effective 8/13/2023.

Filed Date: 6/13/23.

Accession Number: 20230613–5039.

Comment Date: 5 p.m. ET 7/5/23.

Docket Numbers: ER23–2130–000.

Applicants: Glover Creek Solar, LLC.

Description: Baseline eTariff Filing: Glover Creek MBR Tariff to be effective 8/13/2023.

Filed Date: 6/13/23.

Accession Number: 20230613–5058.

Comment Date: 5 p.m. ET 7/5/23.

Docket Numbers: ER23–2131–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–06–13_SA 4081 Duke Energy-Brouilletts Creek Solar GIA (J1348) to be effective 8/13/2023.

Filed Date: 6/13/23.

Accession Number: 20230613–5061.

Comment Date: 5 p.m. ET 7/5/23.

Docket Numbers: ER23–2132–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 411, 311SV 8me to be effective 5/30/2023.

Filed Date: 6/13/23.

Accession Number: 20230613–5070.

Comment Date: 5 p.m. ET 7/5/23.

Docket Numbers: ER23–2133–000.

Applicants: PGR 2022 Lessee 9, LLC.

Description: Baseline eTariff Filing: PGR 2022 Lessee 9 MBR Tariff to be effective 8/13/2023.

Filed Date: 6/13/23.

Accession Number: 20230613–5090.

Comment Date: 5 p.m. ET 7/5/23.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission

[1] 175 FERC ¶ 62,151–153 (2021).

[2] 18 CFR 385.2007(a)(2) (2022).

processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–13069 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 382–108]

Southern California Edison Company; Notice of Application for Surrender of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application for surrender of license and decommissioning of project facilities.

b. *Project No.:* 382–108.

c. *Date Filed:* May 1 & 2, 2023 and supplemented May 16, 2023.

d. *Licensee:* Southern California Edison Company.

e. *Name of Project:* Borel Hydroelectric Project.

f. *Location:* On the Kern River, in the City of Bodfish in Kern County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact:* Meg Richardson, Southern California Edison Company, 1515 Walnut Grove Avenue, Rosemead, CA 91770, (626) 238–2903, *Mary.M.Richardson@SCE.com.*

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments, interventions, and protests:* July 13, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. The first page of any filing should include docket number P–382–108. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Southern California Edison Company (licensee or SCE) is requesting to surrender its license for the Borel Hydroelectric Project and the disposition of all Borel Project facilities (*i.e.,* removal, modification, or abandonment in place). SCE is surrendering the Borel Project license because the U.S. Army Corps of Engineers (Corps) implemented a safety modification to its Lake Isabella Auxiliary Dam for which the Corps condemned 10.7 acres of private and public land associated with the Borel Project and sealed off the existing section of conduit through the Auxiliary Dam by filling it with concrete and abandoning the conduit in place. This action rendered the Borel Project nonfunctional and therefore SCE is seeking to surrender the Project license.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–13074 Filed 6–16–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0041; 10986–01–OAR]

Proposed Information Collection Request; Comment Request; RadNet (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''RadNet'' (EPA ICR No. 0877.15, OMB Control No. 2060–0015) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2024. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 21, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0041, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: John Griggs, OAR/ORIA/NAREL, Environmental Protection Agency, National Analytical Radiation Environmental Laboratory, 540 South Morris Ave., Montgomery, AL 36115; telephone number: (334) 270–3400; fax number: (334) 270–3450; email address: *griggs.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: RadNet is a national network of stations collecting environmental media that include air, precipitation, and drinking water. Samples are sent to EPA's National Analytical Radiation Environmental Lab (NAREL) in Montgomery, Alabama, where they are analyzed for radioactivity. RadNet provides emergency response/homeland security and ambient monitoring information on levels of environmental radiation across the nation. All stations operators participate in RadNet voluntarily. Station operators complete information forms that accompany the samples. The forms request information pertaining to sample type, sample location, start and stop date and times for sampling, length of sampling period, and volume represented. Data from RadNet are made available regularly on the Agency websites—Envirofacts and the EPA website *www.epa.gov/radnet.*

Form numbers: RadNet Air Particulate Sample (EPA Form 5900–24); RadNet Precipitation Report Form (EPA Form 5900–27); RadNet Drinking Water Report Form (EPA Form 5900–29); and RadNet Supply Request Form (EPA Form 5900–23).

Respondents/affected entities: Primarily State and Local Officials.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 213.

Frequency of response: Varies depending upon sample media type. Responses vary from twice weekly to quarterly.

Total estimated burden: 3,640 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,622,124 (per year), includes annualized capital costs, operational costs, and maintenance costs.

Changes in estimates: There is a 2.2 percent reduction in burden from 3,722 hours annually. While the RadNet network is fully established and operating with essentially no changes expected, 30% of the drinking water sampling locations have not responded since the beginning of the COVID–19 pandemic. There is a 4.5 percent increase in costs due to increases in federal and contractor salaries and cost of goods and supplies.

Jonathan D. Edwards,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2023–13062 Filed 6–16–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0270; FRL–10998–01–OCSPP]

Implementation of PRIA 5 Bilingual Labeling Requirements To Make Bilingual Pesticide Labeling Accessible to Farmworkers; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Pesticide Registration Improvement Act of 2022 (PRIA 5) requires the U.S. Environmental Protection Agency (EPA) to begin to seek stakeholder input on ways to make bilingual pesticide labeling accessible to farmworkers by June 30, 2023, and to implement a plan to ensure that farmworkers have access to the bilingual pesticide labeling by December 2025. EPA hosted the Bilingual Pesticide Labeling National Webinar on June 15, 2023 and is opening a docket to receive written public comments. The purpose of the public comment period is to obtain feedback from stakeholders on ways to make bilingual pesticide labeling accessible to farmworkers to aid

in the development of a plan to ensure that farmworkers have access to the bilingual pesticide labeling. Public input that includes environmental justice perspectives with solutions will be key in helping the Agency develop a strong starting point for addressing historical disadvantages for farmworkers.

DATES: Submit your comments on or before August 21, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0270, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Office of Chemical Safety and Pollution Prevention, Pesticide Re-evaluation Division (7508M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2280; email address: *OPPbilinguallabels@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This notice is directed to the general public and may be of specific interest to persons (*e.g.,* industry, non-governmental organizations (NGOs), farmworkers, and academia) who are interested in making bilingual pesticide labeling accessible to farmworkers. Because other entities may also be interested in this notice, the agency has not attempted to describe all the specific entities that may be interested in this subject. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see Tips for Effective Comments at *https://www.epa.gov/dockets.* Please note that once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket.

II. Background

A. What is the Agency's authority for taking this action?

The Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 3(f)(5)(D) requires EPA to seek stakeholder input on ways to make bilingual labeling accessible to farmworkers.

B. What action is the Agency taking?

The Pesticide Registration Improvement Act of 2022 (PRIA 5), enacted on December 29, 2022, amended FIFRA requiring Spanish language translation for sections of the end-use pesticide product labels where translation is available in the EPA *Spanish Translation Guide for Pesticide Labeling.* The Spanish Translation Guide is located at: *https://www.epa.gov/pesticide-labels/spanish-translation-guide-pesticide-labeling.* It contains translations of the health and safety portions of pesticide product labels. Specifically, it has Spanish translations of the ''keep out of reach of children'' statement, the restricted use pesticide statement for restricted use products, the signal word, the first aid section, the precautionary statement section, the personal protective equipment section, the misuse statement, and the storage and disposal statements. It also has examples of pesticide product label language for the agricultural use requirements section (including restricted entry interval information) and precautionary statements.

PRIA 5 requires that the Spanish language translation for sections of the end-use pesticide product labels (where translation is available in the EPA Spanish Translation Guide) must appear on the pesticide product container or a link to such translation via scannable technology or other electronic methods readily accessible on the product label. These translations are required on a rolling schedule from December 2025 to December 2030 depending on the type of pesticide product and the toxicity category.

PRIA 5 also requires EPA to begin to seek stakeholder input on ways to make bilingual pesticide labeling accessible to farmworkers by June 30, 2023, and to implement a plan to ensure that farmworkers have access to the bilingual pesticide labeling by December 2025.

On June 15, 2023, EPA hosted the Bilingual Pesticide Labeling National Webinar to obtain input from the public on ways to make bilingual pesticide labeling accessible to farmworkers as required by the Pesticide Registration Improvement Act of 2022. EPA is now opening a comment period for 60 days through a **Federal Register** Notice. The purpose of the public comment period is to obtain feedback from stakeholders on ways to make bilingual pesticide labeling accessible to farmworkers to aid in the development of a plan to ensure that farmworkers have access to the bilingual pesticide labeling. Public input that includes environmental justice perspectives with solutions will be key in helping the Agency develop a strong starting point for addressing historical disadvantages for farmworkers.

C. What feedback does EPA hope to gain from the public comments?

The Agency is interested in suggestions focusing on how to make bilingual pesticide labeling accessible to farmworkers. We are not seeking input or comments about any specific products or other topics outside of that scope. Here are some questions to consider as you provide feedback to EPA on making bilingual pesticide labeling accessible to farmworkers:

- What communication approaches, processes or strategies should the Agency consider to ensure bilingual pesticide labels are accessible to farmworkers? What specific approaches should the Agency avoid or adopt when implementing efforts to best ensure access by farmworkers to bilingual pesticide labels?
- What technologies, mobile applications, and internet access should the Agency consider? Would web-based labels be accessible to farmworkers? How should the Agency overcome internet connectivity issues that some farmworkers may face?
- How can the Agency effectively share health and safety information on pesticide labels with farmworkers? What should on-the-ground logistics look like? Which entities (*e.g.,* community-based organizations) should the Agency work with to provide label information to farmworkers?

• As the Agency implements actions to meet this requirement, how can EPA effectively increase farmworker access to bilingual pesticide labels (*e.g.,* communication plans, outreach strategies)?

D. How is EPA seeking public comments?

EPA is seeking public comments through several planned activities including through this **Federal Register** document, EPA is soliciting comment on the questions posed in Unit II.B. Following the close of the comment period, EPA will consider comments received during the public webinar and public comment period in the development of a plan to ensure that farmworkers have access to the bilingual pesticide labeling.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 13, 2023.

Michal Freedhoff,

Assistant Administrator.

[FR Doc. 2023–13013 Filed 6–16–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0298; FR ID 148559]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before August 21, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0298.

Title: Part 61, Tariffs (Other than the Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,834 respondents; 4,659 responses.

Estimated Time per Response: 1 hour–50 hours.

Frequency of Response: On occasion, annual, biennial and one-time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 151–155, 201–205, 208, 251–271, 403, 502 and 503 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 151–155, 201–205, 208, 251–271, 403, 502 and 503.

Total Annual Burden: 171,378 hours.

Total Annual Cost: $604,000.

Needs and Uses: This collection will be submitted as a revision of an existing collection in order to obtain Office of Management and Budget (OMB) approval for the full three-year clearance.

On April 21, 2023, the Commission released the *Access Arbitrage Second Report and Order,* WC Docket No. 18–155, FCC 23–31, 88 FR 35743, which added rules applicable to internet Protocol Enabled Service (IPES) Providers engaged in Access Stimulation. In the *Access Arbitrage Second Report and Order* the Commission adopted rules requiring that access-stimulating IPES Providers provide notice of their status to the Commission by filing a record of their access-stimulating status in the Commission's Access Arbitrage docket, and to provide notice to any affected IXCs and Intermediate Access Providers of the same, within 45 days of the effective date of that requirement after approval of that information collection by OMB (or for an entity that later engages in access stimulation, 45 days from the date it commences access stimulation). If, after the effective date of this requirement subsequent to approval of this requirement by OMB, an access-stimulating IPES Provider is no longer engaged in Access Stimulation, the IPES Provider must file notice of that change in status with the Commission and with any affected IXCs and Intermediate Access Providers.

The revisions to this collection primarily reflect the conclusion of the rate transition(s) adopted in the *8YY Access Charge Reform Order,* WC Docket No. 18–156, FCC 20–143, 85 FR 75894 and the notice and reporting requirements adopted by the Commission in the *Access Arbitrage Second Report and Order.* The information collected through a carrier's tariff is used by the Commission and state commissions to determine whether services offered are just and reasonable as the Act requires. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner. The information provided by IPES Providers pursuant to rules adopted in the *Access Arbitrage Second Report and Order* informs interested parties of an entities' engagement in Access Stimulation.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–13042 Filed 6–16–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, June 22, 2023 at 10:30 p.m.

PLACE: Hybrid Meeting: 1050 First Street NE, Washington, DC (12th floor) and virtual.

Note: For those attending the meeting in person, current COVID–19 safety protocols for visitors, which are based on the CDC COVID–19 hospital admission level in Washington, DC, will be updated on the commission's contact

page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/.* If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the COVID–19 hospital admission level and corresponding health and safety procedures. To access the meeting virtually, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Notice of Availability: Public Citizen's Petition for Rulemaking Regarding Use of Artificial Intelligence in Campaign Ads

Audit Division Recommendation Memorandum on the Communications Workers of America-Cope Political Contributions Committee (A21–09)

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend in person and who 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.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2023–13194 Filed 6–15–23; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 20, 2023.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org.*

1. *Cambray Mutual Holding Company, Gouverneur, New York;* to convert from mutual to stock form. As part of the conversion, Cambray Mutual Holding Company and Gouverneur Bancorp, Inc., an existing mid-tier savings and loan holding company, will cease to exist and Gouverneur Savings and Loan Association, both of Gouverneur, New York, will become a wholly owned subsidiary of a newly formed Maryland corporation also named Gouverneur Bancorp, Inc., which has applied to become a savings and loan holding company, pursuant to section 10(e) of HOLA, by acquiring Gouverneur Savings and Loan Association.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–13058 Filed 6–16–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 5, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *Stilwell Activist Investments, L.P., Stilwell Activist Fund, L.P., and Stilwell Partners, L.P., together known as The Stilwell Group, Stilwell Value LLC, as general partner of each of the limited partnerships, all of New York, New York; and Joseph D. Stilwell, San Juan, Puerto Rico, as managing member of Stilwell Value LLC;* a group acting in concert, to acquire additional voting shares of Ottawa Bancorp, Inc. and thereby indirectly acquire voting shares of OSB Community Bank, both of Ottawa, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–13059 Filed 6–16–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0138; Docket No. 2023–0053; Sequence No. 2]

Information Collection; Contract Financing

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning contract financing. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through January 31, 2024. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by August 21, 2023.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0138, Contract Financing. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0138, Contract Financing.

B. Need and Uses

This clearance covers the information that offerors and contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

- FAR 52.232–28, Invitation to Propose Performance-Based Payments.

This provision requires an offeror, when invited to propose terms under which the Government will make performance-based contract financing payments during contract performance, to include the following: the proposed contractual language describing the performance-based payments; information addressing the contractor's investment in the contract and a listing of—

(i) The projected performance-based payment dates and the projected payment amounts; and

(ii) The projected delivery date and the projected payment amount.

- FAR 52.232–29, Terms for Financing of Purchases of Commercial Products and Commercial Services.
- FAR 52.232–30, Installment Payments for Commercial Products and Commercial Services.

These clauses require contractors, under commercial purchases pursuant to FAR part 12, to include with their payment requests an appropriately itemized statement of the financing payments requested and other supporting information, prepared in concert with the contracting officer.

- FAR 52.232–31, Invitation to Propose Financing Terms.

This provision requires an offeror, when invited to propose terms under which the Government will make contract financing payments during contract performance under commercial purchases pursuant to FAR part 12, to include the following: the proposed contractual language describing the contract financing; and a listing of the earliest date and greatest amount at which each contract financing payment may be payable and the amount of each delivery payment.

- FAR 52.232–32, Performance-Based Payments.

This clause requires the contractor's request for performance-based payment to include any information and documentation as required by the contract's description of the basis for payment; and a certification by a contractor official authorized to bind the contractor.

The contracting officer uses the collected information to review and approve contract financing requests, and establish and administer contract financing terms.

C. Common Form

The General Services Administration is the sponsor agency of this common form. All executive agencies covered by the FAR will use this common form. Each executive agency will report their agency burden separately, and the reported information will be available at *Reginfo.gov.*

D. Annual Burden

General Services Administration

Respondents: 49.
Total Annual Responses: 371.
Total Burden Hours: 742.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0138, Contract Financing.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023–13028 Filed 6–16–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011; Docket No. 2023–0053; Sequence No. 4]

Information Collection; Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning preaward survey forms. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through January 31, 2024. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by August 21, 2023.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0011, Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408). Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0011, Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408).

B. Need and Uses

Contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.,* capable of performing the contract. Before making such a determination, the contracting officer must have or obtain sufficient information to establish that the prospective contractor: has adequate financial resources; or the ability to obtain such resources; is able to comply with required delivery schedule; has a satisfactory record of performance; has a satisfactory record of integrity; and is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not readily available to the contracting officer, it is obtained through a preaward survey conducted by the contract administration office or another organization designated by the agency to conduct the surveys. The necessary data is collected from available data or through plant visits, phone calls, and correspondence in detail commensurate with the dollar value and complexity of the procurement. This clearance covers the information that prospective contractors must provide to ensure proper completion of the following preaward survey forms prescribed by the Federal Acquisition Regulation (FAR):

- Standard Form 1403 Preaward Survey of Prospective Contractor (General)
- Standard Form 1404 Preaward Survey of Prospective Contractor (Technical)
- Standard Form 1405 Preaward Survey of Prospective Contractor (Production)
- Standard Form 1406 Preaward Survey of Prospective Contractor (Quality Assurance)
- Standard Form 1407 Preaward Survey of Prospective Contractor (Financial Capability)
- Standard Form 1408 Preaward Survey of Prospective Contractor (Accounting System)

C. Common Form

The General Services Administration is the sponsor agency of this common form. All executive agencies covered by the FAR will use this common form. Each executive agency will report their agency burden separately, and the reported information will be available at *Reginfo.gov.*

D. Annual Burden

General Services Administration

Respondents: 168.
Total Annual Responses: 168.
Total Burden Hours: 4,032.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0011, Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408).

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023–13039 Filed 6–16–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0135; Docket No. 2023–0053; Sequence No. 3]

Information Collection; Prospective Subcontractor Requests for Bonds

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning prospective subcontractor requests for bonds. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through January 31, 2024. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by August 21, 2023.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit

comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0135, Prospective Subcontractor Requests for Bonds. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0135, Prospective Subcontractor Requests for Bonds.

B. Need and Uses

Part 28 of the Federal Acquisition Regulation (FAR) contains guidance related to obtaining financial protection against losses under Federal contracts (*e.g.,* bonds, bid guarantees, etc.). Part 52 contains the corresponding provisions and clauses. These collectively implement the statutory requirement for Federal contractors to furnish payment bonds under construction contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds.

This information collection is mandated by section 806(a)(3) of Public Law 102–190, as amended by sections 2091 and 8105 of the Federal Acquisition Streamlining Act of 1994 (10 U.S.C. 4601 note prec.) (Pub. L. 103–335). Accordingly, the FAR clause at 52.228–12, Prospective Subcontractor Requests for Bonds, requires prime contractors to promptly provide a copy of a payment bond, upon the request of a prospective subcontractor or supplier offering to furnish labor or material under a construction contract for which a payment bond has been furnished pursuant to 40 U.S.C. chapter 31.

C. Common Form

The General Services Administration is the sponsor agency of this common form. All executive agencies covered by the FAR will use this common form. Each executive agency will report their agency burden separately, and the reported information will be available at *Reginfo.gov.*

D. Annual Burden

General Services Administration

Respondents: 317.
Total Annual Responses: 793.
Total Burden Hours: 270.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0135, Prospective Subcontractor Requests for Bonds.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023–13030 Filed 6–16–23; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–Q–2023–03; Docket No. 2023–0002; Sequence No. 20]

Federal Secure Cloud Advisory Committee Notification of Upcoming Meeting

AGENCY: Federal Acquisition Service (Q), General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act (FACA), GSA is hereby giving notice of an open public meeting of the Federal Secure Cloud Advisory Committee (FSCAC). Information on attending and providing public comment is under the **SUPPLEMENTARY INFORMATION** section.

DATES: The open public meeting will be held on Thursday, July 20, 2023, from 1:00 p.m. to 5:00 p.m., EDT. The agenda for the meeting will be made available prior to the meeting online at *https://gsa.gov/fscac.*

ADDRESSES: The meeting will be accessible via webcast. Registrants will receive the webcast information before the meeting.

FOR FURTHER INFORMATION CONTACT: Michelle White, Designated Federal Officer (DFO), FSCAC, GSA, 703–489–4160, *fscac@gsa.gov.* Additional information about the Committee, including meeting materials and agendas, will be available online at *https://gsa.gov/fscac.*

SUPPLEMENTARY INFORMATION:

Background

GSA, in compliance with the FedRAMP Authorization Act of 2022, established the FSCAC, a statutory advisory committee in accordance with the provisions of FACA (5 U.S.C. 10). The Federal Risk and Authorization Management Program (FedRAMP) within GSA is responsible for providing a standardized, reusable approach to security assessment and authorization for cloud computing products and services that process unclassified information used by agencies.

The FSCAC will provide advice and recommendations to the Administrator of GSA, the FedRAMP Board, and agencies on technical, financial, programmatic, and operational matters regarding the secure adoption of cloud computing products and services. The FSCAC will ensure effective and ongoing coordination of agency adoption, use, authorization, monitoring, acquisition, and security of cloud computing products and services to enable agency mission and administrative priorities.

The purposes of the Committee are:

- To examine the operations of FedRAMP and determine ways that authorization processes can continuously be improved, including the following:
  - Measures to increase agency reuse of FedRAMP authorizations.
  - Proposed actions that can be adopted to reduce the burden, confusion, and cost associated with FedRAMP authorizations for cloud service providers.
  - Measures to increase the number of FedRAMP authorizations for cloud computing products and services offered by small businesses concerns (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)).
  - Proposed actions that can be adopted to reduce the burden and cost of FedRAMP authorizations for agencies.
- Collect information and feedback on agency compliance with, and implementation of, FedRAMP requirements.
- Serve as a forum that facilitates communication and collaboration among the FedRAMP stakeholder community.

The FSCAC will meet no fewer than three (3) times a calendar year. Meetings shall occur as frequently as needed, called, and approved by the DFO.

Purpose of the Meeting and Agenda

The July 20, 2023 public meeting will be dedicated to presenting the Committee with additional information

on FedRAMP through a series of presentations and facilitated discussions reviewing current state and examining top priorities for the secure adoption of cloud computing technologies in the federal government as well as a vote on the Committee's first course of action. The meeting agenda will be posted on *https://gsa.gov/fscac* prior to the meeting.

Meeting Attendance

This meeting is open to the public and can be attended virtually. Meeting registration and information is available at *https://gsa.gov/fscac.* Registration for attending the meeting is highly encouraged by 5:00 p.m. on Monday, July 17, 2023 to obtain the virtual meeting information. After registration, individuals will receive meeting attendance information via email.

For information on services for individuals with disabilities, or to request accommodation for a disability, please email the FSCAC staff at *FSCAC@gsa.gov* at least 10 days prior to the meeting. Live captioning may be provided virtually.

Public Comment

Members of the public will have the opportunity to provide oral public comment during the FSCAC meeting by indicating their preference when registering. Written public comments can be submitted at any time by completing the public comment form on our website, *https://gsa.gov/fscac.* All written public comments received prior to Wednesday, July 12, 2023, will be provided to FSCAC members in advance of the meeting.

Elizabeth Blake,

Senior Advisor, Federal Acquisition Service, General Services Administration.

[FR Doc. 2023–13031 Filed 6–16–23; 8:45 am]

BILLING CODE P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Health Information Technology Advisory Committee (HITAC) Nominations

AGENCY: Government Accountability Office (GAO).

ACTION: Request for letters of nomination and resumes.

SUMMARY: The 21st Century Cures Act established HITAC to provide recommendations to the National Coordinator for Health Information Technology on policies, standards, implementation specifications, and certification criteria relating to the implementation of a health information technology infrastructure that advances the electronic access, exchange, and use of health information. The Act gave the Comptroller General of the United States responsibility for appointing a portion of HITAC's members. The Act requires that members at least reflect providers, ancillary health care workers, consumers, purchasers, health plans, health information technology developers, researchers, patients, relevant Federal agencies, and individuals with technical expertise on health care quality, system functions, privacy, security, and on the electronic exchange and use of health information, including the use standards for such activity. GAO is now accepting nominations for HITAC appointments that will be effective January 1, 2024. Members serve 3-year terms, with the terms subject to renewal, for a total not to exceed 6 years of service on the committee. From these nominations, GAO expects to appoint two to three new HITAC members, focusing especially on patients or consumers, health plans or purchasers, and researchers. Nominations should be sent to the email address listed below.

DATES: Letters of nomination and resumes should be submitted no later than July 31, 2023, to ensure adequate opportunity for review and consideration of nominees prior to appointment.

ADDRESSES: Submit letters of nomination and resumes to *HITCommittee@gao.gov.*

FOR FURTHER INFORMATION CONTACT: Shannon Legeer at (202) 512–3197 or *legeers@gao.gov* if you do not receive an acknowledgment within a week of submission or if you need additional information. For general information, contact GAO's Office of Public Affairs, (202) 512–4800.

Authority: Sec. 4003(e), Pub. L. 114–255, 130 Stat. 1168 (42 U.S.C. 300jj–12).

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2023–12970 Filed 6–16–23; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC); Correction

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

ACTION: Notice.

SUMMARY: In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC), announces the following meeting of the Healthcare Infection Control Practices Advisory Committee (HICPAC). This is a virtual meeting. The public is welcomed to listen to the meeting via Zoom; 500 teleconference lines are available. Time will be available for public comment. Registration is required.

FOR FURTHER INFORMATION CONTACT: Sydnee Byrd, M.P.A., HICPAC, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention, l600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329. Telephone (404) 718–8039; Email: *hicpac@cdc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the meeting of the Healthcare Infection Control Practices Advisory Committee (HICPAC); June 8, 2023, 9:00 a.m. to 5:00 p.m., EDT, and June 9, 2023, 9:00 a.m. to 12:00 p.m., EDT in the original FRN.

The virtual meeting was published in the **Federal Register** on May 1, 2023, Volume 88, Number 83, page/s/26547–26548.

The virtual meeting is being corrected to revise the **SUMMARY**, **ADDRESSES**, and **SUPPLEMENTARY INFORMATION** and should read as follows:

SUMMARY: In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC), announces the following meeting of the Healthcare Infection Control Practices Advisory Committee (HICPAC). This meeting will be virtual for all public attendees, limited only by audio and web conference lines (500 audio and web conference lines are available). Registration is required. To register for this web conference, please go to: *www.cdc.gov/hicpac.* All registered participants will receive the meeting link and instructions shortly before the meeting.

ADDRESSES: Registration is required. All registered participants will receive instructions shortly before the meeting. Please click first link for day one and the second link for day two to join the webinar:

https://cdc.zoomgov.com/j/1616828862?pwd=N3hmSTEvQjQ3ZHFScVMyM1k2Mk8yUT09.

Meeting ID: 161 682 8862.

Passcode: 74249065.

https://cdc.zoomgov.com/j/1614944394?pwd=UWdBRDNNK2pDdS9PMjlMZzYvRVFzZz09.

Meeting ID: 161 494 4394.

Passcode: 26658671.

SUPPLEMENTARY INFORMATION:

Purpose: The Committee is charged with providing advice and guidance to the Director, Division of Healthcare Quality Promotion (DHQP), the Director, National Center for Emerging and Zoonotic Infectious Diseases, the Director, CDC, and the Secretary, Department of Health and Human Services, regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Considered: The agenda will include updates on CDC's activities for prevention of healthcare-associated infections. It will also include updates from the following HICPAC workgroups: the Isolation Precautions Guideline workgroup, the Dental Unit Waterline Guideline Workgroup, the Healthcare Personnel Guideline Workgroup, and the National Healthcare Safety Network Workgroup. The agenda also includes updates on CDC and DHQP activities. Agenda items are subject to change as priorities dictate.

Public Participation

Oral Public Comment: Time will be available for public comment. Members of the public who wish to provide public comments should plan to attend the public comment session at the start time listed. Please note that the public comment period may end before the time indicated, following the last call for comments.

Written Public Comment: The public is welcomed to submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed above. The deadline for receipt of written public comment was May 26, 2023. All requests must contain the name, address, and organizational affiliation of the speaker, as well as the topic being addressed. Written comments should not exceed one single-spaced typed page in length and delivered in 3 minutes or less. Written comments received in advance of the meeting will be included in the official record of the meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–12990 Filed 6–16–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398 #64]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938–1148 (CMS–10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 5, 2023.

ADDRESSES: When commenting, please reference the applicable form number (see below) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 (#64)/OMB control number: 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information

can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* Medicaid Section 1115 Substance Use Disorder (SUD) Demonstration: Federal Meta-Analysis Support; *Type of Information Collection Request:* Revision of a currently approved collection; *Use:* Starting in 2015, in response to the opioid epidemic, CMS offered states the flexibility to test Medicaid coverage of a full substance use disorder (SUD) treatment service array in the context of overall SUD service delivery transformation through the authority of section 1115 demonstrations. In 2017, CMS modified the requirements for SUD section 1115 demonstrations to improve access to clinically appropriate treatment for OUD and other SUDs, to better support the development and expansion of comprehensive treatment strategies, and to incorporate improved progress and outcome monitoring. In 2018, CMS awarded the Federal Meta-Analysis Support contract to RTI International to understand the overall effectiveness of the groups of demonstrations with similar features and how variations in state demonstration features and the context in which they are implemented contribute to differences in effectiveness. The meta-analysis includes multiple rounds of qualitative data collection consisting of: characteristics interviews, implementation interviews, and provider interviews. This 2023 iteration increases the number of respondents. We are not revising any of our active reporting instruments. *Form Number:* CMS–10398 (#64) (OMB control number: 0938–1148); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments, and the Private sector; *Number of Respondents:* 60; *Total Annual Responses:* 340; *Total Annual Hours:* 405. For policy questions regarding this collection contact: Paula Kazi at (240) 841–4332.

Dated: June 14, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–13063 Filed 6–16–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Tribal Maternal, Infant, and Early Childhood Home Visiting Program Data Reports: Demographic and Service Utilization, Grantee Performance Measures, and Quarterly Performance Reports

AGENCY: Office of Early Childhood Development, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a new information collection for the Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Tribal Home Visiting Program Data Reports: Demographic and Service Utilization, Grantee Performance Measures, and Quarterly Performance Reports.

DATES: *Comments due within 30 days of publication.* The Office of Management and Budget (OMB) must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review-Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 511 of title V of the Social Security Act created the MIECHV Program and authorizes the Secretary of the United States Department of Health and Human Services (HHS) to award grants to Indian tribes (or a consortium of Indian tribes), tribal organizations, or urban Indian organizations to conduct an early childhood home visiting program. The legislation set aside 6 percent of the total MIECHV program appropriation for grants to tribal entities. Tribal MIECHV grants, to the greatest extent practicable, are to be consistent with the requirements of the MIECHV grants to states and jurisdictions and include conducting a needs assessment and establishing quantifiable, measurable benchmarks.

The ACF Office of Early Childhood Development (ECD), in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, awards grants for the Tribal MIECHV Program. The Tribal MIECHV grant awards support 5-year cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally grounded, evidence-based home visiting programs in at-risk tribal communities; and participate in research and evaluation activities to build the knowledge base on home visiting among Native populations.

In Year 1 of the cooperative agreement, grantees must (1) conduct a comprehensive community needs and readiness assessment and (2) develop a plan to respond to identified needs. Following each year that Tribal MIECHV grantees implement home visiting services, they must comply with the requirement to submit demographic and service utilization data once they begin to provide services, and then on an annual basis. Grantees also begin to report quarterly on caseloads and family and staff retention and submit performance data in years 2–5 of their cooperative agreements. Tribal MIECHV Program data are used to help ACF better understand the population receiving services from Tribal MIECHV grantees, the degree to which they are using services, as well as staffing data to better understand the Tribal MIECHV workforce. This includes demographic and service utilization data on the number of newly enrolled and continuing participants, educational level and poverty status of participants, education level of staff, number of home visits and grantee caseload capacity, and retention of families and staff. Performance reporting on the six legislatively mandated areas (referred to as ''benchmark areas'') will document grantee improvement in the benchmark areas over time and will allow new cohorts of grantees to reflect on their performance to make program improvements or to document implementation of services successfully that encompass the major goals of the program.

ACF will use Tribal Home Visiting Data Reports to:

- Collect demographic and service utilization that provides vital

information on the families being served under the Tribal MIECHV Program;

- Collect the number of newly enrolled and continuing families being served;
- Collect the number of home visits;
- Track and improve the quality of benchmark measures data submitted by the tribal grantees;
- Improve program monitoring and oversight;
- Improve rigorous data analyses that help to assess the effectiveness of the programs and enable ACF to better monitor projects;
- Ensure adequate and timely reporting of program data to relevant federal agencies and stakeholders, including Congress and members of the public; and
- Collect data on caseload capacity and the retention and attrition of enrolled families and the retention and attrition of program staff on a quarterly basis.

Overall, this information collection will provide valuable information to HHS that will guide understanding of the Tribal MIECHV Program and the provision of technical assistance to Tribal MIECHV Program grantees.

Respondents: Tribal MIECHV Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Tribal MIECHV Demographic and Service Utilization Data Form	55	1	317	17,435
Tribal MIECHV Demographic & Service Utilization Data Report (Families)	1,668	1	.233	389
Tribal MIECHV Performance Measures Form	55	1	288	15,840
Tribal MIECHV Quarterly Performance Report	55	4	2.5	550

Estimated Total Annual Burden Hours: 33,825.

Authority: Section 511 of title V of the Social Security Act.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–13065 Filed 6–16–23; 8:45 am]

BILLING CODE 4184–77–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0473–30D]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before July 20, 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: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041, or *PRA@HHS.GOV.* When submitting comments or requesting information, please include the document identifier 0990–0473–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: HHS Subpart C Certification Form.

Type of Collection: Revision.

Abstract: The Office for Human Research Protections (OHRP) is requesting a three-year extension of OMB No. 0990–0473, the HHS Subpart C Certification Form. The purpose of this form is to provide a simplified, standardized procedure for institutions to submit subpart C research certifications to OHRP in order to obtain authorization to include prisoners in HHS-conducted or supported human subjects research. The form also simplifies the internal process used by OHRP to review and record such certifications, resulting in faster processing while reducing unnecessary and burdensome staff time.

Type of Respondent: Institutions or Organizations operating Institutional Review Boards (IRBs) that have enrolled or are planning to enroll prisoners in human subjects research conducted or supported by HHS.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Institutions or Organizations operating IRBs	25	2	1.0	50
Institutions or Organizations operating IRBs	5	3	1.0	15
Total				65

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–13047 Filed 6–16–23; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Cutting-Edge Basic Research Awards (CEBRA) Review Panel.

Date: July 18, 2023.

Time: 10 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@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: June 14, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13057 Filed 6–16–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Specimen Resource Locator (National Cancer Institute)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this 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.

FOR FURTHER INFORMATION CONTACT: Joanne Demchok, Program Director, Cancer Diagnosis Program, Division of Cancer Treatment and Diagnosis, 9609 Medical Center Drive, Rockville, Md. 20892 or call non-toll-free number 240–276–5959 or Email your request, including your address to: *peterjo@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on April 12, 2023, page 22049 (Vol. 88, No. 70 FR 22049) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Specimen Resource Locator, OMB #0925–0703: Expiration Date 11/30/2023, EXTENSION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The availability of specimens and associated data is critical to increasing our knowledge of cancer biology and translating important research discoveries to clinical applications. The discovery and validation of cancer prevention markers require access, by researchers, to quality clinical biospecimens. In response to this need, the National Cancer Institute's (NCI) Cancer Diagnosis Program has developed and is expanding a searchable database: Specimen Resource Locator (SRL). The SRL allows scientists in the research community and the NCI to locate specimens needed for their research. The SRL will list all NCI-supported repositories and their links. This administrative submission is an online form that will collect information to manage and improve a program and its resources for the use of all scientists. This submission does not involve any analysis.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 105.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hour
Private Sector	Initial Request	70	1	30/60	35
State Government		70	1	30/60	35
Federal Government		60	1	30/60	30
Private Sector	Annual Update	20	1	5/60	2
State Government		20	1	5/60	2

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hour
Federal Government		10	1	5/60	1
Total		250			105

Dated: June 14, 2023.

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2023–13082 Filed 6–16–23; 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 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Population and Public Health Approaches to HIV/AIDS Study Section.

Date: July 13–14, 2023.

Time: 9 a.m. to 8 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: Aubrey Spriggs Madkour, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000C, Bethesda, MD 20892, (301) 594–6891, *madkouras@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory, Cardiac and Circulatory Sciences.

Date: July 13, 2023.

Time: 1 p.m. to 4 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: Richard D. Schneiderman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20817, 301–402–3995, *richard.schneiderman@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Kidney and Urological Sciences.

Date: July 14, 2023.

Time: 8 a.m. to 8 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: Ganesan Ramesh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182 MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Disease Control and Applied Immunology.

Date: July 14, 2023.

Time: 10 a.m. to 8 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: Subhamoy Pal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0926, *subhamoy.pal@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Psychopathology.

Date: July 14, 2023.

Time: 10 a.m. to 8 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: Courtney M. Pollack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3671, *courtney.pollack@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Arthritis, Connective Tissue and Skin Sciences.

Date: July 14, 2023.

Time: 10 a.m. to 6 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; Member Conflict: Molecular Genetics and Genomics.

Date: July 14, 2023.

Time: 11 a.m. to 8 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: Guoqin Yu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1276, *guoqin.yu@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: June 14, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–13056 Filed 6–16–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2023–0392]

Application for Recertification of Cook Inlet Regional Citizens Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of, and seeks comments on, the recertification of the Cook Inlet Regional Citizens Advisory Council (CIRCAC) for September 1, 2023 through August 31, 2024. Under the Oil Pollution Act of 1990 (OPA 90), the Coast Guard may certify on an annual basis the CIRCAC. This advisory group

monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet program established by the statute. The Coast Guard may certify an alternative voluntary advisory group in lieu of the CIRCAC. The current certification for the CIRCAC will expire August 31, 2023.

DATES: Public comments on CIRCAC's recertification application must reach the Seventeenth Coast Guard District on or before August 4, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0392 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this recertification, call or email LT Case Kuikhoven, Seventeenth Coast Guard District (dpi); telephone (907) 463–2812; email *Case.A.Kuikhoven@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0392 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public meeting. We do not plan to hold a public meeting. But you may submit a request for one on or before August 4, 2023, using the method specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid the process of thoroughly considering the application for recertification, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act, and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

Most recently, on September 16, 2002 (67 FR 58440), the Coast Guard changed its policy on recertification procedures for regional citizen's advisory council by requiring applicants to provide comprehensive information every three years. For the two years in between, applicants only submit information describing substantive changes to the information provided at the last triennial recertification. This is the year in this triennial cycle that CIRCAC must provide comprehensive information.

The Coast Guard is accepting comments concerning the recertification of CIRCAC. At the conclusion of the comment period on August 4, 2023, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o);

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year; or

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify CIRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: May 26, 2023.

Nathan A. Moore,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2023–13119 Filed 6–16–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2018–0001]

Request for Applicants for Appointment to the Surface Transportation Security Advisory Committee

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee management; request for applicants.

SUMMARY: The Transportation Security Administration (TSA) is requesting applications from individuals who are interested in being appointed to serve on the Surface Transportation Security Advisory Committee (STSAC). All applicants must represent one of the constituencies specified below in order to be eligible for appointment. STSAC's mission is to provide advice, consultation, and recommendations to the TSA Administrator on improving surface transportation security matters, including developing, refining, and implementing policies, programs, initiatives, rulemakings, and security directives pertaining to surface transportation security, while adhering to sensitive security information requirements. The STSAC considers risk-based approaches in the performance of its duties.

DATES: Applications for membership must be submitted to TSA using one of the methods in the **ADDRESSES** section below on or before July 20, 2023.

ADDRESSES: Applications must be submitted by one of the following means:

- *Email: STSAC@tsa.dhs.gov.*
- *Mail:* Judith Harroun-Lord, STSAC Designated Federal Officer, Transportation Security Administration (TSA–28), TSA Mailstop 6028, 6595 Springfield Center Drive, Springfield, VA 20598–6028.

See **SUPPLEMENTARY INFORMATION** for application requirements.

FOR FURTHER INFORMATION, CONTACT: Judith Harroun-Lord, STSAC Designated Federal Officer (DFO), Transportation Security Administration (TSA–28), TSA Mailstop 6028, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *STSAC@tsa.dhs.gov,* 571–227–2283.

SUPPLEMENTARY INFORMATION: The STSAC is an advisory Committee established pursuant to section 1969, Division K, *TSA Modernization Act,* of the *FAA Reauthorization Act of 2018* (Pub. L. 115–254; 132 Stat. 3186; Oct. 5, 2018). The Committee is composed of individual members representing key constituencies affected by surface transportation security requirements.

Application for Advisory Committee Appointment

TSA is seeking applications for up to 15 members with specific expertise in surface transportation. Any person wishing to be considered for appointment to STSAC must provide the following:

- Complete professional resume.
- Statement of interest and reasons for application, including the membership category and how you represent a significant portion of that constituency, and a brief explanation of how you can contribute to one or more TSA strategic initiatives, based on your prior experience with TSA or your review of current TSA strategic documents that can be found at *www.tsa.gov/about/strategy.*
- Home and work addresses, telephone number, and email address.

In order for DHS to fully leverage broad-ranging experience and education, the STSAC must be diverse with regard to professional and technical expertise. DHS also is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the nation's people.

Membership

The STSAC is composed of no more than 40 voting members from among stakeholders representing each mode of surface transportation, such as passenger rail, freight rail, mass transit, pipelines, highways, over-the-road bus, school bus industry, and trucking; and may include representatives from—

1. Associations representing such modes of surface transportation;
2. Labor organizations representing such modes of surface transportation;
3. Groups representing the users of such modes of surface transportation, including asset manufacturers, as appropriate;
4. Relevant law enforcement, first responders, and security experts; and
5. Such other groups as the TSA Administrator considers appropriate.

The STSAC also includes nonvoting members, serving in an advisory capacity, who are designated by TSA; the Department of Transportation; the Coast Guard; and such other Federal department or agency as the TSA Administrator considers appropriate.

The STSAC does not have a specific number of members allocated to any membership category and the number of members in a category may change to fit the needs of the Committee, but optimally each category is represented by a minimum of one individual. Members will serve as representatives and speak on behalf of their respective constituency group. Membership on the Committee is personal to the appointee and a member may not send an alternate to a Committee meeting. The members of the Committee shall not receive any compensation from the Government by reason of their service on the Committee.

Committee Membership

Committee members are appointed by and serve at the pleasure of the Administrator of TSA for a term of 2 years, but a voting member may continue to serve until the Administrator appoints a successor. Voting members who are currently serving on the Committee are eligible to reapply for membership. A new application is required.

Committee Meetings

The Committee shall meet as frequently as deemed necessary by the Designated Federal Official (DFO) in consultation with the Chairperson, but no less than two (2) scheduled meetings each year. At least one meeting will be open to the public each year. Unless the DFO decides otherwise, meetings will be held in person in the Washington, DC metropolitan area or through web conferencing. In addition, STSAC members are expected to participate on STSAC subcommittees that normally meet more frequently to deliberate and discuss specific surface transportation matters.

Committee Membership Vetting

All applicants who are presented for appointment to the STSAC must successfully complete a Security Threat Assessment (STA) by TSA, as access to sensitive security information will be necessary. U.S. citizens and those meeting residency requirements will be vetted using TSA's Universal Enrollment Services (UES), which includes the collection of biographic and biometric information to allow TSA to perform the STA in regards to criminal history, intelligence, and citizenship. Selected applicants will be offered a no-cost authorization code to complete the three-step UES process; which includes online pre-enrollment and coordinating an in-person visit to the enrollment center. Non-U.S. applicants presented for appointment to the STSAC will be required to complete additional vetting.

Dated: June 13, 2023.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement.

[FR Doc. 2023–13021 Filed 6–16–23; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–34]

30-Day Notice of Proposed Information Collection: Evaluation of Public Housing Agencies (PHA) Coronavirus Aid, Relief, and Economic Security (CARES) Act Waivers: PHA Interviews Data Collection; OMB Control No.: 2528–New

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 20, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; phone number 202–402–5535 or email: *PaperworkReductionActOffice@hud.gov.* This is not a toll-free number, HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 3, 2023 at 88 FR 19661.

A. Overview of Information Collection

Title of Information Collection: Evaluation of Public Housing Agencies (PHA) Coronavirus Aid, Relief, and Economic Security (CARES) Act Waivers: PHA Interviews Data Collection.

OMB Approval Number: 2528–New.

Type of Request: New collection.

Description of the need for the information and proposed use: The purpose of this proposed information collection is to conduct semi-structured interviews with PHA staff and stakeholders to understand why and how PHAs utilized waivers offered by the CARES Act, and how these waivers impacted PHA operations and assisted households.

In early 2020, Congress passed and the President signed the CARES Act. The landmark statute was a response to the COVID–19 pandemic and contained many provisions related to mitigating its worst effects. Included were provisions that gave the U.S. Department of Housing and Urban Development (HUD) statutory and regulatory waiver authority to help programs adapt and operate in the changing circumstances and to encourage the continuity of critical PHA operations in order to support PHA residents and tenants.

The Evaluation of Public Housing Agencies Coronavirus Aid, Relief, and Economic Security Act (CARES) Waivers is a mixed-method and multi-phase study to understand how PHAs implemented the CARES Act waivers and the utility of these waivers on general operations and assisted households. The insights from this study will also help inform future policy and program implications related to the waivers offered by the CARES Act.

2M will conduct semi-structured interviews with PHA stakeholders from a purposive sample of 50 PHAs. This includes interviews with three interview respondent groups (PHA leadership, PHA operations staff, and members of Resident Advisory Boards) from 45 PHAs that adopted waivers offered by the CARES Act (a total of 135 interviews with 135 respondents), and one group interview with PHA leadership and operations staff from five PHAs that did not adopt any waivers offered by the CARES Act (a total of 5 interviews with 10 respondents). Collectively, 2M plans to conduct a total of 140 interviews across 145 respondents. This data collection effort is expected to last five months.

Respondents: At PHAs that adopted a waiver: PHA leadership, PHA operations staff (such as outreach staff or other relevant staff with knowledge about the impact of the CARES Act waivers), and members of Resident Advisory Boards. At PHAs that did not adopt a waiver: PHA leadership and PHA operations staff.

Information Collection Form Number: N/A.

ANNUALIZED BURDEN TABLE

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Cost
PHAs that Adopted a Waiver							
Interview of PHA Leadership	45	1	45	1.0	45.0	$77.58	$3,491.10
Interview of PHA Operations Staff	45	1	45	1.0	45.0	29.89	1,345.05
Interview of Members of Residents Advisory Board	45	1	45	1.0	45.0	59.78	2,690.10
PHAs that did not Adopted a Waiver							
Interview of PHA Leadership and Staff (combined)	10	1	10	1.0	10.0	53.74	537.40
Total	145				145.0		8,063.65

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Anna P. Guido,

Department Reports Management Office, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–13020 Filed 6–16–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7069–N–02]

60-Day Notice of Proposed Information Collection: Ginnie Mae President Invitation Form; OMB Control No.: 2503–NEW

AGENCY: Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 21, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Guido, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; telephone 202–402–5535, (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Anna Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Ginnie Mae President Invitation Form.

OMB Approval Number: 2503–Pending.

Type of Request: Meeting request.

Form Number: N/A.

Description of the need for the information and proposed use: Meeting request details used to schedule time with Ginnie Mae's President and other leadership.

Estimated Number of Respondents: 5 to 10 per month.

Estimated Number of Responses: 5 to 10 per month.

Frequency of Response: 5 to 10 per month.

Average Hours per Response: .25 hours.

Total Estimated Burdens: 15 to 30 hours.

Information collection/form number	Estimated number of respondents	Frequency of responses	Responses per annum	Average burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
N/A	5–10	Monthly	60–120	0.25	15–30	N/A	N/A

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden 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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Sam I. Valverde,

Principal Executive Vice President, Ginnie Mae.

[FR Doc. 2023–13048 Filed 6–16–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7069–N–03]

60-Day Notice of Proposed Information Collection: Ginnie Mae Multiclass Securities Program Documents; OMB Control No.: 2503–0030

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 21, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email at *Anna.Guido@hud.gov,* telephone 202–402–5535. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from [Ms. Guido].

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Ginnie Mae Multiclass Securities Program.

OMB Approval Number: 2503–0030.

Type of Request Update to a currently approved collection.

Description of the need for the information and proposed use:

Respondents:

Information Collection/Form Number: 2503–0030.

Estimated Number of Respondents: 95.

Frequency of Response: 25.

Responses per Annum: 250.

Average Burden Hours per Response: 8,556.

Total Estimated Burdens: 39,525.75.

A	B	C	D	E	F		
Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hrs	Hourly cost per response	Annual cost
Pricing Letter	25	10	250	0.5	125	$45.56	$5,695.00
Structured Term Sheet	25	10	250	3	750	45.56	34,170.00
Trust (REMIC) Agreement	25	10	250	1	250	45.56	11,390.00
Trust Opinion	25	10	250	4	1,000	45.56	45,560.00
MX Trust Agreement	25	10	250	0.16	40	45.56	1,822.40
MX Trust Opinion	25	10	250	4	1,000	45.56	45,560.00
RR Certificate	25	10	250	0.08	20	45.56	911.20
Sponsor Agreement	25	10	250	0.05	12.5	45.56	569.50
Table of Contents	25	10	250	0.33	82.5	45.56	3,758.70
Issuance Statement	25	10	250	0.05	12.5	45.56	569.50
Tax Opinion	25	10	250	4	1,000	45.56	45,560.00
Transfer Affidavit	25	10	250	0.08	20	45.56	911.20
Supplemental Statement	25	0.25	6.25	1	6.25	45.56	284.75
Final Data Statements (attached to closing letter)	25	10	250	32	8,000	45.56	364,480.00
Accountants' Closing Letter	25	10	250	8	2,000	45.56	91,120.00
Accountants' OSC Letter	25	10	250	8	2,000	45.56	91,120.00
Structuring Data	25	10	250	8	2,000	45.56	91,120.00
Financial Statements	25	10	250	1	250	45.56	11,390.00
Principal and Interest Factor File Specifications	25	10	250	16	4,000	45.56	182,240.00
Distribution Dates and Statement	25	10	250	0.42	105	45.56	4,783.80
Term Sheet	25	10	250	2	500	45.56	22,780.00
New Issue File Layout	25	10	250	4	1,000	45.56	45,560.00
Flow of Funds	25	10	250	0.16	40	45.56	1,822.40
Trustee Receipt	25	10	250	2	500	45.56	22,780.00
Subtotal			5,756.25		24,713.75		1,146,916.05
Platinum Securities							
Deposit Agreement	70	10	700	1	700	45.56	31,892.00
MBS Schedule	70	10	700	0.16	112	45.56	5,102.72
New Issue File Layout	70	10	700	4	2,800	45.56	127,568.00
Principal and Interest Factor File Specifications	70	10	700	16	11,200	45.56	510,272.00
Subtotal			2,800		14,812.00		674,834.72
Total Annual Responses			8,556.25				

A	B	C	D	E	F		
Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hrs	Hourly cost per response	Annual cost
Total Burden Hours					39,525.75		
Total Cost							1,821,750.77

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden 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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Sam I. Valverde,

Principal Executive Vice President, Ginnie Mae.

[FR Doc. 2023–13046 Filed 6–16–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO#4500171000]

Temporary Closure and Restrictions of Specific Uses on Public Lands for the Burning Man Event (Permitted Event), Pershing County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure and restrictions.

SUMMARY: Under the authority of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Winnemucca District, Black Rock Field Office, will implement a temporary closure and temporary restrictions to protect public safety and resources on Black Rock Desert playa public lands within and adjacent to the Burning Man Event authorized under a Special Recreation Permit (SRP).

DATES: This action is in effect for a 66-day period each year from 2023 through 2027 for the Burning Man Event. The event takes place annually from approximately the last week of August through Labor Day weekend. The 31 days prior to the event will be dedicated to set up of the Black Rock City and the building of the art displays, 9 days will be dedicated to the event, and 26 days post-event will be dedicated to the breakdown of the city and art displays and conducting cleanup of the playa. The BLM will post the dates for each Burning Man Event, copies of the temporary closure and restrictions, and an associated map in kiosks at access points to the Black Rock Desert playa as well as at the Gerlach Post Office, Bruno's Restaurant, Empire Store, Burning Man Project Offices, Friends of Black Rock-High Rock Office, the BLM-Nevada Black Rock Station near Gerlach, the BLM-California Applegate Field Office, and on the BLM website at the address provided below every year at least 30 days prior to the events.

ADDRESSES: Winnemucca District, 5100 E Winnemucca Blvd., Winnemucca, NV 89445–2921; BLM website: *www.blm.gov/nevada.*

FOR FURTHER INFORMATION CONTACT: James Boerigter, Field Manager, BLM Black Rock Field Office, Winnemucca District, 5100 E Winnemucca Blvd., Winnemucca, NV 89445–2921; telephone: (775) 623–1500; email: *jboerigter@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. The TTY is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: The temporary closure and temporary restrictions affect public lands within and adjacent to the Burning Man Event permitted on the Black Rock Desert playa within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area in Pershing County, Nevada. The temporary closure of public lands will be conducted in two phases in order to limit impacts on the general public outside of the Burning Man Event. Phase 1 will encompass a smaller temporary closure area during the building and tear-down of Black Rock City, and Phase 2 will encompass the larger, temporary closure area during the event itself. Phase 2 includes all of the Phase 1 area.

The legal description of the affected public lands in the temporary public closure area of both stages is Mount Diablo Meridian, Nevada:

Phase 1, being the smaller area of 9,941 acres, will be effective for 26 days prior to build week. Phase 1 resumes for 22 days following the end of Phase 2.

Phase 1

Mount Diablo Meridian, Nevada

T. 33 N., R. 24 E., unsurveyed,
Sec. 1, those portions of the N½ lying northwesterly of playa access road;
Sec. 2, N½ and SW¼;
Sec. 3;
Secs. 4 and 5, those portions lying southeasterly of Washoe County Road 34;
Sec. 9, N½.
T. 33½ N., R. 24 E., unsurveyed,
Secs. 25 and 26;
Secs. 27, 33, and 34, those portions lying southeasterly of West Playa Highway;
Secs. 35 and 36.
T. 34 N., R. 24 E., partly unsurveyed,
Sec. 25;
Secs. 26 and 27, those portions lying southeasterly of West Playa Highway;
Sec. 34, those portions of the E½ lying southeasterly of West Playa Highway;
Secs. 35 and 36.
T. 34 N., R. 25 E., unsurveyed,
Sec. 16, SW¼SW¼;
Sec. 21;
Sec. 27, W½NW¼ and W½SW¼;
Sec. 28;
Sec. 33, N½ and SW¼;
Sec. 34, W½NW¼.

The area described contains 9,941 acres, more or less, according to the BLM National Public Land Survey System Cadastral National Spatial Data

Infrastructure (PLSS CadNSDI) dataset, the protraction diagrams, and the official plats of the surveys of the said lands, on file with the BLM.

Phase 2, being the larger area of 51,149 acres, includes all Phase 1 lands, will be effective for 20 days, which covers six (6) days prior to the event, the event itself, and five (5) days after the event.

Phase 2

Mount Diablo Meridian, Nevada

T. 33 N., R. 23 E.,
Sec. 25, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 26, S½SE¼;
Sec. 35, NE¼, SE¼NW¼, N½NE¼SW¼, N½NW¼SW¼, N½NE¼SE¼, and N½NW¼SE¼;
Sec. 36, N½, N½NE¼SW¼, N½NW¼SW¼, N½NE¼SE¼, and N½NE¼SE¼.
T. 33 N., R. 24 E., unsurveyed,
Secs. 1 thru 3;
Sec. 4, those portions lying southeasterly of Washoe County Road 34;
Sec. 5;
Sec. 8, NE¼, S½SW¼, and SE¼;
Secs. 9 thru 12 and secs. 14 thru 17;
Sec. 18, SE¼NE¼, S½SW¼, and SE¼;
Secs. 19 and 20;
Sec. 21, excepting M.S. No. 4800;
Sec. 29, N½;
Sec. 30, N½.
T. 33½ N., R. 24 E., unsurveyed,
Secs. 25 thru 27;
Secs. 28, 29, and 33, those portions lying easterly and northeasterly of Washoe County Road 34;
Secs. 34 thru 36.
T. 34 N., R. 24 E., partly unsurveyed,
Secs. 1 and 2, Secs. 11 thru 14, and Secs. 23 thru 26;
Sec. 27, E½NE¼, E½SW¼, and SE¼;
Sec. 32, those portions of the SE¼ lying northeasterly of Washoe County Road 34;
Sec. 33, NE¼NE¼, S½NE¼, those portions of the SW¼ lying northeasterly of Washoe County Road 34, and SE¼;
Secs. 34 thru 36.
T. 33 N., R. 25 E.,
Secs. 2 thru 4, those portions lying northwesterly of the Black Rock Desert, High Rock Canyon National Conservation Area boundary.
T. 34 N., R. 25 E., unsurveyed,
Secs. 1 thru 4, Secs. 9 thru 16, Secs. 21 thru 28, and Secs. 33 and 34;
Secs. 35 and 36, those portions lying northwesterly of the Black Rock Desert, High Rock Canyon National Conservation Area boundary.
T. 35 N., R. 25 E., unsurveyed,
Secs. 25 thru 28 and Secs. 33 thru 36.
T. 34 N., R. 26 E., unsurveyed,
Secs. 6, 7, 18, 19, and 30;
Sec. 31, those portions lying north of the Black Rock Desert, High Rock Canyon National Conservation Area boundary.
T. 35 N., R. 26 E., unsurveyed,
Secs. 30 and 31.

The area described contains 51,149 acres, more or less, according to the BLM National PLSS CadNSDI, the protraction diagrams, and the official plats of the surveys of the said lands, on file with the BLM.

The two-phase temporary closure area is in Pershing County, Nevada, and is necessary for the specified period because of the Burning Man Event. The event's activities begin with the golden spike, fencing the site perimeter, Black Rock City setup (31 days), followed by the actual event (9 days), Black Rock City tear down and cleanup, and final site cleanup (26 days). This event is authorized on public land under a Special Recreation Permit.

The public temporary closure area comprises about 33 percent of the Black Rock Desert playa. Public access to the other 67 percent of the playa outside the temporary closure area will remain open to dispersed recreational use.

The event area is fully contained within the Phase 2 temporary closure area. The event area is defined as the portion of the temporary closure area that: (1) is entirely contained within the event perimeter fence, including 50 feet from the outside of the event perimeter fence; (2) lies within 25 feet from the outside edge of the event access road; and (3) includes the entirety of the aircraft parking area outside the event perimeter fence.

The temporary closure and restrictions are necessary to provide a safe environment for the staff, volunteers, participants, and members of the public visiting the Black Rock Desert, and to protect public land resources by addressing law enforcement and public safety concerns associated with the event. The temporary closure and temporary restrictions are also necessary to enable BLM law enforcement personnel to provide for public safety and to protect the public lands.

The event attracts up to 87,000 staff and participants to a remote, rural area, located more than 90 miles from urban infrastructure and support, including such services as public safety, emergency medical delivery, transportation, and communication. During the event Black Rock City, the temporary city associated with the event, becomes one of the largest populated areas in Nevada.

A temporary closure and restrictions order, under the authority of 43 CFR 8364.1, is appropriate for a single event. The temporary closure and restrictions are specifically tailored to the time frame that is necessary to provide a safe environment for the public and for participants at the Burning Man Event, and to protect public land resources while avoiding imposing restrictions that may not be necessary in the area during the remainder of the year.

The BLM will post copies of the temporary closure, temporary restrictions, and an associated map in kiosks at access points to the Black Rock Desert playa, as well as at the Gerlach Post Office, Bruno's Restaurant, Empire Store, Burning Man Project Offices, Friends of Black Rock-High Rock Office, the BLM-Nevada Black Rock Station near Gerlach, and the BLM-California Applegate Field Office. The BLM will also make the materials available on the BLM external web page at: *http://www.blm.gov.*

In addition to the Nevada Collateral Forfeiture and Bail Schedule as authorized by the United States District Court for the District of Nevada and under the authority of Section 303(a) of FLPMA, 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce a temporary public closure and the following temporary restrictions will apply within and adjacent to the Burning Man Event on the Black Rock Desert playa approximately thirty-one (31) days prior to the event until approximately twenty-six (26) days post-event.

Temporary Restrictions

A. Environmental Resource Management and Protection

(1) *Fires/Campfires:* The ignition of fires on the surface of the Black Rock Desert playa without a burn blanket or burn pan is prohibited. Campfires may only be burned in containers that are sturdily elevated six (6) inches above the playa surface and in a manner that does not pose a risk of fire debris falling onto the playa surface. Plastic and nonflammable materials may not be burned in campfires. The ignition of fires other than a campfire is prohibited. This restriction does not apply to events sanctioned and regulated as art burns by the event organizer.

(2) *Fireworks:* The use or possession of personal fireworks is prohibited except for uses of fireworks approved by the permit holder and used as part of a Burning Man sanctioned art burn event.

(3) *Grey and Black Water Discharge:* The discharge and dumping of grey and black water onto the playa/ground surface is prohibited. Grey water is defined as water that has been used for cooking, washing, dishwashing, or bathing and/or contains soap, detergent, or food scraps/residue, regardless of whether such products are biodegradable or have been filtered or disinfected. Black water is defined as wastewater containing feces, urine, and/or flush water.

(4) *Human Waste:* The depositing of human waste (liquid and/or solid) on the playa/ground surface is prohibited.

(5) *Trash:* The discharge of any and all trash or litter onto the ground/playa surface is prohibited. All event participants must pack out and properly dispose of all trash at an appropriate disposal facility.

(6) *Hazardous Materials:* The dumping or discharge of vehicle oil, petroleum products, or other hazardous household, commercial, or industrial refuse or waste onto the playa surface is prohibited. This applies to all recreational vehicles, trailers, motorhomes, port-a-potties, generators, and other camp infrastructure.

(7) *Fuel Storage:*

(a) The storage of greater than 110 gallons of liquid fuel in a single camp is prohibited. For purposes of this restriction, LP-Gas is not considered liquid fuel and must be stored separately from liquid fuel.

(b) Fuel tanks that are not purpose-built auxiliary tanks may not be incorporated into fuel systems for the purpose of circumventing the 110-gallon liquid fuel limit.

(c) Each camp storing liquid fuel must establish a designated fuel storage area at least ten (10) feet apart from combustible materials; twenty-five (25) feet from vehicles, camp trailers/RV's, generators, and any sources of ignition (such as burning cigarettes, open flame, electrical connections, or trailer/RV appliances); twenty (20) feet from LP-gas storage; and one hundred (100) feet from other designated liquid fuel storage areas.

(d) Fuel storage containers, regardless of size or type, shall not exceed 80 percent capacity per container.

(e) Storage areas for all liquid fuel, regardless of amount, and not exceeding 110 gallons, must include a secondary containment system that can hold a liquid volume equal to or greater than 110 percent of the largest container being stored. Secondary containment measures must comply with the following:

(i) The secondary containment system must be free of cracks or gaps and constructed of materials impermeable to the fuel(s) being stored.

(ii) The secondary containment system must be designed to allow the removal of any liquids captured from leaks, spills, or precipitation.

(8) *Water Discharge:* The unauthorized dumping or discharge of fresh water onto the playa surface, onto city streets or other public areas, or onto camp electric systems in a manner that creates a hazard or nuisance is prohibited. This provision does not prohibit the use of water trucks contracted by the event organizer to provide dust abatement measures.

B. Commercial Activities

In accordance with 43 CFR 2932: Vending and the Special Recreation Permit Additional Stipulations for the permitted event, all vendors and air carrier services must provide proof of authorization to operate at the event issued by the permitting agency and/or the permit holder upon request. Failure to provide such authorization could result in eviction from the event.

C. Aircraft Landing

(1) The public closure area is closed to aircraft landing, takeoff, and taxiing. Aircraft is defined in Title 18, U.S.C., section 31 (a)(1), and includes lighter-than-aircraft and ultra-light craft. The following exceptions apply:

(a) All aircraft operations, including ultra-light and helicopter landings and takeoffs, will occur at the designated 88NV Black Rock City Airport landing strips and areas defined by airport management. All takeoffs and landings will occur only during the hours of operation (06:00 through 18:30) of the airport as described in the Burning Man Operating Plan. All pilots using the Black Rock City Airport must agree to and abide by the published airport rules and regulations;

(b) Only fixed wing aircraft and helicopters providing emergency medical services may land at the designated Emergency Medical Services areas/pads or at other locations when required for medical incidents. The BLM authorized officer, or an authorized State/Local Law Enforcement Officer or his/her delegated representative may approve other helicopter landings and takeoffs when deemed necessary for the benefit of the law enforcement operation; and

(c) Landings or takeoffs of lighter-than-air craft previously approved by the BLM authorized officer.

D. Alcohol/Prohibited Substance

(1) Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion, is prohibited.

(2) Possession of alcohol by minors:

(a) The following are prohibited:

(i) Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands; and

(ii) Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

(3) *Definitions:*

(a) *Open container:* Any bottle, can, or other container that contains an alcoholic beverage, if that container does not have a closed top or lid for which the seal has not been broken. If the container has been opened one or more times, and the lid or top has been replaced, that container is an open container.

(b) Possession of an open container includes any open container that is physically possessed by the driver or operator or is adjacent to and reachable by that driver or operator. This includes, but is not limited to, containers in a cup holder or rack adjacent to the driver or operator, containers on a vehicle floor next to the driver or operator, and containers on a seat or console area next to a driver or operator.

E. Drug Paraphernalia

(1) The possession of drug paraphernalia is prohibited.

(2) *Definition:* Drug paraphernalia means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of any State or Federal law, or regulation issued pursuant to law.

F. Disorderly Conduct

(1) Disorderly conduct is prohibited.

(2) *Definition:* Disorderly conduct means that an individual, with the intent of recklessly causing public alarm, nuisance, jeopardy, or violence, or recklessly creating a risk thereof:

(a) Engages in fighting or violent behavior;

(b) Uses language, an utterance or gesture, or engages in a display or act that is physically threatening or menacing or done in a manner that is likely to inflict injury or incite an immediate breach of the peace; or

(c) Obstructs, resists, or attempts to elude a law enforcement officer, or fails to follow their orders or directions.

G. Eviction of Persons

(1) The public closure area is closed to any person who:

(a) Has been trespassed from the event by the permit holder;

(b) Has been evicted from the event by the BLM;

(c) Has been ordered by a law enforcement officer to leave the area of the permitted event.

(2) Any person evicted from the event forfeits all privileges to be present

within the perimeter fence or anywhere else within the public closure area even if they possess a ticket to attend the event.

H. Motor Vehicles

(1) Must comply with the following requirements:

(a) The operator of a motor vehicle must possess a valid driver's license.

(b) Motor vehicles and trailers must possess evidence of valid registration, except for mutant vehicles, or other vehicles registered with the permitted event organizers and operated within the scope of that registration.

(c) Motor vehicles must possess evidence of valid insurance, except for mutant vehicles or other vehicles registered with the permitted event organizers and operated within the scope of that registration.

(d) Motor vehicles and trailers must not block a street used for vehicular travel or a pedestrian pathway.

(e) Motor vehicles must not exceed the posted or designated speed limits. Posted or designated speed limits also apply to motorized skateboards, hover boards, electric assist bicycles, and Go-Peds with handlebars.

(f) No person shall occupy a trailer while the motor vehicle is in transit upon a roadway, except for mutant vehicles, or other vehicles registered with the permitted event organizers and operated within the scope of that registration.

(g) During night hours, from a half-hour after sunset to a half-hour before sunrise, motor vehicles, other than a motorcycle or golf cart, must be equipped with at least two working headlamps and at least two functioning tail lamps, except for mutant vehicles or other vehicles registered with the permitted event organizers and operated within the scope of that registration, so long as they are adequately lit according to Burning Man Project's Department of Mutant Vehicle requirements.

(h) Motor vehicles, including motorcycles or golf carts, must display a red, amber, or yellow brake light visible to the rear in normal sunlight upon application of the brake, except for mutant vehicles, or other vehicles registered with the permitted event organizers and operated within the scope of that registration, so long as they are adequately lit according to Burning Man Project's Department of Mutant Vehicle requirements.

(i) Motorcycles or golf carts require only one working headlamp and one working taillight during night hours, from a half-hour after sunset to a half-hour before sunrise, unless registered with the permitted event organizers and operated within the scope of that registration, so long as they are adequately lit according to Burning Man Project's Department of Mutant Vehicle requirements.

(j) Trailers pulled by motor vehicles must be equipped with at least two functioning tail lamps and at least two functioning brake lights.

(2) The public closure area is closed to motor vehicle use, except as provided below. Motor vehicles may be operated within the public closure area under the circumstances listed below:

(a) Participant arrival and departure on designated routes;

(b) BLM, medical, law enforcement, and firefighting vehicles are authorized at all times;

(c) Vehicles, mutant vehicles, or art cars operated by the permit holder's staff or contractors and service providers on behalf of the permit holder are authorized at all times. These vehicles must display evidence of event registration in such manner that it is visible to the rear of the vehicle while the vehicle is in motion;

(d) Vehicles used by disabled drivers and displaying official State disabled driver license plates or placards;

(e) Participant drop-off of approved burnable material and wood to the Burn Garden/Wood Reclamation Stations (located on open playa at 3:00, 6:00, 9:00 Promenades and the Man base) from 10:00 a.m. Sunday through the end of day Tuesday, post event;

(f) Passage through, without stopping, the public closure area on the west or east playa roads or from the east side of the playa to the west and vice versa to traverse the entirety of the playa surface.

(g) Support vehicles for art vehicles, mutant vehicles, and theme camps will be allowed to drive to and from fueling stations.

(3) *Definitions:*

(a) A motor vehicle is any device designed for and capable of travel over land and which is self-propelled by a motor but does not include any vehicle operated on rails or any motorized wheelchair.

(b) Motorized wheelchair means a self-propelled wheeled device, designed solely for and used by a mobility-impaired person for locomotion.

(c) ''Trailer'' means every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle, this includes camp trailers, pop-up trailers, 4′x7″ or larger flatbed trailers, enclosed cargo trailers, or RV style trailers.

(d) A mutant vehicle (art car) must be licensed by Burning Man Project and is built from scratch or has been modified, customized, or changed (*i.e.,* 'mutated') from its original form. A mutant vehicle is, in essence, a unique, motorized creation that either shows little or no resemblance to its original form, or any standard street vehicle.

I. Public Camping

The public closure area is closed to public camping with the following exception:

(1) The permitted event's ticket holders who are camped in designated event areas provided by the permit holder;

(2) Ticket holders who are camped in the authorized pilot camp;

(3) The permit holder's authorized staff, contractors, and BLM authorized event management camps

(4) Individuals or groups who have been permitted by the BLM.

J. Public Use

The public closure area is closed to entry and use by members of the public unless that person:

(1) Is traveling through, without stopping, the public closure area on the west or east playa roads;

(2) possesses a valid ticket to attend the event;

(3) Is an employee or authorized volunteer with the BLM, a law enforcement officer, emergency medical service provider, fire protection provider, or another public agency employee working at the event and that individual is assigned to the event;

(4) Is a person working at or attending the event on behalf of the permit holder, or is authorized by the permit holder to be onsite prior to the commencement of the event for the primary purpose of constructing, creating, designing, or installing art, displays, buildings, facilities, or other items and structures in connection with the event;

(5) Is an employee of a commercial operation contracted to provide services to the event organizers and/or participants authorized by the permit holder through a contract or agreement and authorized by BLM through a Special Recreation Permit.

K. Lasers

(1) The possession and or use of handheld lasers is prohibited.

(2) Definition: A laser means any hand-held laser beam device or demonstration laser product that emits a single point of light amplified by the stimulated emission of radiation that is visible to the human eye.

L. Weapons

(1) For public health and safety reasons, the possession or discharge of

any weapon is prohibited starting two (2) days prior to the event, the nine (9) days of the event, and for two (2) days after the event, with three exceptions:

(a) Unloaded weapons may be carried within motor vehicles that are passing through, without stopping, the Phase 2 closure area on designated playa routes;

(b) County, State, Tribal, and Federal law enforcement personnel who are working in their official capacity at the event are not prohibited from possessing or discharging weapons; and

(c) Art that includes weapons will be allowed only after receipt of authorization from both the special recreation permit holder and the BLM authorized officer.

(2) *Definitions:*

(a) Weapon means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, cross bow, blowgun, spear gun, hand-thrown spear, sling shot, irritant gas device, electric stunning or immobilization device, explosive device, any implement designed to expel a projectile, switch-blade knife, any blade which is greater than 10 inches in length from the tip of the blade to the edge of the hilt or finger guard nearest the blade (*e.g.,* swords, dirks, daggers, machetes), or any other weapon the possession of which is prohibited by State law. Exception: This rule does not apply in a kitchen or cooking environment or where an event worker is wearing or utilizing a construction knife for their duties at the event.

(b) Firearm means any pistol, revolver, rifle, shotgun, or other device, which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant.

(c) Discharge means the expelling of a projectile from a weapon or the ignition of a propellant.

M. Enforcement

Any person who violates this temporary closure or any of these temporary restrictions may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Nevada law.

(Authority: 43 CFR 8364.1.)

Bradlee A. Matthews,

Deputy District Manager, Winnemucca District Office, Winnemucca District.

[FR Doc. 2023–13016 Filed 6–16–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1219]

Importer of Controlled Substances Application: Alcami Carolinas Corporation

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Alcami Carolinas Corporation has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 20, 2023. Such persons may also file a written request for a hearing on the application on or before July 20, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 22, 2023, Alcami Carolinas Corporation, 1519 North 23rd Street, Wilmington, North Carolina 28405–1827, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocin	7438	I
Pentobarbital	2270	II
Thebaine	9333	II

The company plans to import the listed controlled substances in bulk for the manufacturing of capsules/tablets for Phase II clinical trials. The company plans to import derivatives of Thebaine that have been determined by DEA to be captured under drug code (9333) Thebaine. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–13026 Filed 6–16–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Bankrutpcy Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

On June 12, 2023, the Department of Justice lodged a proposed settlement Stipulation with Remington Arms Distribution Company, LLC (''Remington Arms''), with the United States Bankruptcy Court for the

Northern District of Alabama in the Chapter 11 bankruptcy case captioned *In re Remington Outdoor Company, Inc., et al.,* Case No. 20–81688–CRJ11.

In January 2021, the United States filed a Proof of Claim in this bankruptcy case alleging that Remington Arms is liable, along with others, for reimbursement of past and future costs of responses actions addressing environmental contamination at the Chemetco Superfund Site in Madison County, Illinois (the ''Chemetco Site'') under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607. The Proof of Claim seeks reimbursement of: (i) more than $3.7 million in unreimbursed past response costs that the U.S. Environmental Protection Agency (''EPA'') has incurred in connection with the Chemetco Site; and (ii) an estimated $18 million to $45 million in costs of necessary future response work at the Chemetco Site.

The proposed settlement Stipulation that the United States has lodged in the bankruptcy case would resolve the EPA Proof of Claim on agreed terms and conditions. If approved by the bankruptcy court, it would grant EPA a $1.275 million allowed general unsecured claim against Remington Arms that would be paid in accordance with the Court-approved Joint Chapter 11 Plan of the Debtors. As specified by the Stipulation, EPA will deposit any cash distributions it receives on account of the allowed claim into a special account established by EPA for the Chemetco Site within the Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Chemetco Site, or to be transferred to the Hazardous Substance Superfund.

The publication of this notice opens a period for public comment on the proposed settlement Stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re Remington Outdoor Company, Inc., et al.,* DJ Ref. No. 90–5–1–1–4516/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed settlement Stipulation may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed settlement Stipulation upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $2.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia A. McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–13025 Filed 6–16–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Proposed Extension of Information Collection; Registration for Public Data Service

AGENCY: Office of Data Governance, Office of the Assistant Secretary for Policy, Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request 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. Currently, the Office of the Assistant Secretary for Policy (OASP) is soliciting comments on an information collection of user registrations to access a public Application Programming Interface providing machine readable subsets of public data generated by DOL programs and activities.

DATES: All comments must be received on or before August 21, 2023.

ADDRESSES: Electronic submission: You may submit comments and attachments electronically at *http://www.regulations.gov.* Follow the online instructions for submitting comments. A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Scott Gibbons by email at *gibbons.scott.m@dol.gov.* Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Data Governance, Office of the Assistant Secretary for Policy, Room S2312, 200 Constitution Avenue NW, Washington, DC 20210; by email: *odg@dol.gov.* All submissions received must include the agency name and **Federal Register** notice title.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, *Chief Data Officer* by telephone at 202–693–5075 (this is not a toll-free number), or by email at *gibbons.scott.m@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

DOL is developing a new public facing data service consistent with the requirements of title II of the Foundations for Evidence-Based Policymaking Act of 2018, the goals described in DOL's Enterprise Data Strategy, and feedback from a prior public request for information on how DOL can optimally structure its public data offerings available through Docket No. DOL–2021–0005 at *www.regulations.gov.*

To best ensure that this service will optimally meet current, evolving, and long range needs among public, private, and Federal data users, specifically with respect to the kinds of data offered, the formats of machine readable data made accessible, the software and services that can connect to the Application programming Interface (API), and the kinds of documentation provided, DOL anticipates collecting a limited number of characteristic data elements from prospective users. These data elements will guide DOL efforts to provide questions about familiarity with APIs usage, preferred software, questions about topics of analysis to ensure that our creation of tutorials, code examples, documentation, and data schema best reflect the collective needs of our users. The information will also be used to identify patterns and trends among users to inform proper administration of the service. DOL will not disclose any

of the information being collected to the public.

DOL experience shows that the number of applicants to our public data services will vary considerably but will almost certainly exceed 10 or more persons (ref: 5 CFR 1320.3(c)(4)(ii)), so DOL seeks to obtain and maintain PRA clearance to conduct this information collection.

II. Desired Focus of Comments

OASP is soliciting comments concerning an information collection of user registrations to access a public Application Programming Interface providing machine readable subsets of public data generated by DOL programs and activities. OASP is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OASP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OASP, located at Office of the Assistant Secretary for Policy, Room S2312, 200 Constitution Avenue NW, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns user registrations to access a public Application Programming Interface providing machine readable subsets of public data generated by DOL programs and activities. OASP has estimated the potential impact of this collection data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: New collection.

Agency: DOL–OASP.

Title of Collection: Registration for Public API.

OMB Number: 1290–0NEW.

Affected Public: Individuals or households, and not-for-profit institutions.

Estimated Annual Number of Respondents: 200.

Estimated Annual Number of Responses: 200.

Estimated Annual Burden Hours: 30 hours.

Estimated Average Hourly Wage of Respondents: $49.76.

Estimated Total Annual Burden Costs: $1,492.80.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Scott Gibbons,

Chief Data Officer.

[FR Doc. 2023–12992 Filed 6–16–23; 8:45 am]

BILLING CODE 4510–HX–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Committee on Strategy's Subcommittee on Technology, Innovation and Partnerships hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, June 21, 2023, from 5:00–6:00 p.m. EDT.

PLACE: This meeting will be via videoconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda is: Committee Chair's opening remarks regarding the agenda: Engines 2 Portfolio conversation; Discussion of Engines progress monitoring and interim goals & metrics; and Consideration of the Quadrennial Review request for NSB input on fostering regional innovation.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–13200 Filed 6–15–23; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0106]

NUREG: Report to Congress on Abnormal Occurrences: Fiscal Year 2022; Dissemination of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final report; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–0090, Volume 45, ''Report to Congress on Abnormal Occurrences: Fiscal Year 2022.'' The report describes those events that the NRC or an Agreement State identified as abnormal occurrences (AOs) during fiscal year (FY) 2022, based on the criteria defined by the Commission. The report describes eight events at Agreement State-licensed facilities and one event at an NRC-licensed facility.

DATES: NUREG–0090, Volume 45, is available June 20, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0106 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0106. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The 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.

FOR FURTHER INFORMATION CONTACT: Edward Harvey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3704; email: *Edward.Harvey@nrc.gov.*

SUPPLEMENTARY INFORMATION: Section 208 of the Energy Reorganization Act of 1974, as amended (Pub. L. 93–438), defines an ''abnormal occurrence'' as an unscheduled incident or event that the NRC determines to be significant from the standpoint of public health or safety. The FY 2022 AO report, NUREG–0090, Volume 45, ''Report to Congress on Abnormal Occurrences: Fiscal Year 2022'' (ADAMS Accession No. ML23158A228), describes those events that the NRC identified as AOs during FY 2022.

This report describes eight events involving Agreement State licensees and one event involving an NRC licensee. Seven of the AOs occurred at medical facilities and the other two events involved overexposures.

The NRC identified no events at NRC-licensed facilities during FY 2022 that met the guidelines for inclusion in Appendix B, ''Other Events of Interest.''

One event met the guidelines for inclusion in appendix C, ''Updates of Previously Reported Abnormal Occurrences.''

Agreement States are the 39 U.S. States that currently have entered into formal agreements with the NRC pursuant to section 274 of the Atomic Energy Act of 1954, as amended (AEA), to regulate certain quantities of AEA-licensed material at facilities located within their borders.

The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–68) requires that AOs be reported to Congress annually. The full report, NUREG–0090, Volume 45, ''Report to Congress on Abnormal Occurrences: Fiscal Year 2022,'' is also available electronically at the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff.*

Dated: June 14, 2023.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

[FR Doc. 2023–13083 Filed 6–16–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information: Extension of Comment Deadline Automated Worker Surveillance and Management

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information (RFI).

SUMMARY: Employers are increasingly using automated systems to monitor, manage, and evaluate their workers. These systems may allow employers to manage supply chains, improve health and safety, or make other informed business decisions. At the same time, applications of surveillance and monitoring systems can also pose risks to workers, including to their health and safety, equal employment opportunities, privacy, ability to meet critical needs, access to workplace accommodations, and exercise of workplace and labor rights, including their rights to form or join a labor union. The White House Office of Science and Technology Policy (OSTP) seeks comments from the public to better understand automated surveillance and management of workers, including its prevalence, purposes, deployment, and impacts, as well as opportunities for Federal agencies to work with employers, workers, and other stakeholders to ensure that these systems do not undermine workers' rights, opportunities, access, health, or safety.

DATES: Interested persons and organizations are invited to submit comments on or before 5 p.m. ET, June 29, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. OSTP will not accept comments by fax, or comments submitted after the comment period closes. To ensure that OSTP does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on how to use *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ'' (*https://www.regulations.gov/faq*).

Privacy Note: OSTP's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. OSTP requests that no proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

Instructions: Response to this RFI is voluntary. Respondents may answer as many or as few questions as they wish. Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Any information obtained from this RFI is intended to be used by the Government on a non-attribution basis for planning and strategy development. OSTP will not respond to individual submissions. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. This RFI is not accepting applications for financial assistance or financial incentives. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included in the body of your response. Respondents interested in submitting anonymous comments should use the option on *www.regulations.gov/.*

FOR FURTHER INFORMATION CONTACT: Alan Mislove, Assistant Director for Data and Democracy, *workersurveillance@ostp.eop.gov,* 202–456–4444.

SUPPLEMENTARY INFORMATION:

Background: Employers are increasingly using automated systems to monitor, manage, and evaluate their workers—both on and off the job. According to a 2022 investigation by the *New York Times,* eight of the ten largest private U.S. employers track the productivity metrics of individual workers.[1] Use of automated surveillance and management systems has increased with the spread of remote work during the pandemic, and now often extends to workers' homes.[2] Private-sector research

[1] *https://www.yahoo.com/video/bosses-giving-return-office-fight-191121126.html.*

[2] *https://www.shrm.org/hr-today/news/all-things-work/pages/monitoring-remote-workers.aspx.*

suggests that the percentage of large employers using automated tools to track their workforce may have doubled since the beginning of the pandemic to some 60%.[3]

Automated worker surveillance and management systems may track workers' location, pace or quality of work, communications (*e.g.,* text, chats, emails, social media), interactions with other workers or customers, and computer activity. Such surveillance can be accomplished through a variety of techniques, ranging from software on workers' computers to dedicated electronic devices that workers wear or carry on their person. The market for these technologies and systems has greatly expanded in recent years, and a number of vendors are now developing products to help employers electronically monitor and manage their workers in a variety of contexts.

Examples of applications of automated surveillance and management of workers that have been reported in the press include:

- Warehouse workers who are tracked by whether they are actively moving products
- Grocery store cashiers who are monitored on the speed of their transactions with customers
- Office workers whose keystrokes, chats, emails, and other communications are collected and monitored
- Lawyers whose computer cameras track whether their eyes are actively focused on the screen
- Call center workers whose calls are monitored by a computer that judges the emotional state of customers
- Copywriters whose computers automatically take screenshots of their activity to track which applications they are using
- Home healthcare workers whose locations are monitored by an app that verifies patient visits
- Nurses whose time on task and location are tracked through radio frequency identification (RFID) tags in identification badges
- Delivery or rideshare drivers whose vehicles track their location, speed, and driving behavior
- Long-haul truckers whose eye movements are monitored and locations tracked
- Fast food workers whose pace of work in preparing meals is tracked and reported
- Teachers whose lessons delivered remotely online are recorded and analyzed electronically

These systems may allow employers to more closely monitor worker performance; protect public health and safety; make decisions about promotion, discipline, or termination; or manage work assignments, schedules, and supply chains. At the same time, applications of automated surveillance and management systems can also pose risks to workers and even violate labor and employment laws.[4] Emerging research suggests that certain applications of these systems may undermine the quality of work; workers' rights to a safe and healthy workplace; compensation for time worked; labor market competition; and workers' ability to organize and work collectively with their coworkers to improve working conditions, including through labor unions. Certain applications of these systems—when paired with decisions about working conditions, promotion, discipline, or termination—may also treat otherwise similar workers differently on the basis of their race, ethnicity, gender, religion, age, national origin, health or disability, or other protected status. Some systems may also violate antitrust and privacy laws, for instance, if employers use technologies to artificially reduce wages.

Automated worker surveillance and management can also cause and exacerbate disabilities and interfere with legal protections for those with disabilities. Automated worker surveillance and management systems can potentially put workers at risk for physical injury and mental health distress that can cause or exacerbate anxiety, depression, cognitive disability, and trauma responses; interfere with legally-protected workplace accommodations that enable individuals with disabilities to participate in the workforce; and reveal workers' otherwise-undisclosed disabilities to employers.

In 2022, the White House Office of Science and Technology Policy released the *Blueprint for an AI Bill of Rights* (''Blueprint''), which stated that individuals ''should be free from unchecked surveillance.'' [5] The Blueprint noted that continuous surveillance can pose harms to workers, using the example of electronic monitoring intended to stymie workers' efforts to organize a labor union. Consistent with the Blueprint, the Office of Science and Technology Policy seeks to further study the use of automated surveillance and management systems in the workplace, including their prevalence, impacts, and deployment, as well as opportunities for Federal agencies to work together with employers and workers to ensure that these systems do not undermine workers' rights or their safety.

This focus on automated surveillance and management in the workplace is also consistent with the Administration's commitment to ensuring that all workers have access to high-quality, well-paying jobs, including jobs with opportunities to organize and bargain collectively with their employers through labor unions, as articulated in the Executive Order 14025 (*Worker Organizing and Empowerment*) [6] and through a competitive market for their labor, as articulated in Executive Order 14036 (*Promoting Competition in the American Economy*).[7] This initiative advances the Biden-Harris Administration's historic commitment to racial equity and support for underserved communities, by investigating whether automated surveillance and management systems ''contribute to unjustified different treatment or impacts,'' as articulated in Executive Order 14091 (*Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*) as well as the Administration's call for robust protections for Americans' privacy.

Request for Comment: This request for information seeks input from the public on the prevalence, uses and purposes, and deployment of automated worker surveillance and management systems, including impacts of these systems on workers' legal rights and lives. It includes workers' physical and mental health; privacy, dignity, and autonomy; and ability to exercise workplace rights, including rights to collective action, pay, reasonable accommodation, health, and safety, and freedom from retaliation, discrimination, and harassment. It also seeks input on how employers may share data collected through these surveillance applications and how worker surveillance may contribute to unfair competition between firms.

[3] *https://www.gartner.com/en/articles/the-right-way-to-monitor-your-employee-productivity.*

[4] See for instance, *https://laborcenter.berkeley.edu/wp-content/uploads/2021/11/Data-and-Algorithms-at-Work.pdf, https://cdt.org/insights/report-warning-bossware-may-be-hazardous-to-your-health/,* and *https://equitablegrowth.org/research-paper/workplace-surveillance-is-becoming-the-new-normal-for-u-s-workers/.*

[5] *https://www.whitehouse.gov/ostp/ai-bill-of-rights/data-privacy-2/.*

[6] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/26/executive-order-on-worker-organizing-and-empowerment/.*

[7] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.*

This RFI focuses on automated surveillance and management by employers that may track workers' locations, pace of work, performance or output, compliance with policy or regulations, or social media activity; their emails, texts, chats, phone calls, and other communications; or other similar measures. Such surveillance may take place during or outside of work hours, and on or off the worksite. This request for information also covers workers in traditional employment relationships (*i.e.,* W–2 employment) as well as other employment relationships, such as independent contractors and gig economy workers.

OSTP is particularly interested in hearing from:

- Workers who have experienced automated surveillance and management (including workers of color, low-paid workers, immigrant workers, and workers with disabilities);
- Worker organizations (including worker advocacy groups, worker centers, labor unions, and workplace legal services providers);
- Civil rights and privacy organizations;
- Employers (including for-profit, non-profit, and government employers) that are using automated surveillance and management systems or considering using such systems;
- Platforms, crowdsourcing websites, transportation network companies, ride-hailing services, and other entities that match workers with opportunities to generate income;
- Trade and business associations representing employers;
- Developers and vendors developing or selling automated surveillance or management systems;
- Researchers (including researchers using both qualitative and quantitative methods to understand the use, prevalence, benefits and risks, and impacts of automated surveillance and management systems on individuals and society); and
- State, Tribal, local, and Territorial governments.

To assist commenters in developing responses, OSTP has crafted the questions below that commenters may answer. Respondents may provide information for one or more of the topics below, as desired. *However, OSTP welcomes members of the public to submit any personal experiences, data, information, and research relating to the use and impact of automated worker surveillance and management systems. Please do not to include personally identifying information in the body of your response.*

1. If you are a *worker or organization representing workers (such as a worker center, union, or legal services provider),* please tell us about your experiences with automated worker surveillance and management systems or the experiences of the workers you interact with, including:

a. The type of work you do (*e.g.,* describe the relevant job, employer, and industry);

b. Whether you are a member of a labor union;

c. The type of automated surveillance or management you have experienced, including the location of the monitoring technology (such as an app you had to use or download; a device you had to use, carry, or wear; or a camera that monitors you);

d. Whether the automated surveillance or management was used during a labor organizing drive;

e. Whether and when your employer informed you about their use of automated worker surveillance and management systems;

f. Whether you (or, if relevant, your representative, like a labor union) have any input or control over how, where, and over what automated surveillance occurs;

g. Whether you know how the data generated by surveillance is used for management or other purposes (including purposes related to employment or labor market competition);

h. Whether you (or, if relevant, your representative, like a labor union) have any visibility into the data collected on you or how it is used, including whether data on you collected by surveillance can be shared with other companies, trade groups, or third parties;

i. How the use of automated surveillance and management systems has changed how you do your job or how your employer treated you at your job;

j. Whether your employer has used information from an automated surveillance and management system in support of any discipline against you—and if so, what the action was, how and when you were informed, and what information was provided to you or your representative (such as a labor union);

k. How automated surveillance and management has affected you—whether positively or negatively—including any economic, safety, physical, mental, and emotional impacts;

l. How automated surveillance and management systems have affected your workplace rights, including rights around collective action, labor organizing, collective bargaining, pay, reasonable accommodations, health and safety, discrimination, and harassment—or your expectation of retaliation when exercising these rights;

m. How these systems have impacted your non-working hours, personal time, or the privacy of other members of your household;

n. If you are disabled or have a health condition, how automated surveillance and management systems have impacted or may impact your use of reasonable accommodations; such as assistive technology or accessibility features of software or breaks, or affected your ability to keep information about your condition private from your employer, supervisor, or coworkers;

o. If you are disabled or have a health condition, how automated surveillance and management systems have affected performance reviews or other management activities, or concerns about how these systems may affect performance reviews or how your management treats you; and

p. Whether you work for an employer that receives Federal funds (for instance, as a Federal contractor).

2. If you are an *employer or organization representing employers,* please tell us about your experiences implementing or using automated worker surveillance and management systems, including:

a. The type of business you are in, or represent, including your industry and roughly how many workers you employ;

b. Whether any of your employees are represented by a labor union;

c. The types of automated worker surveillance and management systems your business has implemented or is considering implementing;

d. The purposes for which your business decided to implement automated worker surveillance and management systems, such as safety and health, productivity, competition, liability or insurance, compliance, or resource and worker management;

e. How your business decided to use specific automated worker surveillance and management systems, including decisions not to use particular products or types of systems, to limit their scope, and relevant training;

f. In what ways your business uses the information collected through automated surveillance and management systems, such as for management, human resources, and business operations, including whether the information is sold or shared with other businesses or otherwise influenced by other businesses' activities;

g. Any steps your business has taken to solicit or incorporate worker input into how automated worker surveillance and management systems are adopted, implemented, and used; whether workers may opt out of such systems (and any consequences for doing so); and how generated data is used or shared with other parties;

h. Any involvement of third parties (such as vendors) in collecting or maintaining information on workers and any control retained by the employer;

i. Any steps you have taken to ensure that the use or sharing of automated worker surveillance and management systems does not infringe on workers' rights;

j. How you decide the categories of workers for whom you deploy automated worker surveillance and management systems (*e.g.,* managerial versus non-managerial workers);

k. Any policies or protocols adopted to govern the use of automated worker surveillance and management systems or the data they produce; and Whether your organization receives Federal funds.

3. If you are a *technology developer or vendor,* please tell us about your experience developing or distributing automated worker surveillance and management systems, including:

a. The purposes for which employers adopt your products and how they deploy these products;

b. How the impact, performance, and efficacy of your products is audited and validated by you, employers, and workers;

c. How you and the users of your products manage data collection, storage, and maintenance, including access to data by third parties;

d. Whether you provide guidance to employers on your products and their appropriate use, including guidance on notifying workers about the use of technology, and offering opportunities for workers to consent to or opt out of data collection;

e. Whether you engage with employers to help them implement your products in ways that protect workers' rights, health, and safety—or otherwise take steps to help protect workers who will engage with your products; and

f. Any steps you have taken to ensure that the use of automated worker surveillance and management systems does not infringe on workers' rights.

4. Data and research-related questions we are interested in include:

a. What data and evidence exist on the prevalence of automated worker surveillance and management systems across different industries, occupations, and regions, including changes over time?

b. What data and evidence exist on the impact of automated worker surveillance and management systems on workers, including workers' pay, benefits, and employment, physical and mental health, and ability to exercise workplace rights?

c. What data and evidence exist on the impact of automated worker surveillance and management systems on labor rights, including workers' abilities to form and join unions and bargain collectively with their employers?

d. What data and evidence exist on how the impact of automated worker surveillance and management systems differs across groups of workers, including based on characteristics such as race, national origin, sex, age, disability, religion, or health status?

e. What data or evidence exists on whether automated worker surveillance and management systems are being used for discriminatory purposes or resulting in discrimination?

f. What data and evidence exist on whether automated workers surveillance and management systems impact employers' ability to recruit and retain workers?

g. What data or evidence exists on how the provision of reasonable accommodations is accounted for in the design and operation of automated worker surveillance and management systems?

h. What data and evidence exist on why employers decide to adopt automated worker surveillance and management systems?

i. Are there any existing or new systems that aggregate worker surveillance data across multiple employers?

j. What are new or emergent automated worker surveillance and management systems—or new and emergent uses of existing technologies—that Federal agencies should be tracking?

k. Where might further research, including by the Federal Government, be helpful in understanding the prevalence and impact of automated worker surveillance and management systems?

5. Last, we are especially interested in the following questions about policies, practices, or standards that could protect workers:

a. What guidelines, standards, or best practices might inform the design of automated worker surveillance and management systems to protect workers' rights?

b. Are there policy approaches to regulating automated worker surveillance and management systems from state, Tribal, territorial, or local governments or other countries that Federal agencies could learn from?

c. What policies or actions should Federal agencies consider to protect workers' rights and wellbeing as automated worker surveillance and management systems are developed and deployed, including through regulations, enforcement, contracting, and grantmaking?

Dated: June 13, 2023.

Stacy Murphy,

Deputy Chief Operations Officer/Security Officer.

[FR Doc. 2023–12995 Filed 6–16–23; 8:45 am]

BILLING CODE 3270–F1–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97707; File No. SR–NYSENAT–2023–09]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37 To Specify the Exchange's Source of Data Feeds From MEMX LLC

June 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2023, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37 to specify the Exchange's source of data feeds from MEMX LLC (''MEMX'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37(d), which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37(d) to specify that, with respect to MEMX, the Exchange will receive a MEMX direct feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance, and will use the SIP Data Feed as its secondary source for data from MEMX.

The Exchange proposes to make this change operative in the third quarter of 2023, and, in any event, before September 30, 2023. The Exchange proposes to announce the implementation date of this change by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5),[4] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal to update the table in Rule 7.37(d) to include the MEMX direct feed will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will enhance competition because providing the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance would enhance transparency and enable investors to better assess the quality of the Exchange's execution and routing services. The Exchange also believes the proposal would enhance competition because it would potentially enhance the performance of its order handling and execution of orders in equity securities by receiving market data directly from MEMX. Finally, the proposed rule change would not impact competition between market participants because it will affect all market participants equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSENAT–2023–09 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–NYSENAT–2023–09. This file number should be included on the

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions. You should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSENAT–2023–09 and should be submitted on or before July 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12998 Filed 6–16–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97710; File No. SR–NYSE–2023–21]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37 To Specify the Exchange's Source of Data Feeds From MEMX LLC

June 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37 to specify the Exchange's source of data feeds from MEMX LLC (''MEMX'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37(e), which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37(e) to specify that, with respect to MEMX, the Exchange will receive a MEMX direct feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance, and will use the SIP Data Feed as its secondary source for data from MEMX.

The Exchange proposes to make this change operative in the third quarter of 2023, and, in any event, before September 30, 2023. The Exchange proposes to announce the implementation date of this change by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5),[4] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal to update the table in Rule 7.37(e) to include the MEMX direct feed will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will enhance competition because providing the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance would enhance transparency and enable investors to better assess the quality of the Exchange's execution and routing

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

services. The Exchange also believes the proposal would enhance competition because it would potentially enhance the performance of its order handling and execution of orders in equity securities by receiving market data directly from MEMX. Finally, the proposed rule change would not impact competition between market participants because it will affect all market participants equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2023–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions. You should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–21 and should be submitted on or before July 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–13000 Filed 6–16–23; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97719; File No. SR–ISE–2023–11]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Amend the Short Term Option Series Program in Supplementary Material .03 of Options 4, Section 5

June 13, 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 May 31, 2023, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Short Term Option Series Program in Supplementary Material .03 of Options 4, Section 5 (Series of Options Contracts Open for Trading).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .03 of Options 4, Section 5, ''Series of Options Contracts Open for Trading.'' Specifically, the Exchange proposes to expand the Short Term Option Series Program to permit the listing of two Wednesday expirations for options on United States Oil Fund, LP (''USO''), United States Natural Gas Fund, LP (''UNG''), SPDR Gold Shares (''GLD''), iShares Silver Trust (''SLV''), and iShares 20+ Year Treasury Bond ETF (''TLT'') (collectively ''Exchange Traded Products'' or ''ETPs'').

Currently, as set forth in Supplementary Material .03 to Options 4, Section 5, after an option class has been approved for listing and trading on the Exchange as a Short Term Option Series pursuant to Options 1, Section 1(a)(49),[3] the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates''). The Exchange may have no more than a total of five Short Term Option Expiration Dates. Further, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that Friday.

Additionally, the Exchange may open for trading series of options on the symbols provided in Table 1 of Supplementary Material .03 to Options 4, Section 5 that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Short Term Option Daily Expirations''). For those symbols listed in Table 1, the Exchange may have no more than a total of two Short Term Option Daily Expirations for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.

Proposal

At this time, the Exchange proposes to expand the Short Term Option Daily Expirations to permit the listing and trading of options on USO, UNG, GLD, SLV, and TLT expiring on Wednesdays. The Exchange proposes to permit two Short Term Option Expiration Dates beyond the current week for each Wednesday expiration at one time.[4] In order to effectuate the proposed changes, the Exchange would add USO, UNG, GLD, SLV, and TLT to Table 1 of Supplementary Material .03 to Options 4, Section 5, which specifies each symbol that qualifies as a Short Term Option Daily Expiration.

The proposed Wednesday USO, UNG, GLD, SLV, and TLT expirations will be similar to the current Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations set forth in Supplementary Material .03 to Options 4, Section 5, such that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week) series of options on USO, UNG, GLD, SLV, and TLT to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (''Wednesday USO Expirations,'' ''Wednesday UNG Expirations,'' ''Wednesday GLD Expirations,'' ''Wednesday SLV Expirations,'' and ''Wednesday TLT Expirations'') (collectively, ''Wednesday ETP Expirations'').[5] In the event Short Term Option Daily Expirations expire on a Wednesday and that Wednesday is the same day that a Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Wednesday expirations in SPY, QQQ, and IWM similarly skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series.

USO, UNG, GLD, SLV, and TLT Friday expirations would continue to have a total of five Short Term Option Expiration Dates provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates'').

Similar to Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within Supplementary Material .03 to Options 4, Section 5, the Exchange proposes that it may open for trading on any Tuesday or Wednesday that is a business day series of options on USO, UNG, GLD, SLV, and TLT that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which Quarterly Options Series expire.

The interval between strike prices for the proposed Wednesday ETP Expirations will be the same as those for the current Short Term Option Series for Friday expirations applicable to the Short Term Option Series Program.[6] Specifically, the Wednesday ETP Expirations will have a strike interval of $0.50 or greater for strike prices below $100, $1 or greater for strike prices between $100 and $150, and $2.50 or greater for strike prices above $150.[7] As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Wednesday ETP Expirations series will be P.M.-settled.

Pursuant to Options 1, Section 1(a)(49), with respect to the Short Term Option Series Program, a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week if the Wednesday is not a business day.

Currently, for each option class eligible for participation in the Short

[3] Options 1, Section 1(a)(49) provides that a Short Term Option Series means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the following business week that is a business day, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

[4] Consistent with the current operation of the rule, the Exchange notes that if it adds a Wednesday expiration on a Tuesday, it could technically list three outstanding Wednesday expirations at one time. The Exchange will therefore clarify the rule text in Supplementary Material .03 to Options 4, Section 5 to specify that it can list two Short Term Option Expiration Dates *beyond the current week* for each Monday, Tuesday, Wednesday, and Thursday expiration.

[5] While the relevant rule text in Supplementary Material .03 to Options 4, Section 5 also indicates that the Exchange will not list such expirations on a Wednesday that is a business day in which monthly options series expire, practically speaking this would not occur.

[6] *See* Supplementary Material .03(e) to Options 4, Section 5.

[7] *Id.*

Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[8] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[9] With the proposed changes, this thirty (30) series restriction would apply to Wednesday USO, UNG, GLD, SLV, and TLT Short Term Option Daily Expirations as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list Wednesday ETP Expirations.

With this proposal, Wednesday ETP Expirations would be treated similarly to existing Wednesday SPY, QQQ, and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Wednesday ETP Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire because those options would be duplicative of each other.

The Exchange does not believe that any market disruptions will be encountered with the introduction of Wednesday ETP Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Wednesday ETP Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Wednesday for SPY, QQQ and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Wednesday for SPY, QQQ and IWM.

Impact of Proposal

The Exchange notes that listings in the Short Term Option Series Program comprise a significant part of the standard listings in options markets. The below diagrams demonstrate the percentage of weekly listings compared to monthly, quarterly, and Long-Term Option Series in 2020 and 2022 in the options industry.[10] The weekly strikes decreased from 24% to 19% in these two years. The Exchange notes that during this timeframe all options exchanges mitigated weekly strike intervals.

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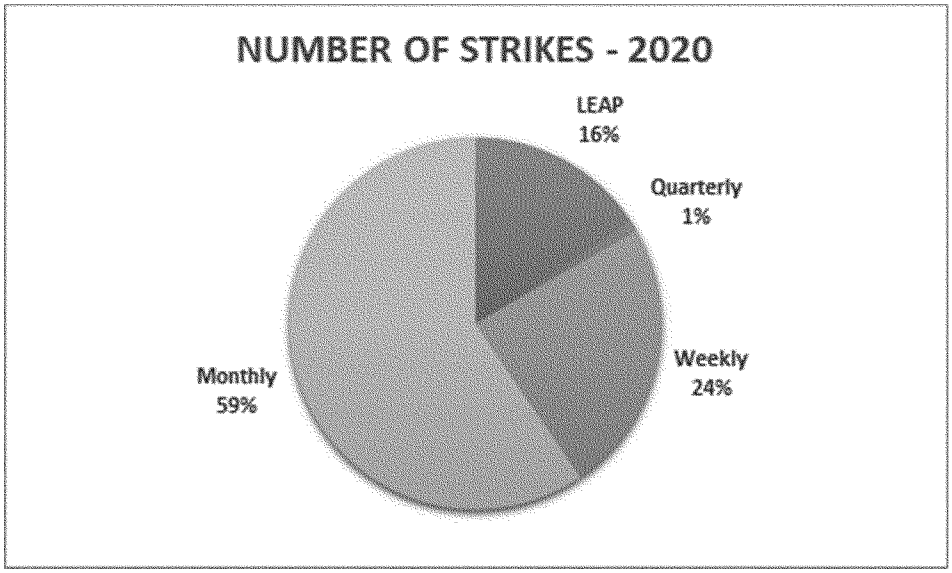
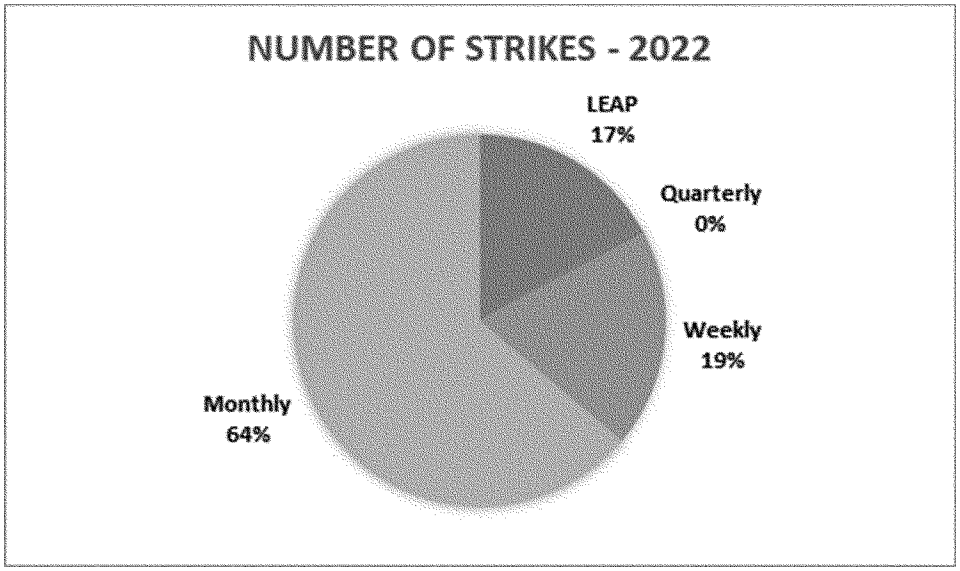
[8] *See* Supplementary Material .03(a) to Options 4, Section 5.

[9] *Id.*

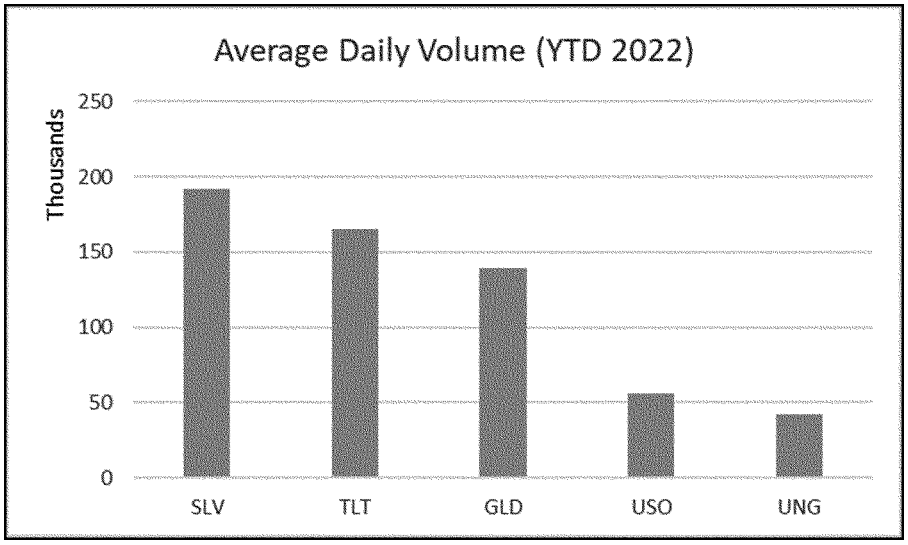
[10] The Exchange sourced this information from The Options Clearing Corporation (''OCC''). The information includes time averaged data for all 16 options markets up to August 18, 2022.





While the Exchange is expanding the Short Term Option Series Program to permit USO, UNG, GLD, SLV, and TLT Wednesday Expirations, the Exchange anticipates that it would overall add a small number of weekly expiration dates because the Exchange will limit the number of Short Term Option Daily Expirations for these ETPs to two Wednesday expirations. The below chart displays average daily volume for options on USO, UNG, GLD, SLV, and TLT.[11]

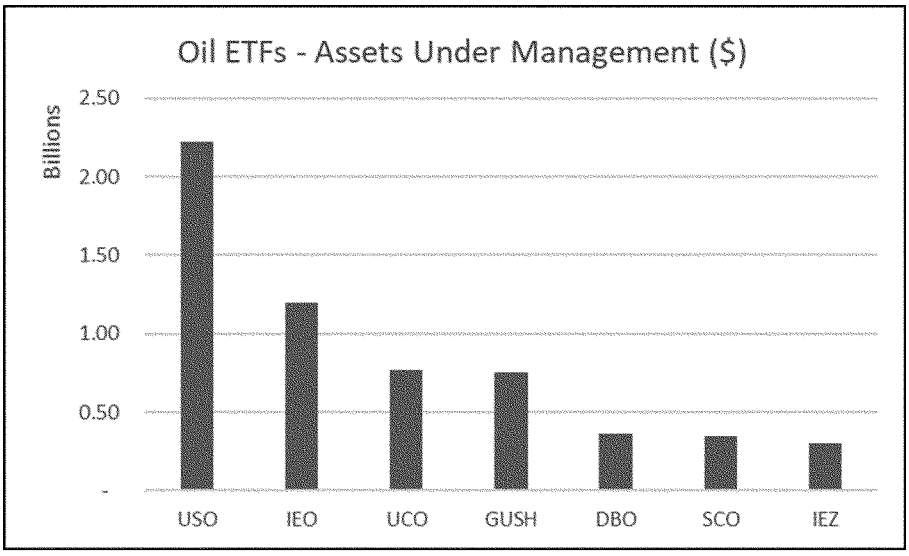
[11] Average daily volume data for options contracts are as of November 2022.

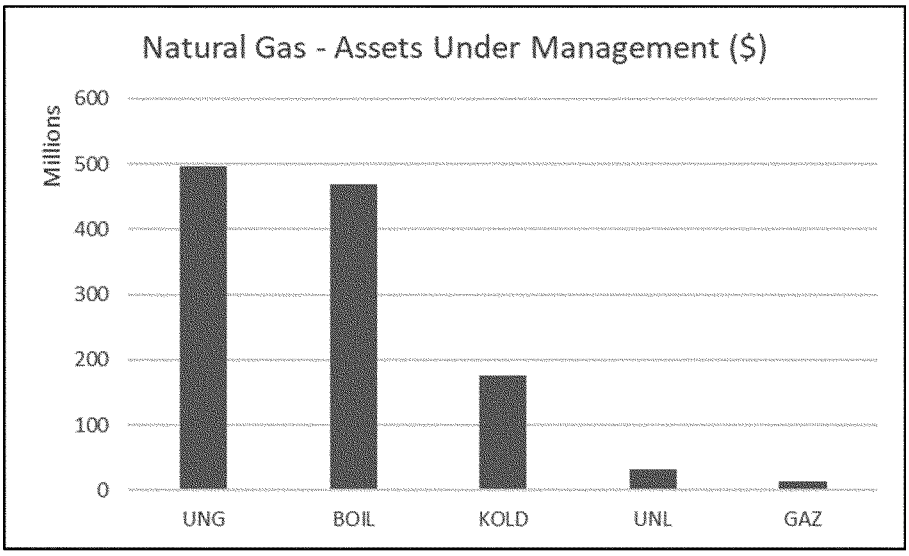


The Exchange believes that there is general investor demand for alternative expirations, including Wednesday expirations, as evidenced by the relatively significant percentage of volume in Wednesday SPY, QQQ, and IWM expirations. Notably, in 2022, the Exchange observed that Wednesday expiration volume in SPY, QQQ, and IWM consisted of approximately 23.3% (for SPY), 19.8% (for QQQ), and 10.9% (for IWM) of total volume for the respective symbols.

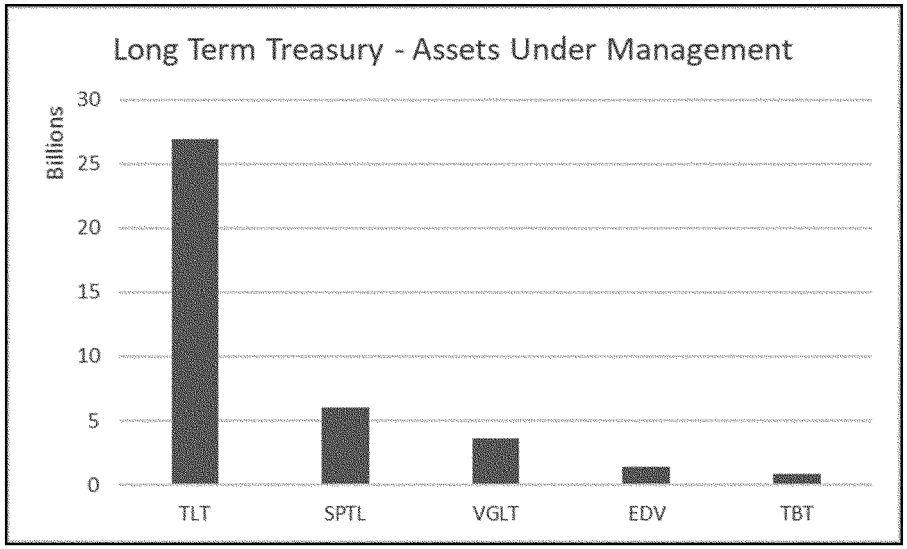
Further, the Exchange believes that there is investor demand for additional Short Term Option Daily Expirations for USO, UNG, GLD, SLV, and TLT based on the total assets under management (''AUM'') for these Exchange Traded Products. As illustrated below, the ETPs are all leading products in their respective asset classes.[12]

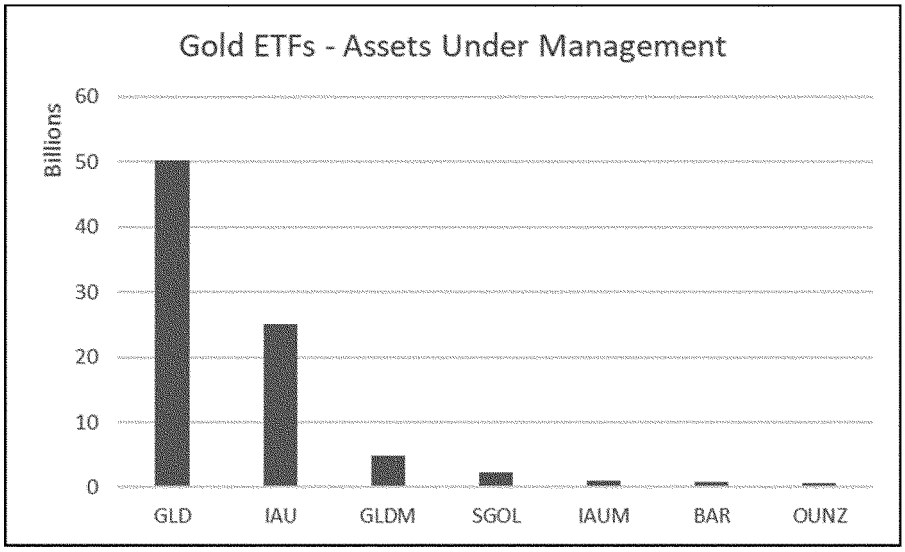
[12] AUM data for ETPs are as of November 2022.

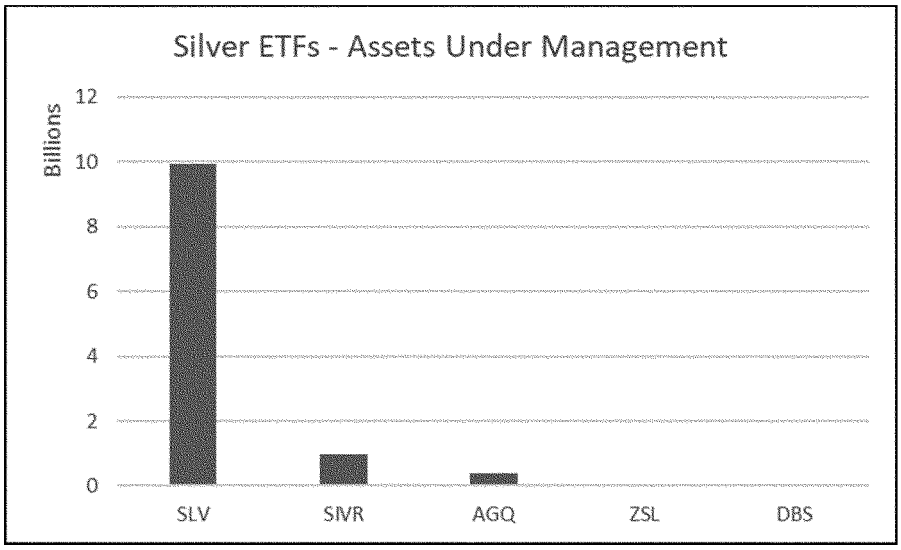




*BOIL and KOLD are leveraged ETFs

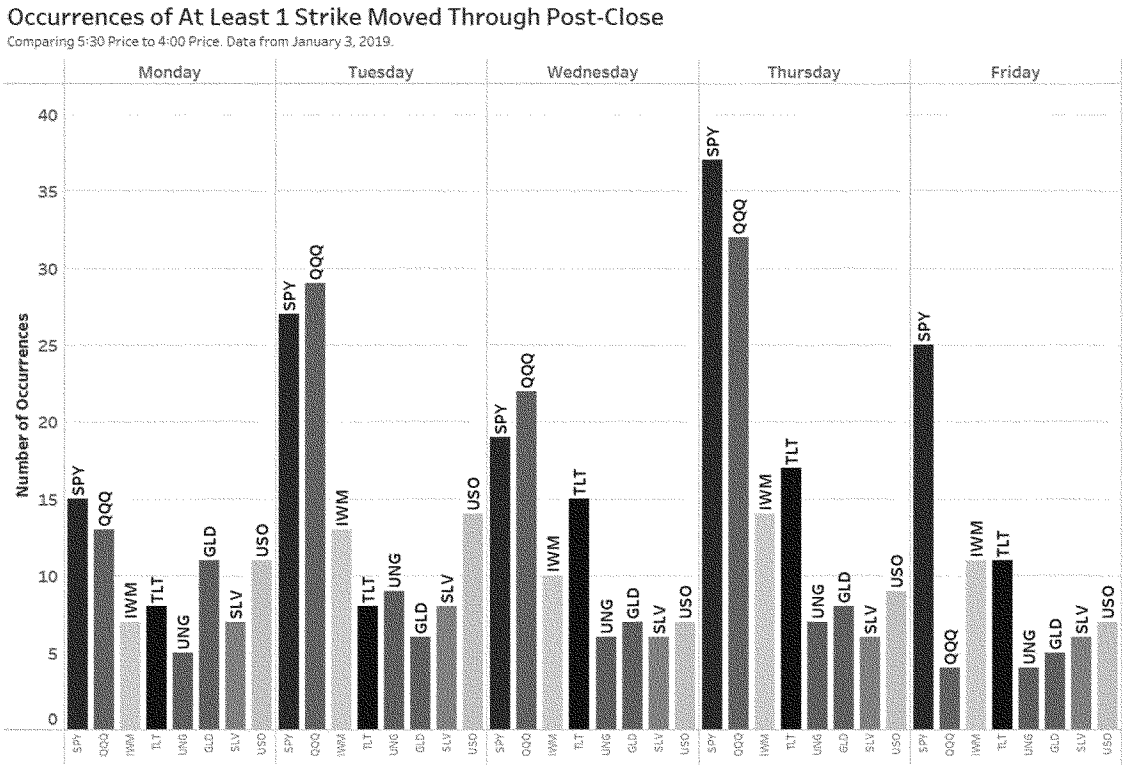




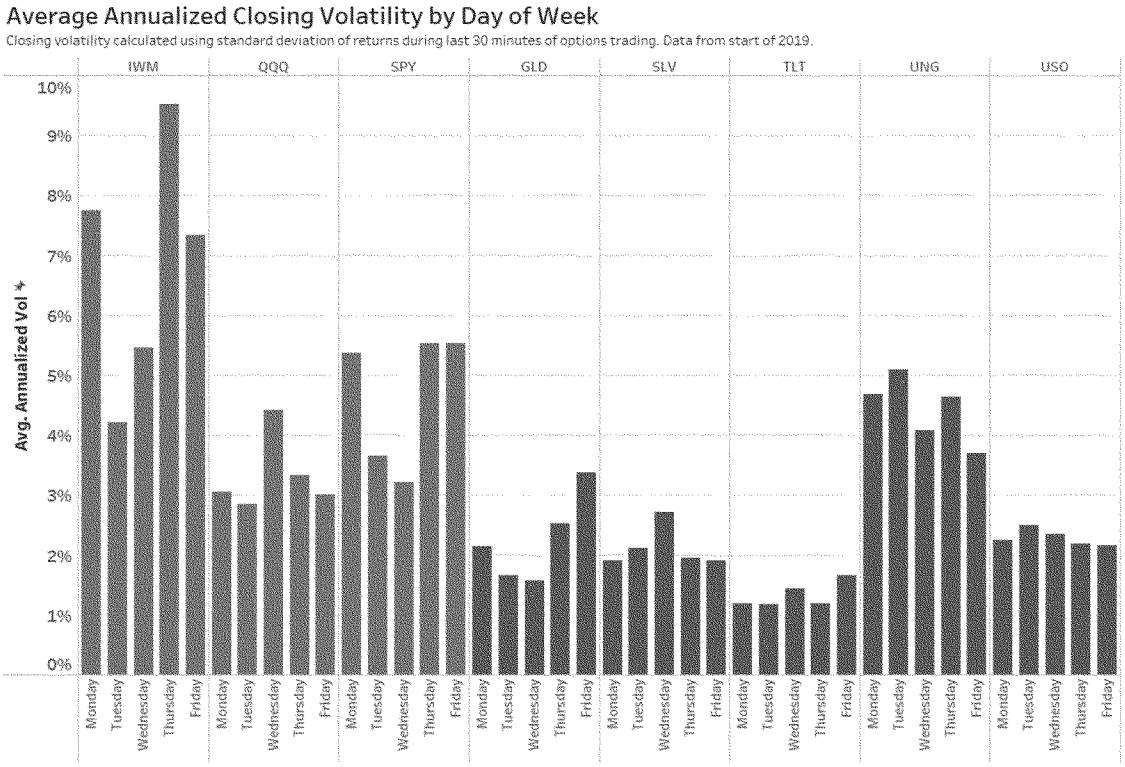


In addition, the below chart shows post-close movements between 4:00–5:30 p.m. Eastern Time, and indicates that GLD, SLV, TLT, UNG, and USO are less volatile (strike-wise) than SPY,

QQQ, and IWM, where alternative expirations exist today.



Furthermore, the below chart shows that GLD, SLV, TLT, UNG, and USO are less volatile in the last 30 minutes of trading than SPY, QQQ, and IWM, which have alternative expirations today.



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The Exchange also notes that GLD, SLV, TLT, USO, and UNG currently trade within ''complexes'' where, in addition to the underlying security, there are multiple instruments available for hedging. Specifically, the GLD complex includes:

.GC—COMEX Gold Futures—CME
.AUD—Gold Daily Futures—ICE
$IAU—iShares Gold Trust
$GLDM—SPDR Gold Minishares Trust
$SGOL—Aberdeen Physical Gold Trust
$BAR—GraniteShares Gold Shares

The SLV complex includes:

.SI—COMEX Silver Futures—CME
.HIO—Silver Daily Futures—ICE
$SIVR—Aberdeen Physical Silver Trust

The USO complex includes:

.CL—CME WTI Light Sweet Crude Futures
.HIO—Brent Crude Futures—ICE
$DBO—Invesco DB Oil Fund
$BNO—United States Brent Oil Trust
$OIL—iPath Pure Beta Crude Oil ETN

The UNG complex includes:

.NG—Henry Hub Natural Gas Futures
ICE—Financial Gas Markets (multi)—ICE
$FCG—First Trust Natural Gas ETF
$UNL—United States 12 mo NG ETF
$HUN—Horizons Natural Gas ETF

Lastly, the TLT complex includes:

CME—Multiple Interest Rate Futures
ICE—Multiple Interest Rate Futures
US Treasury Securities
$IEF—iShares 7–10 Year Treasury Bond ETF
$GOVT—iShares Barclays US Treasury Bond ETF
Numerous highly correlated FICC ETPs

Given the multi-asset class nature of these products and available hedges in highly-correlated instruments, the Exchange believes that its proposal to add Wednesday expirations on these products will not be a strain on liquidity providers.

Because the Exchange proposes to limit the number of Wednesday Expirations for options on USO, UNG, GLD, SLV, and TLT to two expirations beyond the current week, the Exchange believes that the addition of these Wednesday ETP Expirations should encourage Market Makers to continue to deploy capital more efficiently and improve displayed market quality.[13]

Similar to SPY, QQQ and IWM Wednesday Expirations, the introduction of Wednesday ETP Expirations will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to hedge their portfolios with options on commodities (oil, natural gas, gold, and silver) as well as treasury securities, and tailor their investment and hedging needs more effectively.

Implementation

The Exchange proposes to implement this rule change within 30 days after Commission approval. The Exchange will issue an Options Trader Alert to notify Members of the implementation date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Similar to Wednesday expirations in SPY, QQQ, and IWM, the proposal to permit Wednesday ETP Expirations, subject to the proposed limitation of two expirations beyond the current week, would protect investors and the public interest by providing the investing public and other market participants more choice and flexibility to closely tailor their investment and hedging decisions in these options and allow for a reduced premium cost of buying portfolio protection, thus allowing them to better manage their risk exposure.

ISE represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Series for Wednesday SPY, QQQ and IWM expirations. The Exchange also represents that it has the necessary system capacity to support the new expirations. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of these option expirations. As discussed above, the Exchange believes that its proposal is a modest expansion of weekly expiration dates for GLD, SLV, USO, UNG, and TLT given that it will be limited to two Wednesday expirations beyond the current week. Furthermore, the above charts show less volatility in these five products (both in terms of post-close and during the last 30 minutes of trading) compared to SPY, QQQ, and IWM, which have alternative expirations (including Wednesday expirations) today. Lastly, the Exchange believes its proposal will not be a strain on liquidity provides because of the multi-class nature of GLD, SLV, USO, UNG, and TLT and the available hedges in highly-correlated instruments, as described above.

The Exchange believes that the proposal is consistent with the Act as the proposal would overall add a small number of Wednesday ETP Expirations by limiting the addition of two Wednesday expirations beyond the current week. The addition of Wednesday ETP Expirations would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve displayed market quality.[16] The Exchange believes that the proposal will allow Members to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT as these funds are most likely to be utilized by market participants to hedge the underlying asset classes.

Similar to Wednesday SPY, QQQ, and IWM expirations, the introduction of Wednesday ETP Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively, thus allowing them to better manage their risk exposure. Today, ISE lists Wednesday SPY, QQQ, and IWM Expirations.[17]

In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Wednesday ETP Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the

[13] Market Makers include Primary Market Makers and Competitive Market Makers. *See* ISE Options 1, Section 1(a)(21). Today, Primary Market Makers and Competitive Market Makers are required to quote a specified time in their assigned options series. *See* ISE Options 2, Section 5.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] Today, Primary Market Makers and Market Makers are required to quote a specified time in their assigned options series. *See* ISE Options 2, Section 5.

[17] *See* ISE Supplementary Material .03 at Options 4, Section 5.

month in the same way that the Short Term Option Series Program has expanded the landscape of hedging.

There are no material differences in the treatment of Wednesday SPY, QQQ and IWM expirations compared to the proposed Wednesday ETP Expirations. Given the similarities between Wednesday SPY, QQQ and IWM expirations and the proposed Wednesday ETP Expirations, the Exchange believes that applying the provisions in Supplementary Material .03 to Options 4, Section 5 that currently apply to Wednesday SPY, QQQ and IWM expirations is justified. For example, the Exchange believes that allowing Wednesday ETP Expirations and monthly Exchange Traded Product expirations in the same week will benefit investors and minimize investor confusion by providing Wednesday ETP Expirations in a continuous and uniform manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

While the proposal will expand the Short Term Options Expirations to allow Wednesday ETP Expirations to be listed on ISE,[18] the Exchange believes that this limited expansion for Wednesday expirations for options on USO, UNG, GLD, SLV, and TLT will not impose an undue burden on competition; rather, it will meet customer demand. The Exchange believes that Members will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT given multi-class nature of these products and the available hedges in highly-correlated instruments, as described above.

Similar to Wednesday SPY, QQQ and IWM expirations, the introduction of Wednesday ETP Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Wednesday ETP Expirations.[19] Further, the Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2023–11 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–ISE–2023–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2023–11 and should be submitted on or before July 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–13005 Filed 6–16–23; 8:45 am]

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[18] As noted above, Nasdaq, Phlx, BX, GEMX and MRX incorporate ISE Options 4, Section 5 by reference, so the proposed changes herein will apply to those markets as well.

[19] *See supra* note 18.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97708; File No. SR–NYSEARCA–2023–40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37–E To Specify the Exchange's Source of Data Feeds From MEMX LLC

June 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37–E to specify the Exchange's source of data feeds from MEMX LLC (''MEMX'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37–E(d), which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in the Rule to specify that, with respect to MEMX, the Exchange will receive a MEMX direct feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance, and will use the SIP Data Feed as its secondary source for data from MEMX.

The Exchange proposes to make this change operative in the third quarter of 2023, and, in any event, before September 30, 2023. The Exchange proposes to announce the implementation date of this change by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5),[4] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal to update the table in Rule 7.37–E(d) to include the MEMX direct feed will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will enhance competition because providing the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance would enhance transparency and enable investors to better assess the quality of the Exchange's execution and routing services. The Exchange also believes the proposal would enhance competition because it would potentially enhance the performance of its order handling and execution of orders in equity securities by receiving market data directly from MEMX. Finally, the proposed rule change would not impact competition between market participants because it will affect all market participants equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions. You should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–40 and should be submitted on or before July 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–12999 Filed 6–16–23; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97716; File No. SR–PEARL–2023–25]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule To Modify the Step-Up Added Liquidity Rebate

June 13, 2023.

Pursuant to the provisions of 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 June 7, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend the fee schedule (the ''Fee Schedule'') applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section (1)(g) of the Fee Schedule to modify one aspect of the criteria that is required for Equity Members [3] to receive the Step-Up Added Liquidity Rebate (described below). The Exchange initially filed this proposal on May 31, 2023 (SR–PEARL–2023–23). On June 7, 2023, the Exchange withdrew SR–PEARL–2023–23 and refiled this proposal as SR–PEARL–2023–25.

Background

The Exchange currently provides a standard rebate of ($0.0029) [4] per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange. The Exchange also currently offers various volume-based tiers and incentives through which an Equity Member may receive an enhanced rebate for executions of orders that add displayed liquidity to the Exchange by achieving the specified criteria that corresponds to a particular tier/incentive.

In particular, the Exchange adopted a volume based pricing incentive, referred to as the ''Step-Up Added Liquidity Rebate,'' in which qualifying Equity Members receive an enhanced rebate of ($0.0031) per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange.[5] The enhanced rebate provided for by the Step-Up Added Liquidity Rebate applies to Liquidity Indicator Codes AA (adds liquidity, displayed order, Tape A), AB (adds liquidity, displayed order, Tape B) and AC (adds liquidity, displayed order, Tape C).[6]

Currently, Equity Members qualify for the Step-Up Added Liquidity Rebate by achieving a ''Step-Up ADAV as a % of TCV'' [7] of at least 0.03% over the

[3] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[4] Rebates are indicated by parentheses. *See* the General Notes Section of the Fee Schedule.

[5] *See* Securities Exchange Act Release No. 95614 (August 26, 2022), 87 FR 53813 (September 1, 2022) (SR–PEARL–2022–33).

[6] *See* Fee Schedule, Section (1)(b), Liquidity Indicator Codes and Associated Fees.

[7] The term ''Step-Up ADAV as a % of TCV'' means ADAV as a percent of TCV in the relevant baseline month subtracted from the current month's ADAV as a percent of TCV. *See* the Definitions Section of the Fee Schedule. The Exchange notes that the Step-Up Added Liquidity Rebate does not apply to executions of orders in securities priced

Continued

baseline month of July 2022.[8] Average daily added volume (''ADAV'') means average daily added volume calculated as the number of shares added per day and average daily volume (''ADV'') means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.[9] Total consolidated volume (''TCV'') means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.[10] For example, prior to the effectiveness of this proposal, if an Equity Member had an ADAV as a percent of TCV of 0.01% in July 2022, then that Equity Member has to achieve an ADAV as a percent of TCV equal to or greater than 0.04% in any subsequent month in order to qualify for the Step-Up Added Liquidity Rebate.

Proposal

The Exchange now proposes to amend Section (1)(g) of the Fee Schedule to modify one aspect of the required criteria for Equity Members to receive the Step-Up Added Liquidity Rebate. In particular, the Exchange proposes to amend the baseline month from July 2022 to now be May 2023. With the proposed change, Equity Members will qualify for the Step-Up Added Liquidity Rebate by achieving a Step-Up ADAV as a % of TCV of at least 0.03% over the baseline month of May 2023.[11]

Additionally, the Exchange proposes that the criteria to qualify for the Step-Up Added Liquidity Rebate will expire no later than September 29, 2023 (the last trading day for the month of September 2023, referred to herein as the ''sunset period'').[12] The Exchange will issue an alert[13] to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than September 29, 2023 or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period. The Exchange notes that at least one other competing equities exchange recently filed a proposal with a similar ''sunset period'' for one of its enhanced rebates subject to a baseline month comparison with a more recent month.[14]

The Exchange does not propose any other changes to the qualifying criteria for Equity Members to receive the Step-Up Added Liquidity Rebate. The Exchange also does not propose to amend the amount of the enhanced rebate of ($0.0031) for Equity Members that qualify for the Step-Up Added Liquidity Rebate.

The purpose of this proposed change is update the baseline month to a more recent month as volume on the Exchange has increased since the Exchange originally adopted the Step-Up Added Liquidity Rebate. The Exchange believes that with the updated baseline month, the Step-Up Added Liquidity Rebate will continue to provide an incentive for Equity Members to strive for higher ADAV on the Exchange (above their ADAV in the baseline month of May 2023) to receive the enhanced rebate for qualifying executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange. The Exchange believes that, with the proposed change to the baseline month, the Step-Up Added Liquidity Rebate will continue to encourage the submission of additional displayed added liquidity to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market, which benefits all market participants and enhances the attractiveness of the Exchange as a trading venue. The Exchange also notes that MEMX recently filed a proposal to use a more recent month (April 2023) as the baseline month for one of its enhanced Liquidity Provision Tiers (Tier 4) for MEMX's members to receive an enhanced rebate.[15] The purpose of including the proposed sunset period in the Fee Schedule is to provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will expire at the end of the sunset period.

Implementation

The proposed changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(4) of the Act[17] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. As of June 7, 2023, based on publicly available information, no single registered equities exchange currently has more than approximately 14–15% of the total market share of executed volume of equities trading for the month of June 2023.[18] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represents approximately 2.09% of the overall market share as of

below $1.00 per share or executions of orders that constitute added non-displayed liquidity.

[8] The Exchange currently uses a baseline ADAV of 0.00% of TCV for firms that become Equity Members of the Exchange after July 2022 for the purpose of the Step-Up Added Liquidity Rebate calculation. *See supra* note 5.

[9] The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a scheduled early market close, and on the ''Russell Reconstitution Day'' (typically the last Friday in June). Routed shares are not included in the ADAV or ADV calculation. With prior notice to the Exchange, an Equity Member may aggregate ADAV or ADV with other Equity Members that control, are controlled by, or are under common control with such Equity Member (as evidenced on such Equity Member's Form BD). *See* the Definitions Section of the Fee Schedule.

[10] The Exchange excludes from its calculation of TCV volume on any given day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours, on any day with a scheduled early market close, and on the ''Russell Reconstitution Day'' (typically the last Friday in June). *See* the Definitions Section of the Fee Schedule.

[11] The Exchange will continue use a baseline ADAV of 0.00% of TCV for firms that become Equity Members of the Exchange after May 2023 for the purpose of the Step-Up Added Liquidity Rebate calculation.

[12] The Exchange notes that at the end of the sunset period, the Step-Up Added Liquidity Rebate will no longer apply unless the Exchange files another 19b–4 Filing with the Commission to amend the criteria terms or update the baseline month to a more recent month.

[13] *See, e.g.,* ''MIAX Pearl Equities Exchange—June 1, 2023 Fee Changes,'' *available at https://www.miaxglobal.com/alert/2023/05/31/miax-pearl-equities-exchange-june-1-2023-fee-changes.*

[14] *See* Securities Exchange Act Release No. 97462 (May 9, 2023), 88 FR 31077 (May 15, 2023) (SR–MEMX–2023–08); *see also* MEMX LLC (''MEMX'') Fee Schedule, Liquidity Provision Tiers, Tier 4, *available at https://info.memxtrading.com/fee-schedule/* (last visited June 7, 2023).

[15] *See id.*

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] *See* the ''Market Share'' Section of the Exchange's website, *available at https://www.miaxglobal.com/* (last visited June 7, 2023).

June 7, 2023 for the month of June 2023.[19] 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, 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.'' [20]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional orders that add liquidity to the Exchange, which the Exchange believes would deepen liquidity and promote market quality on the Exchange to the benefit of all market participants.

The Exchange notes that volume-based incentives and discounts (such as tiers) have been widely adopted by exchanges (including the Exchange), and believes they are reasonable, equitable and not unfairly discriminatory because they are available to all Equity Members on an equal basis, provide additional benefits or discounts that are reasonably related to the value of an exchange's market quality associated with higher levels of market activity (such as higher levels of liquidity provision and/or growth patterns), and the introduction of higher volumes of orders into the price and volume discovery process.

The Exchange believes its proposal to update the baseline month criteria for the Step-Up Added Liquidity Rebate is reasonable, equitably allocated and not unfairly discriminatory because volume on the Exchange has increased since the Exchange originally adopted the Step-Up Added Liquidity Rebate. The Exchange believes that with the updated baseline month, the Step-Up Added Liquidity Rebate will continue to provide an incentive for Equity Members to strive for higher ADAV on the Exchange (above their ADAV in the baseline month of May 2023) to receive the enhanced rebate for qualifying executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange. The Exchange believes that the proposal is reasonable because even with the updated baseline month, the Step-Up Added Liquidity Rebate will continue to encourage the submission of added displayed liquidity to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market, which benefits all market participants and enhances the attractiveness of the Exchange as a trading venue.

The Exchange believes that the Step-Up Added Liquidity Rebate, as modified by the proposed change to the baseline month, is reasonable, equitable and not unfairly discriminatory as the Step-Up Added Liquidity Rebate will continue to be available to all Equity Members on an equal basis, and is reasonably designed to encourage Equity Members to maintain or increase their order flow in liquidity-adding volume. The Exchange believes this will continue to promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members and market participants. The Exchange also notes that MEMX recently filed a proposal to use a more recent month (April 2023) as the baseline month for one of its enhanced Liquidity Provision Tiers (Tier 4) for MEMX's members to receive an enhanced rebate.[21]

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to include the sunset period in the Fee Schedule for the Step-Up Added Liquidity Rebate because it will provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will expire at the end of the sunset period. This will allow Equity Members to take into account that the enhanced rebate provided for by the Step-Up Added Liquidity Rebate may be discontinued at the end of sunset period unless the Exchange announces otherwise and files a revised proposal with the Commission. The Exchange further notes that it will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than September 29, 2023 or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period. At least one other competing equities exchange provided a similar sunset period in its fee schedule for one of its enhanced rebates subject to a baseline month comparison with a more recent month.[22]

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to use a baseline ADAV of 0.00% of TCV for firms that become Equity Members of the Exchange after May 2023 for the purpose of the Step-Up Added Liquidity Rebate calculation because it will provide an additional incentive for prospective firms to become Equity Members. The Exchange believes this will incentivize new Equity Members to trade on the Exchange, which will add to price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members and market participants. The Exchange notes that the proposed Step-Up Added Liquidity Rebate will not adversely impact any Equity Member's ability to qualify for reduced fees or enhanced rebates offered under other pricing tiers/incentives on the Exchange. Should an Equity Member not meet the required criteria, the Equity Member will merely not receive the corresponding enhanced rebate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposal will impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the Step-Up Added Liquidity Rebate, as modified by this proposal, will continue to incentivize Equity Members to submit additional orders that add liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the

[19] *See id.*

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

[21] *See supra* note 14.

[22] *See id.*

attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange.

The Exchange also believes that using a baseline ADAV of 0.00% of TCV for firms that become Equity Members of the Exchange after May 2023 for the purpose of the Step-Up Added Liquidity Rebate calculation will incentivize new Equity Members to trade on the Exchange, which will add to price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members and market participants. Greater liquidity benefits all Equity Members by providing more trading opportunities and encourages Equity Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. As described above, the opportunity to qualify for the proposed new Step-Up Added Liquidity Rebate, and thus receive the proposed rebate for qualifying executions of orders in securities priced at or above $1.00 per share that add displayed volume will continue to be available to all Equity Members that meet the associated volume requirement, and the Exchange believes the proposed update to the baseline month is reasonably related to the enhanced market quality that the Step-Up Added Liquidity Rebate is designed to promote. As such the Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

The Exchange believes its proposal to include the sunset period in the Fee Schedule for the Step-Up Added Liquidity Rebate will not impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act because it will provide clarity to Equity Members that, unless the Exchange determines to amend or otherwise modify the Step-Up Added Liquidity Rebate, the Step-Up Added Liquidity Rebate will be discontinued at the end of the sunset period. This will allow Equity Members to take into account that the enhanced rebate provided for by the Step-Up Added Liquidity Rebate may be discontinued at the end of sunset period unless the Exchange announces otherwise. The Exchange further notes that it will issue an alert to market participants should the Exchange determine that the Step-Up Added Liquidity Rebate will expire earlier than September 29, 2023 or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Added Liquidity Rebate prior to the end of the sunset period. At least one other competing equities exchange provided a similar sunset period in its fee schedule for one of its enhanced rebates subject to a baseline month comparison with a more recent month.[23]

Intermarket Competition

The Exchange believes its proposal will benefit competition, and the Exchange notes that it operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, as of June 7, 2023, based on publicly available information, no single registered equities exchange currently has more than approximately 14–15% of the total market share of executed volume of equities trading for the month of June 2023.[24] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represents approximately 2.09% of the overall market share as of June 7, 2023 for the month of June 2023.[25] Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including with respect to the criteria for Equity Members to achieve the Step-Up Added Liquidity Rebate, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem rebate criteria at those other venues to be more favorable.

As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to continue to encourage additional order flow to the Exchange through a volume-based incentive that is comparable to the criteria for volume-based incentives adopted by at least one other competing exchange which also updated its baseline month to a more recent month for a specific enhanced rebate that adds liquidity to that market.[26] Accordingly, the Exchange believes that its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. circuit stated: ''[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 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 possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .''.[28] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

[23] *See id.*

[24] *See* the ''Market Share'' Section of the Exchange's website, *available at https://www.miaxglobal.com/* (last visited June 7, 2023).

[25] *See id.*

[26] *See supra* note 14.

[27] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[28] *See NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

19(b)(3)(A)(ii) of the Act,[29] and Rule 19b–4(f)(2)[30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–25 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–PEARL–2023–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2023–25 and should be submitted on or before July 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–13002 Filed 6–16–23; 8:45 am]

BILLING CODE 8011–01–P

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 240.19b–4(f)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97715; File No. SR–NYSEAMER–2023–30]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 7.37E To Specify the Exchange's Source of Data Feeds From MEMX LLC

June 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.37E to specify the Exchange's source of data feeds from MEMX LLC (''MEMX'') for purposes of order handling, order execution, order routing, and regulatory compliance. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the use of data feeds table in Rule 7.37E(d), which sets forth on a market-by-market basis the specific securities information processor (''SIP'') and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the Exchange proposes to amend the table in Rule 7.37E(d) to specify that, with respect to MEMX, the Exchange will receive a MEMX direct feed as its primary source of data for order handling, order execution, order routing, and regulatory compliance, and will use the SIP Data Feed as its secondary source for data from MEMX.

The Exchange proposes to make this change operative in the third quarter of 2023, and, in any event, before September 30, 2023. The Exchange proposes to announce the implementation date of this change by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5),[4] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

public interest. Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal to update the table in Rule 7.37E(d) to include the MEMX direct feed will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific SIP and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will enhance competition because providing the public and market participants with up-to-date information about the data feeds the Exchange will use for the handling, execution, and routing of orders, as well as for regulatory compliance would enhance transparency and enable investors to better assess the quality of the Exchange's execution and routing services. The Exchange also believes the proposal would enhance competition because it would potentially enhance the performance of its order handling and execution of orders in equity securities by receiving market data directly from MEMX. Finally, the proposed rule change would not impact competition between market participants because it will affect all market participants equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2023–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2023–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions. You should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2023–30 and should be submitted on or before July 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–13001 Filed 6–16–23; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97720; File No. SR–CboeBZX–2023–037]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

June 13, 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 June 1, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''BXZ Equities'') by eliminating the Tape A Incentive Tier. The Exchange proposes to implement these changes effective June 1, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 15% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity.[4] For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.[5] Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Tape A Incentive Tier

Under footnote 12 of the Fee Schedule, the Exchange currently offers the Tape A Incentive Tier, which provides an enhanced rebate for Members' qualifying orders yielding fee code V[6] where a Member reaches certain add volume-based criteria, including ''growing'' its volume over a certain baseline month. The Exchange is proposing to discontinue the Tape A Incentive Tier, as the Exchange no longer wishes to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)[10] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to eliminate the Tape A Incentive Tier is reasonable because the Exchange is not required to maintain this tier or provide Members an opportunity to receive enhanced rebates. The Exchange believes the proposal to eliminate this tier is also equitable and not unfairly discriminatory because it applies to all Members (*i.e.,* the tier will not be available for any Member). The Exchange also notes that the proposed rule change to remove this tier merely results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate the Tape A Incentive Tier enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (May 19, 2023), available at *https://www.cboe.com/us/equities/market_statistics/.*

[4] *See* BZX Equities Fee Schedule, Standard Rates.

[5] *Id.*

[6] Fee code V is appended to displayed orders adding liquidity to BZX in Tape A securities.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change to eliminate the Tape A Incentive Tier will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as in, the tier will no longer be available to any Member.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% of the market share.[11] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[13] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and paragraph (f) of Rule 19b–4 [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–037 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–CboeBZX–2023–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–037 and should be submitted on or before July 11, 2023.

[11] *Supra* note 3.

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[13] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–13006 Filed 6–16–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97717; File No. SR–NYSEAMER–2023–27]

Self-Regulatory Organizations; NYSE American LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Change To Amend Rule 915 (Criteria for Underlying Securities) To Accelerate the Listing of Options on Certain IPOs

June 13, 2023.

On April 21, 2023, NYSE American LLC (''NYSE American'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE American Rule 915 (Criteria for Underlying Securities) to accelerate the listing of options on certain initial public offerings. The proposed rule change was published for comment in the **Federal Register** on May 1, 2023.[3] One comment letter was received on the proposed rule change.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 15, 2023. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,[6] the Commission designates July 30, 2023 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEAMER–2023–27).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–13003 Filed 6–16–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 88 FR 38117, June 12, 2023.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, June 15, 2023 at 9:15 a.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, June 15, 2023 at 9:15 a.m. has been changed to Thursday, June 15, 2023 at 7:30 p.m.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

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

Dated: June 15, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–13171 Filed 6–15–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97718; File No. SR–NYSE–2023–20]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

June 13, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 30, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to institute Ratio Threshold Fees. The Exchange proposes to implement the fee change effective June 1, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Price List to institute Ratio Threshold

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97374 (Apr. 25, 2023), 88 FR 26634.

[4] *See* Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, Commission (May 16, 2023), *available at https://www.sec.gov/comments/sr-nyseamer-2023-27/srnyseamer202327.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Fees, which would be applied to orders ranked Priority 2—Display Orders and to shares of Auction-Only Orders [4] that have a disproportionate ratio of orders that are not executed.

The Exchange proposes to implement the fee change effective June 1, 2023.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [6] Indeed, cash equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, based on transaction fees and credits. Accordingly, the Exchange's fees, including the proposed Ratio Threshold Fee, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The purpose of the proposed rule change is to encourage efficient usage of Exchange systems by member organizations, which the Exchange believes is in the best interests of all member organizations and investors who access the Exchange. Unproductive share entry and cancellation practices, such as when member organizations flood the market with displayed orders that are frequently and/or rapidly cancelled, do little to support meaningful price discovery and may create investor confusion about the extent of trading interest in a security. The Exchange further believes that the inefficient order entry practices of a small number of member organizations may place excessive burdens on Exchange systems and on the systems of member organizations that ingest market data, while also negatively impacting the usefulness of market data feeds that transmit each order and subsequent cancellation.[11] Member organizations with an excessive ratio of cancelled to executed orders do little to support meaningful price discovery.

The Exchange also believes that market quality can be improved through the imposition of a fee on market participants that have a disproportionate ratio of unexecuted orders. The Exchange believes that the proposed rule change would promote a more efficient marketplace and enhance the trading experience of all member organizations by encouraging them to more efficiently participate in the marketplace while at the same time allowing for the provision of liquidity in volatile, high-volume markets and providing member organizations with order management flexibility without being subject to the proposed fee. Unnecessary ratios of executed orders due to cancellations can have a detrimental effect on all market participants who are potentially compelled to upgrade capacity as a result of the bandwidth usage of other participants.

All member organizations are free to manage their order and message flow consistent with their business models, and the vast majority of member organizations are able to do so without even approaching the ratio thresholds proposed for the fee, as described below. The Exchange believes that the proposed rule change would promote a more efficient marketplace, encourage liquidity provision and enhance the trading experience of all member organizations by imposing a financial incentive for the small number of member organizations that are currently exceeding the proposed ratio thresholds. The Exchange notes that its technology and infrastructure is adequately able to handle high-volume and high-volatility situations for member organizations that exceed the thresholds established by the Exchange. As described below, the proposed fee would take into consideration the number of shares that are executed or trades that occur.

As noted, only a small number of member organizations are executing orders at a disproportionately low ratio to the number of orders that have been entered and, thus, the impact of the proposed fee would be narrow and limited to those member organizations. These member organizations can avoid the proposed fee by altering their behavior. The Exchange believes the proposed fee would encourage member organizations that could be impacted to modify their practices in order to avoid the fee, thereby improving the market for all participants. Accordingly, the Exchange does not expect the proposed fee to result in meaningful, if any, revenue. Prior to the submission of the proposed fee change, the Exchange engaged in discussions with member organizations that could be impacted by the proposed fee based on their prior trading behavior so that they may enhance the efficiency of their order entry practices and avoid the fee. The Exchange also provided notice to member organizations generally regarding the proposed fee.[12]

[4] *See* Rule 7.31(c) and note 15, *infra.*

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[6] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[7] *See* Cboe U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[8] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

[11] *See generally* Recommendations Regarding Regulatory Reponses to the Market Events of May 6, 2010, Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues, at 11 (February 18, 2011) (''The SEC and CFTC should also consider addressing the disproportionate impact that [high frequency trading] has on Exchange message traffic and market surveillance costs. . . . The Committee recognizes that there are valid reasons for algorithmic strategies to drive high cancellation rates, but we believe that this is an area that deserves further study. At a minimum, we believe that the participants of those strategies should properly absorb the externalized costs of their activity.'').

[12] *See* NYSE Equities Trader Update dated May 30, 2023, available at *https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000564614/NYSE_Notice_Fee_Change_202306.pdf.*

Proposed Rule Change

As proposed, the Ratio Threshold Fee would apply to orders ranked Priority 2—Display Orders and to shares of Auction-Only Orders during the period when Auction Imbalance information is being disseminated.[13]

Ratio Threshold for Priority 2—Display Orders (''RT—Display Fee'')

For orders ranked Priority 2—Display Orders, member organizations that have characteristics indicative of inefficient order entry practices would be charged an RT—Display Fee on a monthly basis.[14] For purposes of determining the RT—Display Fee:

- The ''Weighted Order Total'' is the total number of orders ranked Priority 2—Display Orders entered by that member organization in a month, as adjusted by a ''Weighting Factor.'' The Weighted Order Total calculation excludes (i) all orders in securities in which that member organization is registered as a Designated Market Makers (''DMM''), and (ii) all orders for a member organization that is registered as a DMM, a market maker, a Supplemental Liquidity Provider (''SLP'') or as an SLP registered as an Exchange market maker (''SLMM'') in 100 or more securities.
- The ''Weighting Factor'' applied to each order based on its price in comparison to the national best bid or best offer (''NBBO'') at the time of order entry is:

Order's price versus NBBO at entry	Weighting factor
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

For example, an order more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total but would be included in the ''executed'' orders component of the Order Entry Ratio if they execute in full or part.

- The ''Order Entry Ratio'' would be calculated by dividing a member organization's Weighted Order Total by the greater of (i) the number of orders ranked Priority 2—Display Orders that execute in full or in part or (ii) the number one (1).[15]
- ''Excess Weighted Orders'' would be calculated by subtracting (i) the Weighted Order Total that would result in the member organization having an Order Entry Ratio of 100 from (ii) the member organization's actual Weighted Order Total.

A member organization with a daily average Weighted Order Total of 100,000 or more [16] during a month would be charged the RT—Display Fee, which is calculated by multiplying the Applicable Rate in the chart below by the number of Excess Weighted Orders.

Member organizations that exceed the Order Entry Ratio threshold of 1,000:1 would pay a fee of $0.01 on each order that caused the member organization to surpass the threshold. member organizations that exceed the Order Entry Ratio threshold of 100:1 but less than 1,000:1 would pay a fee of $0.005 on all orders that caused member organization's ratio to exceed 100:1.

Order entry ratio	Applicable rate
0–100	$0.00
101–1,000	0.005
More than 1,000	0.01

The following example illustrates the calculation of the Order Entry Ratio and resulting RT—Display Fee:

- In a month, Member Organization A enters 35,000,000 displayed, liquidity-providing orders:
  - 20,000,000 of the orders are in securities in which Member Organization A is an DMM or registered as a DMM, a market maker, SLP, which assumes is 100 securities or more. These orders are excluded from the calculation.
  - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
  - 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- The Weighted Order Total is $(10{,}000{,}000 \times 0) + (5{,}000{,}000 \times 2) = 10{,}000{,}000$.
- Of the 15,000,000 orders included in the calculation, 90,000 are executed in full or in part.
- The Order Entry Ratio is 10,000,000 (Weighted Order Total)/90,000 (executed orders total) = 111

In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since 9,000,000/90,000 = 100. Accordingly, the Excess Weighted Orders would be 10,000,000 − 9,000,000 = 1,000,000.

The RT—Display Fee charged to a member organization would then be determined by multiplying the Applicable Rate by the number of Excess Weighted Orders.

In the example above, because Member Organization A had an Order Entry Ratio of 111, the Applicable Rate would be $0.005. Accordingly, the monthly RT—Display Fee would be 1,000,000 (Excess Weighted Orders) × $0.005 (Applicable Rate) = $5,000.

Ratio Threshold for Auction-Only Orders During the Period When Auction Imbalance Information is Being Disseminated for a Core Open Auction or Closing Auction (''RT—Auction Fee'')

For Auction-Only Orders,[17] member organizations with an average daily number of orders of 10,000 or more [18] would be charged an RT—Auction Fee on a monthly basis.[19] For purposes of determining the RT—Auction Fee:

- The number of ''Ratio Shares'' is the average daily number of shares of Auction-Only Orders that are cancelled by the member organization during the Closing Auction Imbalance Freeze Time [20] at a disproportionate ratio to the average daily number of shares executed by that member organization. Orders

[13] The Exchange proposes the non-substantive change of removing the colon following ''Routing Fees'' in the heading beneath which the proposed Ratio Threshold Fee would be inserted.

[14] The proposed fee focuses on displayed orders because such orders utilize more system resources than non-displayed orders.

[15] In the case where no orders entered by a member organization executed, this component of the ratio would be assumed to be 1 so as to avoid the impossibility of dividing by zero.

[16] The Exchange believes it is reasonable to exclude member organizations with a daily average Weighted Order Total of less than 100,000 during the month because member organizations with an extremely low volume of entered orders has only a *de minimis* impact on Exchange systems.

[17] An Auction-Only Order is a Limit or Market Order that is to be traded only within an auction pursuant to Rule 7.35 Series (for Auction-Eligible Securities) or routed pursuant to Rule 7.34 (for UTP Securities). *See* Rule 7.31(c). Auction-Only Orders are orders submitted by member organizations before the Core Trading Session begins (for the Core Open Auction) or during a halt or pause (for a Trading Halt Auction). *See id.*

[18] The Exchange believes it is reasonable to exclude member organizations with average daily orders of less than 10,000 during the month because a member organization with an extremely low volume of entered orders has only a *de minimis* impact on Exchange systems.

[19] Similar to orders ranked Priority 2—Display Orders, the proposed fee focuses on Auction-Only Orders because a disproportionate ratio of such orders that are not executed utilize more system resources, including updates to the Auction Imbalance Information as such orders are entered and cancelled, than other order entry and cancellation practices of member organizations. Accordingly, for Auction-Only Orders, Ratio Shares include shares of Auction-Only Orders executed in a disproportionate ratio to the quantity of shares entered during the period when Auction Imbalance Information is being disseminated for the Core Open Auction and Closing Auction.

[20] ''Closing Auction Imbalance Freeze Time'' means 10 minutes before the scheduled end of Core Trading Hours. *See* Rule 7.35(a)(8).

ranked Priority 2—Display Orders designated for the Core Trading Session only that are entered during the period when Auction Imbalance Information for the Core Open Auction is being disseminated are included in the Ratio Shares calculation.[21] All orders entered by a member organization acting as a DMM are not included in the calculation of Ratio Shares.

• The ''Ratio Shares Threshold'' is a member organization's Ratio Shares divided by the average daily executed shares by the member organization.

The Exchange proposes to charge the RT—Auction Fee for Auction-Only Orders during the period when Auction Imbalance Information is being disseminated.[22]

The Exchange proposes that it would not charge the RT—Auction Fee if Auction-Only Orders have a Ratio Shares Threshold of less than 25. If the Ratio Shares Threshold is greater than or equal to 25, the fee would be as follows:

• No Charge for member organizations with an average of fewer than 10 million Ratio Shares per day.

• $5.00 per million Ratio Shares for member organizations with an average of 10 million to 100 million Ratio Shares per day.

• $15.00 per million Ratio Shares for member organizations with an average of more than 100 million Ratio Shares per day.

Member organizations would be charged for the entirety of their Ratio Shares at a rate of $5.00 per million Ratio Shares if the member organization has an average of 10 million to 100 million Ratio Shares; and $15.00 per million Ratio Shares if the member organization has an average of more than 100 million Ratio Shares.

The following example illustrates the calculation of the RT—Auction Fee for Auction-Only Orders.

• In a month, Member Organization B enters a daily average of 100,000 Auction-Only Orders for the Closing Auction, with an average size of 600 shares.

• Thus, Member Organization B's daily average number of shares submitted in Auction-Only Orders for the Closing Auction is 60,000,000 shares (100,000 orders × 600 shares).

• During the period when Closing Auction Imbalance Information is being disseminated, Member Organization B cancels a daily average of 59,000,000 shares and executes a daily average of 1,000,000 shares in the Closing Auction.

• Member Organization B has an average daily Ratio Shares quantity of 58,000,000 (59,000,000 − 1,000,000), and a Ratio Shares Threshold of 58 (58,000,000/1,000,000).

• Since the Ratio Shares Threshold is greater than 25 and the average daily Ratio Shares quantity is between 10 million and 100 million, Member Organization B would be subject to the proposed fee of $5.00 per million Ratio Share, resulting in a fee of $6,090 assuming a 21-day month (58,000,000/1,000,000 × $5.00 × 21).

As noted above, the purpose of the fee is not the generation of revenue but rather to provide an incentive for a small number of member organizations to change their order entry practices. Therefore, the Exchange also proposes to limit the amount a member organization would pay by adopting a cap such that the combined RT—Display Fee and RT—Auction Fee for a member organization would not exceed $1,000,000 per month. Based on an analysis of the impact to member organizations, the Exchange does not believe that many member organizations would be impacted. For example, the median Order Entry Ratio across all member organizations was 0.59 in April 2023 and 0.62 in May 2023 [23] for orders ranked Priority 2—Display Orders. The median Ratio Shares Threshold across all ETP Holders was −0.918 in April 2023 and −0.919 in May 2023 [24] Auction-Only Orders. The negative Ratio Shares Threshold indicates that the median ETP Holder has more executed shares than Ratio Shares.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[26] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee would help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because it is designed to reduce the numbers of orders and shares being entered and then cancelled prior to an execution.

The Proposed Changes Are Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [28] Indeed, equity trading is currently dispersed across 13 exchanges,[29] numerous alternative trading systems,[30] and broker-dealer

[21] For purposes of the Ratio Threshold Fees, orders ranked Priority 2—Display Orders designated for the Core Trading Session only that are cancelled during the period when Auction Imbalance Information for the Core Open Auction is being disseminated are included in the calculation of the proposed RT—Auction Fee. The Exchange proposes to include such orders as Auction-Only Orders for purposes of such fee because prior to the Core Open Auction, such orders would not be eligible to trade and therefore would not be included in the RT—Display Fee calculation, yet such orders would be included in the imbalance calculation for the Core Open Auction.

[22] *See* Rules 7.35A(e)(1) (Core Open Auction Imbalance Information begins at 8:00 a.m.); 7.35B(e)(1) (Closing Auction Imbalance Information begins at the Closing Auction Imbalance Freeze Time); Rule 7.35(a)(8) (Closing Auction Imbalance Freeze Time means 10 minutes before the scheduled end of Core Trading Hours).

[23] Through May 17, 2023.

[24] Through May 17, 2023.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4) and (5).

[27] *See* Regulation NMS, *supra* note 4, 70 FR at 37499.

[28] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[29] *See* Cboe U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[30] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is

internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[31] The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, the Exchange's fees, including the proposed Ratio Threshold Fee, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange believes that the proposed Ratio Threshold Fees are reasonable because they are designed to achieve improvements in the quality of displayed liquidity—both intraday and in advance of auctions—on the Exchange for the benefit of all market participants. In addition, the proposed fees are reasonable because market participants may readily avoid the fee by adjusting their order entry and/or cancellation practices, which would result in more orders or shares being cancelled before execution.

The Exchange believes it is also reasonable to charge a Ratio Threshold Fee on the basis of the number of orders ranked Priority 2—Display Orders and to charge a Ratio Threshold Fee that is based on the number of shares of Auction-Only Orders because, as a general matter, displayed orders entered on the Exchange have fewer shares associated with each order whereas, the share quantity of an Auction-Only Order typically is much larger. The Exchange believes that applying the Ratio Threshold Fee to orders ranked Priority 2—Display Orders based on the number of shares of each order would not promote efficient order entry practice by member organizations in a meaningful way because, as noted above, the average size of each displayed order is relatively small in terms of shares. Therefore, to properly incentivize member organizations, the Exchange believes assessing the proposed fee based on orders, rather than number of shares, is more appropriate. The Exchange further believes that it is reasonable to apply the proposed fee to Auction-Only Orders only during the period when Auction Imbalance Information is being disseminated, because such orders are not displayed prior to such information being disseminated. By contrast, cancelling shares of Auction-Only Orders during the period when Auction Imbalance Information is being disseminated could result in excessive and unnecessary changes to imbalance information.

Although only a small number of member organizations could be subject to the proposed fee, the Exchange believes that the proposed fee is necessary because of the negative externalities that such behavior imposes on others through order entry practices resulting in a disproportionate ratio of executed orders or shares to those that are not executed. Accordingly, the Exchange believes that it is fair to impose the fee on these market participants in order to incentivize them to modify their practices and thereby benefit the market. Importantly, whether a member organization would be subject to the proposed fee would be independent of any determination of whether such member organization is complying with Exchange and federal rules, including those governing order entry and cancellation.

The Exchange believes that the proposed combined fee cap of $1,000,000 is reasonable as it would reduce the impact of the fee on member organizations. As noted above, the purpose of the proposed fee is not to generate revenue for the Exchange, but rather to provide an incentive for a small number of member organizations to change their order entry and/or cancellation behavior. As a general principal, the Exchange believes that greater participation on the Exchange by member organizations improves market quality for all market participants. Thus, in adopting the proposed fee, and the cap, the Exchange balanced the desire to improve market quality against the need to discourage inefficient order entry and/or cancellation practices.

The Exchange believes the proposed rule change is designed to promote just and equitable principles of trade by adopting a fee that is comparable to a fee charged by the NASDAQ Stock Market LLC (''Nasdaq'') [32] and by both the options and equities markets of the Exchange's affiliate NYSE Arca, Inc. (''NYSE Arca'').[33]

With respect to the RT—Display Fee, the proposed fee is substantially the same as the display fee charged on NYSE Arca's equities market and the Excess Order Fee on Nasdaq, and would subject member organizations to the fee if they exceed the Order Entry Ratio thresholds established by the Exchange, which thresholds are also substantially the same as those on NYSE Arca and Nasdaq. Additionally, the proposed RT—Auction Fee, similar to the RT—Display fee, is intended to disincentivize a disproportionate ratio of orders that are not executed. Therefore, the RT—Auction Fee focuses on Auction-Only Orders because a disproportionate ratio of such orders that are not executed uses more system resources, including updates to the Auction Imbalance Information as such orders are entered and cancelled, than other order entry and cancellation practices of member organizations. Finally, the RT—Auction Fee, unlike the RT—Display Fee which would be assessed on a tiered basis, would be applied on the entirety of each member organization's Ratio Shares, which, as defined above, is calculated net of shares that have been executed, and therefore, the fee would be applied only to those shares that remain unexecuted. The Exchange believes it would be appropriate to assess the fee in a non-tiered manner because Auction-Only Orders generally have a larger number of shares associated with each order than orders ranked Priority 2—Display Orders and therefore, the number of shares that could be impacted could increase significantly in a short period of time since the auction imbalance period only lasts for one hour. Additionally, the submission, and subsequent cancellation, of Auction-Only Orders during the imbalance dissemination period could lead to disruption in trading as each order, which could contain a large number of shares, would require the Exchange to update and disseminate the new order information on its market data feed. Accordingly, the Exchange believes assessing the fee on a share basis is appropriate because it would more effectively disincentivize member organizations from submitting a disproportionate ratio of shares that are not executed.

available at https://www.sec.gov/foia/docs/atslist.htm.

[31] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[32] *See* Nasdaq Stock Market LLC Equity Rule 7, Section 118(m).

[33] *See* NYSE Arca Equities Fees and Charges, Ratio Threshold Fee, at available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf,* and NYSE Arca Options Fees and Charges, Ratio Threshold Fee, at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.* On the NYSE Arca options marketplace, the Ratio Threshold Fee is charged to OTP Holders based on the number of orders entered compared to the number of executions received in a calendar month.

The Proposal Is an Equitable Allocation of Fees

For the reasons noted above, the Exchange believes the proposed fees are also equitably allocated among its market participants. Although only a small number of member organizations may be subject to the proposed fees based on their current trading practices, any member organization could determine to change their order entry practices at any time, and the proposed fees would be applied to any member organization that determined to engage in such inefficient order entry practices. The proposed fee is therefore designed to encourage better displayed order entry practices by all member organizations for the benefit of all market participants. Moreover, the purpose of the proposal is not to generate revenue for the Exchange, but rather to provide an incentive for a small number of member organizations to change their order entry and/or cancellation behavior.

The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be subject to the proposed fees. As noted above, the Exchange believes that because having a disproportionate ratio of unexecuted orders is a problem associated with a relatively small number of member organizations, the impact of the proposal would be limited to those member organizations, and only if they do not alter their trading practices. The Exchange believes the proposal would encourage member organizations that could be impacted to modify their practices in order to avoid the fee, thereby improving the market for all participants.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value, and are free to transact on competitor markets to avoid being subject to the proposed fees. The Exchange believes that the proposed fees neither target nor will they have a disparate impact on any particular category of market participant. The Exchange believes that the proposal change does not permit unfair discrimination because it would be applied to all similarly situated member organizations, who would all be subject to the proposed fee on an equal basis.

The Exchange further believes that it is not unfairly discriminatory to exclude DMMs from the proposed RT—Display Fee in securities in which they are registered, or DMMs, non-DMM market makers, SLPs or SLMMs if they are registered in more than 100 securities. Each of these market participants have independent obligations to maintain a two-sided quotation in their registered securities. In order to meet this obligation, these member organizations are more likely to need to cancel their resting orders so that they can update their quotes. The Exchange believes that such independent obligation to maintain a fair and orderly market outweighs any impact such cancellations would have on Exchange systems.

Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[34] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed fee would encourage member organizations to modify their order entry and/or cancellation practices so that fewer orders or shares are cancelled without resulting in an execution, thereby promoting price discovery and transparency and enhancing order execution opportunities on the Exchange.

Intramarket Competition. The Exchange believes the proposed Ratio Threshold Fees would not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees are designed to encourage member organizations to submit orders or shares into the market that are actionable. Further, the proposal would apply to all member organizations on an equal basis, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. To the extent that these purposes are achieved, the Exchange believes that the proposal would serve as an incentive for member organizations to modify their order entry practices, thus enhancing the quality of the market and increase the volume of orders or shares directed to, and executed on, the Exchange. In turn, all the Exchange's market participants would benefit from the improved market liquidity.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor other exchange and off-exchange venues. In such an environment, the Exchange must continually review, and consider adjusting its services along with its fees and rebates, to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own services, and their fees and credits in response, the Exchange does not believe the proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[35] of the Act and subparagraph (f)(2) of Rule 19b–4[36] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[37] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[34] 15 U.S.C. 78f(b)(8).

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 17 CFR 240.19b–4(f)(2).

[37] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2023–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–20 and should be submitted on or before July 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–13004 Filed 6–16–23; 8:45 am]

BILLING CODE 8011–01–P

[38] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17966 and #17967; Texas Disaster Number TX–00657]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 06/13/2023.

Incident: Severe Storms and Flooding.

Incident Period: 05/10/2023 through 05/23/2023.

DATES: Issued on 06/13/2023.

Physical Loan Application Deadline Date: 08/14/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 03/13/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Nacogdoches.

Contiguous Counties:

TEXAS: Angelina, Cherokee, Rusk, San Augustine, Shelby.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17966 B and for economic injury is 17967 0.

The States which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: June 13, 2023.

Isabella Guzman,

Administrator.

[FR Doc. 2023–13027 Filed 6–16–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12099]

60-Day Notice of Proposed Information Collection: Welcome Corps Application

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to August 21, 2023.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2023–0019'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRM-Comments@state.gov.*
- *Regular Mail:* PRM/Admissions, 2025 E Street NW, SA–9, 8th Floor, Washington, DC 20522.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests

for copies of the proposed collection instrument, and supporting documents, to Cassie Le, who may be reached on 202–805–9291 or at *LeCR@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Welcome Corps Application.
- *OMB Control Number:* 1405–0256.
- *Type of Request:* Extension of an approved collection.
- *Originating Office:* Bureau of Population, Refugees, and Migration, Office of Admissions, PRM/A.
- *Form Number:* No form.
- *Respondents:* Private Sponsor Groups (PSGs), groups of at least five or more individual American citizens or permanent residents who will be able to apply to sponsor the resettlement of refugees, and Private Sponsor Organizations (PSOs), established and/or incorporated organizations who will be able to apply to mobilize, organize, oversee, and/or offer support to Private Sponsor Groups.
- *Estimated Number of Respondents:* 2,020.
- *Estimated Number of Responses:* 2,020.
- *Average Time per Response:* 5.5 hours.
- *Total Estimated Burden Time:* 8,908 hours total.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

In Executive Order 14013 on ''Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration'' issued in February 2021, President Biden directed the Department of State and Department of Health and Human Services to ''capitalize on . . . private sponsorship of refugees'' as part of efforts to ''meet the challenges of restoring and expanding the [U.S. Refugee Admissions Program].'' To fulfill this directive, the Department of State is rolling out a program for private sponsorship of refugees approved for admission to the United States through the U.S. Refugee Admissions Program (USRAP), named ''the Welcome Corps.''

Through the Welcome Corps application process, private sponsors accept primary responsibility to welcome arriving refugees and to provide core services/assistance to support their initial resettlement equivalent to what is provided by nonprofit resettlement agency partners through the U.S. Government-funded Reception and Placement (R&P) program. When private sponsors apply through the program, sponsors have the option to be matched with a refugee case already being processed through the USRAP or to refer specific individuals to access the USRAP through the P–4 Privately Sponsored Refugees category. The P–4 category, along with the other categories of cases that have access to the USRAP, is outlined in the annual Proposed Refugee Admissions—Report to Congress, which is submitted on behalf of the President in fulfillment of the requirements of Section 207(d) of the Immigration and Nationality Act (8 U.S.C. 1157) and authorized by the annual Presidential Determination for Refugee Admissions.

Private sponsor entities include Private Sponsor Groups (groups of at least five or more individual American citizens or permanent residents who can apply to sponsor the resettlement of refugees) and Private Sponsor Organizations (established and/or incorporated organizations who can apply to mobilize, organize, oversee, and/or offer support to Private Sponsor Groups).

As part of the Welcome Corps application process for private sponsors, biographic information is collected from Private Sponsor Groups (PSGs) and Private Sponsor Organizations (PSOs) to facilitate the placement of approved refugee applicants with private sponsors and to plan for refugee applicants to travel to the appropriate location of private sponsors within the United States. In instances where private sponsors are seeking to refer specific individuals to access the USRAP through the P–4 category, additional information is collected on refugee applicants, including biographic information, to assess whether refugee applicants meet the eligibility criteria to access the USRAP through the P–4 category. The information collected on refugee applicants will also assist Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) officials in conducting adjudications of applicants' refugee status.

Methodology

The Department of State's Bureau of Population, Refugees, and Migration (PRM) has entered into a cooperative agreement with the Community Sponsorship Hub (CSH), which is managing a consortium of non-governmental organizations (NGOs) to establish and oversee an online application process to intake applications from PSGs and PSOs and screen their applications for approval for participation in the Welcome Corps. CSH and the NGO consortium it is managing will also screen referrals submitted by PSGs and PSOs of refugee applicants before sharing referrals with PRM for consideration of whether referred refugee applicants meet the eligibility criteria to be granted access to the USRAP through the P–4 category.

As part of the online application process for PSGs, the NGO consortium will collect information on PSGs as part of completed applications submitted electronically by prospective private sponsors through the program website that is being built and managed by the consortium (*www.welcomecorps.org*). This will include biographic information on each member of the PSG, evidence that each member of the PSG has completed the required background checks through a third-party identified by the consortium, evidence that at least one member of the PSG has completed required online training developed by the consortium, and details on how PSGs will plan to provide initial resettlement support to the refugees who are matched to them through the Welcome Corps.

In addition, the NGO consortium will also oversee a separate application process for PSOs and collect information from PSOs accordingly. This will include biographic information for a key point of contact at the PSO, background information on the organizational structure of the PSO, and information on the PSO's organizational resources and staffing capacity to mobilize, support, and oversee PSGs.

The NGO consortium will also collect information on refugee applicants referred by PSGs and PSOs for access to the USRAP through the P–4 category that will be submitted electronically by PSGs and PSOs through the program website. This will include biographic

information on each refugee applicant being referred, claimed relationships of the principal refugee applicant to all derivatives on the referral, their immigration status in the country of asylum, a narrative of the principal applicant's refugee claim, and supporting documentation.

To support PRM's operational requirements to facilitate placements of refugee cases with PSGs (including those supported by specific PSOs), the consortium will share key biographic information of PSGs and PSOs with PRM. This will include points of contact of PSGs and PSOs, such as the name of the designated point of contact along with that private sponsor group member's address, phone number, email address, and other relevant contact information. Information collected by the NGO consortium on referred refugee applicants will also be shared with PRM to enable PRM to determine whether applicants meet the eligibility criteria for access to the USRAP through the P–4 category.

The consortium will electronically transmit biographic information on PSGs and PSOs, along with information on refugee applicants, to PRM's Refugee Processing Center (RPC) through secure means. Biographic information on PSGs and PSOs will enable PRM to facilitate the matching of approved refugee applicants with approved PSGs or PSOs and to track the placement of refugee applicants, similarly to how PRM facilitates and tracks placement of refugee applicants supported by PRM's funded resettlement agency partners through the R&P Program. This will enable PRM to have a record of the relevant point of contact for each resettled refugee case supported by a PSG or PSO through the Welcome Corps.

The information on refugee applicants will enable PRM to assess the eligibility of referred applicants to access the USRAP through the P–4 category. Those meeting the eligibility criteria will be granted access to the USRAP for further processing. Referred refugee applicants approved for resettlement in the United States will be served by the private sponsors who referred them.

Sarah R. Cross,

Deputy Assistant Secretary, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2023–13041 Filed 6–16–23; 8:45 am]

BILLING CODE 4710–33–P

TENNESSEE VALLEY AUTHORITY

Cheatham County Generation Site Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Intent; extension of comment period.

SUMMARY: The Tennessee Valley Authority (TVA) is announcing an extension of the public comment period on the Cheatham County Generation Site Notice of Intent to Prepare an Environmental Impact Statement. A Notice of Intent to prepare an EIS was published in the **Federal Register** on May 19, 2023, announcing a 30-day comment period closing on June 20, 2023. This notice serves to extend the comment period by 7 days until June 27, 2023.

DATES: The comment period for the Notice of Intent published May 19, 2023, at 88 FR 32267, is extended to June 27, 2023. Comments must be postmarked, emailed, or submitted online no later than June 27, 2023.

ADDRESSES: Comments can be submitted by one of the following methods:

1. *TVA's NEPA website: https://www.tva.gov/nepa.* Follow the instructions for submitting comments electronically on the website.

2. *Email: NEPA@tva.gov.*

3. *Mail comments to:* J. Taylor Johnson, NEPA Compliance Specialist, 1101 Market Street, BR 2C–C, Chattanooga, Tennessee 37402.

Before including your address, phone number, email address, or other personal identifying information in your comment, please note that any comments received, including names and addresses, will become part of the project administrative record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: For general information about the project, please contact J. Taylor Johnson, NEPA Compliance Specialist, by mail at 1101 Market Street, BR 2C–C, Chattanooga, Tennessee 37402, by email at *nepa@tva.gov,* or by phone at 423–751–2732.

SUPPLEMENTARY INFORMATION: The Cheatham County Generation Site (CHG) would generate approximately 900 Megawatts (MW) and replace generation capacity for a portion of the Cumberland Fossil Plant (CUF) second unit retirement planned by the end of 2028. The CHG CTs would be composed of multiple natural gas-fired frame CTs and natural gas-fired and oil-fired (*i.e.,* dual-fuel) Aeroderivative CTs. CHG would provide flexible and dispatchable transmission grid support and facilitate the integration of renewable generation onto the TVA bulk transmission system, consistent with the 2019 Integrated Resource Plan. TVA is inviting public comment concerning the scope of the EIS, alternatives being considered, and environmental issues that should be addressed as a part of this EIS.

On May 19, 2023, TVA published a Notice of Intent to prepare an EIS to address the potential environmental impacts associated with the proposed construction and operation of a simple cycle Combustion Turbine (CT) plant and Battery Energy Storage System (BESS) on a parcel of TVA-owned land in Cheatham County, Tennessee. The open house that TVA planned to have on May 24, 2023, has been rescheduled and will be held on June 21, 2023. Because of the rescheduling of the open house, the comment period will remain open until June 27, 2023, so commenters have a week after the open house to provide their comments. The TVA website listed above contains relevant information about the open house and the proposed project. TVA urges the public to review this information on the website prior to submitting comments.

Susan Jacks,

General Manager, Environmental Resource Compliance.

[FR Doc. 2023–13116 Filed 6–16–23; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Commercial Space Transportation Advisory Committee.

DATES: The meeting will take place on July 11, 2023 from 1 p.m. to 3 p.m.

ADDRESSES: Instructions on how to virtually attend the meeting, copies of meeting minutes, and a detailed agenda will be posted on the COMSTAC website at: *https://www.faa.gov/space/additional_information/comstac/.*

FOR FURTHER INFORMATION CONTACT: James Hatt, Designated Federal Officer, U.S. Department of Transportation, at *james.a.hatt@faa.gov* or 202–549–2325. Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Commercial Space Transportation Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Public Law 92–463. Since its inception, industry-led COMSTAC has provided information, advice, and recommendations to the U.S. Department of Transportation through FAA regarding technology, business, and policy issues relevant to oversight of the U.S. commercial space transportation sector.

II. Proposed Agenda

Welcome Remarks

COMSTAC Chair

COMSTAC Report

Additional Clarification on part 450

Public Comment Period

Closing Comments

Adjournment

III. Public Participation

The meeting listed in this notice will be open to the public, virtually. Please see the website no later than five working days before the meeting for details on viewing the meeting on YouTube.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section at least 10 calendar days before the meeting. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in writing (mail or email) by July 7, 2023 so that the information can be made available to COMSTAC members for their review and consideration before the meeting. Written statements should be supplied in the following formats: One hard copy with original signature and/or one electronic copy via email. Portable Document Format (PDF) attachments are preferred for email submissions. A detailed agenda will be posted on the FAA website at *https://www.faa.gov/space/additional_information/comstac/.*

Issued in Washington, DC.

James A. Hatt,

Designated Federal Officer, Commercial Space Transportation Advisory Committee, Federal Aviation Administration, Department of Transportation.

[FR Doc. 2023–13009 Filed 6–16–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Regulatory Guidance: Clarification of Reissuance Dates

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Regulatory guidance; notice of reissuance dates.

SUMMARY: On March 3, 2020, the Department announced the availability of a regulatory guidance portal to provide public access to the Department's guidance documents. This notice clarifies the reissuance date of FMCSA guidance published in FMCSA's guidance portal (''Guidance Portal'' or ''Portal'') as of March 3, 2020. This notice also clarifies the reissuance dates for guidance posted between March 4 and June 27, 2020, during the ''grace period.''

DATES: This clarification of prior reissuance dates is applicable on June 20, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Winkle, Attorney-Advisor, Office of Chief Counsel, FMCSA, 1200 New Jersey Ave. SE, Washington, DC 20590–0001; 202–366–5257; *anna.winkle@dot.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order (E.O.) 13891 and the Announcement of the DOT and FMCSA Guidance Portals

On March 3, 2020, the Department announced the availability of a portal for regulatory guidance (85 FR 12663). As explained in the introductory text on the DOT Guidance Portal, each operating administration maintains a guidance portal available through a link on the DOT Guidance Portal website.[1] The guidance portals were originally established to comply with section 3(a) of E.O. 13891,[2] which required each Federal agency to establish or maintain on its website a single, searchable, indexed database that contains or links to all guidance documents in effect from that agency or its components. While E.O. 13891 has since been revoked,[3] it provides context, along with the Office of Management and Budget (OMB) memorandum [4] implementing the Order, for the efforts FMCSA undertook to comprehensively review its existing guidance in establishing its Guidance Portal.

The E.O. and implementing memorandum required in part that Federal agencies establish the database mandated by the E.O. no later than February 28, 2020, and permitted agencies a grace period, through June 27, 2020, to reinstate any existing guidance documents not posted by the initial deadline without the need to conduct a formal good faith cost estimate or otherwise review the guidance in accordance with newly-required approval procedures prior to posting it to the relevant database (*e.g.,* the FMCSA Guidance Portal). The E.O. also required each agency to comprehensively review its guidance documents, rescind those it determined should no longer be in effect, and prohibited agencies from either retaining in effect any guidance document not posted to the database or issuing a guidance document without including it in the database. See 84 FR 55236.

FMCSA's Reissuance of Existing Guidance

FMCSA conducted an extensive review of its guidance in response to the requirement in E.O. 13891 to post current guidance and rescind outdated guidance. When FMCSA published current guidance to FMCSA's Portal, including guidance with a specific expiration date identified in the **Federal Register** notices,[5] FMCSA effectively

[1] *https://www.transportation.gov/guidance/operating-administration-guidance-portals.* FMCSA's Guidance Portal may also be accessed through a direct link: *www.fmcsa.dot.gov/guidance.*

[2] See ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' 84 FR 55235 (Oct. 15, 2019), *available at: https://www.federalregister.gov/documents/2019/10/15/2019-22623/promoting-the-rule-of-law-through-improved-agency-guidance-documents.*

[3] See E.O. 13992, ''Revocation of Certain Executive Orders Concerning Federal Regulation.'' 86 FR 7049 (Jan. 25, 2021), *available at: https://www.federalregister.gov/documents/2021/01/25/2021-01767/revocation-of-certain-executive-orders-concerning-federal-regulation.*

[4] See M–20–02, ''Guidance Implementing Executive Order 13891, Titled 'Promoting the Rule of Law Through Improved Agency Guidance Documents,' '' (Oct. 31, 2019) *available at: https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf.*

[5] In both **Federal Register** notices, FMCSA referenced section 5203 of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94, 129 Stat. 1312, 1535, Dec. 4, 2015). This section does not require that an expiration date be added to guidance but rather instructs, in part, that not later than 5 years after the date on which a guidance

reissued the guidance. The date the Department announced the availability of the regulatory guidance portals, March 3, 2020, is therefore the reissuance date for all guidance FMCSA published in the Portal as of that date.

Guidance documents with previously identified expiration dates are identified as follows:

FMCSA Guidance Portal unique identifier(s)	**Federal Register** notice issuing the guidance	Applicability/expiration dates in **Federal Register** notice
FMCSA–HOS–AG–395.1–Q34, FMCSA–HOS–AG–395.1–Q35, FMCSA–HOS–AG–395.1–Q36, and FMCSA–HOS–AG–395.1–Q37.	83 FR 26374 (June 7, 2018)	Applicable June 7, 2018; Expires June 7, 2023.
FMCSA–HOS–395.8–Q26	83 FR 26377 (June 7, 2018)	Applicable on June 7, 2018; Expires June 7, 2023.

Guidance documents that were posted to the Portal by the initial OMB deadline (February 28, 2020) were publicly reissued on March 3, 2020; however, FMCSA's Guidance Portal will continue to provide the original ''issued date'' unless substantive updates were subsequently made to the existing guidance. FMCSA believes this approach provides continuity and minimizes risk of confusion as compared with adding new issuance dates each time a guidance document is reissued.

Reissuance Dates of Grace Period Guidance

This notice also clarifies the reissuance dates of the 53 ''grace period'' guidance documents, which are the existing guidance documents FMCSA posted to the Guidance Portal between March 4 and June 27, 2020—the grace period established by the OMB implementing memorandum. As with the guidance posted to the Portal by February 28, 2020, the original ''issued date'' of all grace period guidance documents remains the same unless substantive updates were made to the existing guidance. However, since the guidance was not in fact posted to the Portal by February 28, 2020, the reissuance dates are the dates they were posted to the Portal, as follows:

Unique identifier	Issued date	Reissuance date
FMCSA–CDL–383.133–Q001	3/1/2019	6/25/2020
FMCSA–ELDT–380.600–Q007	3/1/2020	6/25/2020
FMCSA–ELDT–380.603–Q001	3/1/2019	6/25/2020
FMCSA–ELDT–380.603–Q002	3/1/2019	6/25/2020
FMCSA–ELDT–380.603–Q004	3/1/2019	6/25/2020
FMCSA–ELDT–380.605–Q005	3/1/2019	6/25/2020
FMCSA–ELDT–380.605–Q010	3/1/2019	6/25/2020
FMCSA–ELDT–380.605–Q015	3/1/2019	6/26/2020
FMCSA–ELDT–380.605–Q017	3/1/2019	6/26/2020
FMCSA–ELDT–380.605–Q018	3/1/2019	6/26/2020
FMCSA–ELDT–380.605–Q023	3/1/2019	6/26/2020
FMCSA–ELDT–380.703–Q009	3/1/2019	6/26/2020
FMCSA–ELDT–380.707–Q008	3/1/2019	6/26/2020
FMCSA–ELDT–380.707–Q022	3/1/2019	6/26/2020
FMCSA–ELDT–380.719–Q011	3/1/2019	6/26/2020
FMCSA–ELDT–380.719–Q012	3/1/2019	6/26/2020
FMCSA–ELDT–380.719–Q013	3/1/2019	6/26/2020
FMCSA–ELDT–380.721–Q014	3/1/2019	6/26/2020
FMCSA–ELDT–380.721–Q016	3/1/2019	6/26/2020
FMCSA–ELDT–380–Appendix–Q003	3/1/2019	6/26/2020
FMCSA–ELDT–380–Appendix–Q019	3/1/2019	6/26/2020
FMCSA–ELDT–380–Appendix–Q020	3/1/2019	6/26/2020
FMCSA–ELDT–380–Appendix–Q021	3/1/2019	6/26/2020
FMCSA–ELDT–380–Appendix–Q024	3/1/2019	6/27/2020
FMCSA–ELDT–380–Appendix–Q025	3/1/2019	6/27/2020
FMCSA–ELDT–380–Q026	2/4/2020	6/27/2020
FMCSA–ELDT–383.73–Q006	3/1/2019	6/27/2020
FMCSA–FR–78FR25782.2013.05.02	5/2/2012	6/24/2020
FMCSA–RG–390.23–FAQ001	4/15/2018	6/23/2020
FMCSA–RG–390.23–FAQ002	4/15/2018	6/23/2020
FMCSA–RG–390.23–FAQ003	4/15/2018	6/23/2020
FMCSA–RG–390.23–FAQ004	4/15/2018	6/23/2020
FMCSA–RG–390.23–FAQ005	4/15/2018	6/23/2020
FMCSA–RG–390.23–FAQ006	4/18/2018	6/23/2020
FMCSA–RG–390.23–FAQ007	4/15/2018	6/23/2020
FMCSA–RG–390.23–FAQ008	4/15/2018	6/23/2020
FMCSA–RG–390.23–FAQ009	4/15/2018	6/24/2020
FMCSA–RG–390.23–FAQ010	4/15/2018	6/24/2020
FMCSA–RG–390.23–FAQ011	4/15/2018	6/24/2020
FMCSA–RG–390.23–FAQ012	4/15/2018	6/24/2020
FMCSA–RG–390.23–FAQ013	4/15/2018	6/29/2020
FMCSA–RG–390.23–FAQ014	4/15/2018	6/24/2020
FMCSA–RG–390.23–FAQ015	4/15/2018	6/24/2020

document is published or during a regular review, FMCSA reissue an updated version of any guidance document for which it was not practicable to incorporate into its regulations. Sec. 5203(a)(3)–(4).

Unique identifier	Issued date	Reissuance date
FMCSA–RG–390.23–FAQ016	3/19/2020	6/24/2020
FMCSA–RG–390.23–FAQ017	3/19/2020	6/24/2020
FMCSA–RG–390.23–FAQ018	3/19/2020	6/25/2020
FMCSA–RG–390.23–FAQ019	3/19/2020	6/25/2020
FMCSA–RG–390.23–FAQ020	3/19/2020	6/25/2020
FMCSA–RG–390.23–FAQ021	3/19/2020	6/25/2020
FMCSA–RG–390.23–FAQ022	3/19/2020	6/25/2020
FMCSA–RG–390.23–FAQ023	3/25/2020	6/25/2020
FMCSA–RG–390.23–FAQ024	3/5/2020	6/24/2020
FMCSA–RG–390.23–Q004	2/28/2020	6/23/2020

Robin Hutcheson,

Administrator.

[FR Doc. 2023–13033 Filed 6–16–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0034]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from 27 individuals who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, Department of Transportation, 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 material in the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0034) 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 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 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

FMCSA received applications from 27 individuals who requested an exemption from the FMCSRs prohibiting persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV from operating CMVs in interstate commerce.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(8).

III. Basis for Exemption Determination

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 statute also allows the Agency to renew exemptions at the end of the 5-year period. 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 the eligibility criteria, the terms and conditions for Federal exemptions, and an individualized assessment of each applicant's medical information provided by the applicant.

IV. Conclusion

The Agency has determined that these applicants do not satisfy the eligibility criteria or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(8). Therefore, the 27 applicants in this notice have been denied exemptions from the physical qualification standards in § 391.41(b)(8).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 27 applicants do not meet the minimum time requirement for being seizure-free, either on or off of anti-seizure medication:

Larry Attles (MI)
Julio Baez-Soto (NY)
Charles Boman (PA)
Christopher Carver (TX)
Ryan Cecchini (WI)
Joey Cerniglia (GA)
Jason Ebert (OH)
Muhammad Elbaba (MN)
Jonathan Flight (NE)
Marcus Foster (NJ)
Deyanira Gonzalez (TX)

Bryan Hsu (CA)
Gabriel Ihm (IL)
Scott Jensen (WI)
Evin Ksiezarcyzk (NY)
Zachery Lieske (WI)
Juanita Liscano (TX)
Brandon Mullican (GA)
Matthew Nipper (TN)
Jeremy Olson (WI)
Elizabeth Orr (NC)
Brody Scott (CA)
Andonia Smith (MI)
Joshua Sunderland (PA)
Adriana Torres (WA)
Gabriel Wilcox (CA)
Cornelius Wilson (GA)

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–13034 Filed 6–16–23; 8:45 am]

BILLING CODE 4910–EX–P

UNITED STATES SENTENCING COMMISSION

Proposed Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice; request for comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with its Rules of Practice and Procedure, the United States Sentencing Commission is seeking comment on possible policy priorities for the amendment cycle ending May 1, 2024.

DATES: Public comment should be received by the Commission on or before August 1, 2023. Any public comment received after the close of the comment period may not be considered.

ADDRESSES: There are two methods for submitting public comment.

Electronic Submission of Comments. Comments may be submitted electronically via the Commission's Public Comment Submission Portal at *https://comment.ussc.gov.* Follow the online instructions for submitting comments.

Submission of Comments by Mail. Comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Commission provides this notice identifying the possible policy priorities that the Commission expects to focus on during the amendment cycle ending May 1, 2024. While continuing to address legislation or other matters requiring more immediate action, the Commission has decided to limit its consideration of specific guidelines amendments for this amendment cycle. Instead, in light of the 40th anniversary of the Sentencing Reform Act, the Commission anticipates undertaking a number of projects examining the degree to which current sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in the Sentencing Reform Act. *See* 28 U.S.C. 991(b)(2). The Commission expects to continue work on many of these priorities beyond the upcoming amendment cycle. The Commission invites comment on the proposed priorities set forth below, along with any additional priorities commenters believe the Commission should consider in the upcoming amendment cycle and beyond. Public comment should be sent to the Commission as indicated in the **ADDRESSES** section above.

Pursuant to 28 U.S.C. 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The proposed priorities for the amendment cycle ending May 1, 2024, are as follows:

(1) Assessing the degree to which certain practices of the Bureau of Prisons are effective in meeting the purposes of sentencing as set forth in 18 U.S.C. 3553(a)(2) and considering any appropriate responses including possible consideration of recommendations or amendments.

(2) Promotion of court-sponsored diversion and alternatives-to-incarceration programs by expanding the availability of information and organic documents pertaining to existing programs (*e.g.,* Pretrial Opportunity Program, Conviction And Sentence Alternatives (CASA) Program, Special Options Services (SOS) Program) through the Commission's website and possible workshops and seminars sharing best practices for developing, implementing, and assessing such programs.

(3) Examination of the *Guidelines Manual,* including exploration of ways to simplify the guidelines and possible consideration of amendments that might be appropriate.

(4) Continuation of its multiyear study of the *Guidelines Manual* to address case law concerning the validity and enforceability of guideline commentary.

(5) Continued examination of the career offender guidelines, including (A) updating the data analyses and statutory recommendations set forth in the Commission's 2016 report to Congress, titled *Career Offender Sentencing Enhancements;* (B) devising and conducting workshops to discuss the scope and impact of the career offender guidelines, including discussion of possible alternative approaches to the ''categorical approach'' in determining whether an offense is a ''crime of violence'' or a ''controlled substance offense''; and (C) possible consideration of amendments that might be appropriate.

(6) Examination of the treatment of youthful offenders under the *Guidelines Manual,* including possible consideration of amendments that might be appropriate.

(7) Implementation of any legislation warranting Commission action.

(8) Resolution of circuit conflicts as warranted, pursuant to the Commission's authority under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991).

(9) Consideration of other miscellaneous issues coming to the Commission's attention.

(10) Further examination of federal sentencing practices on a variety of issues, possibly including: (A) the prevalence and nature of drug trafficking offenses involving methamphetamine; (B) drug trafficking offenses resulting in death or serious bodily injury; (C) comparison of sentences imposed in cases disposed of through trial versus plea; (D) continuation of the Commission's studies regarding recidivism; and (E) other areas of federal sentencing in need of additional research.

(11) Additional issues identified during the comment period.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 2.2, 5.2.

Carlton W. Reeves,

Chair.

[FR Doc. 2023–12991 Filed 6–16–23; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

Request for Data and Information on Minority Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Notice-request for information.

SUMMARY: The Department of Veterans Affairs (VA), Office of the Secretary, Center for Minority Veterans (CMV), is hereby giving notice of an opportunity for the public to provide available data and information on minority and historically underserved Veterans. Historically underserved Veterans includes racial and ethnic minority (Asian American; Black; Hispanic/Latino; Native American (including American Indian, Alaskan Native, and Native Hawaiian); or Pacific-Islander American); LGBTQ+; those whose religious or conscientious identity, beliefs, and practices have been determined to be underserved; language barriers or are without citizenship status; and those in rural areas and on tribal lands.

DATES: Comments must be received on or before August 21, 2023.

FOR FURTHER INFORMATION CONTACT: James Albino, Director, Center for Minority Veterans, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, email address: *VACOCMV@va.gov,* 202–461–0500. This is not a toll-free number.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages 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. Any public comment received after the comment period's closing date is considered late and will not be considered in a potential rulemaking.

SUPPLEMENTARY INFORMATION: The Advisory Committee for Minority Veterans (ACMV) and CMV were first authorized in 1994 to address disparities in the use of VA benefits and services for five racial/ethnic groups defined by statute specifying Veterans who identify as Asian American; Black; Hispanic; Native American*(including American Indian, Alaskan Native, and Native Hawaiian) or Pacific-Islander American. CMV identified that in addition to the current racial/ethnic groups, Veterans of Middle Eastern or North African descent and Veterans who identify as belonging to more than one race or ethnicity would benefit from being included in the list of groups served by CMV and ACMV. Additionally, with the input of various stakeholders, CMV identified additional groups of Veterans that have been historically underserved by the Department and designated ''historically underserved'' Veterans as those who are LGBTQ+ or are members in any religious faith that has been determined to be underserved. CMV invites the general public, educational institutions, Veteran serving organizations, non-profit/non-governmental organization and other Federal agencies that conduct research on and/or provide services to the aforementioned cohorts of Veterans to submit and/or comment on data and information on six priority areas: Demographic/Location data; Experience; Memorialization; Health; Benefits; Social Determinants of Health. CMV will utilize this input (information and comments, perhaps) to inform its effort to improve outreach, education, engagement, enrollment, advocacy and access programs for minority and underserved Veterans. CMV is specifically interested in evidence and research-based quantitative and qualitative information related to these six priority areas.

Background: CMV was established by Public Law 103–446 on November 2, 1994, in response to low utilization of VA benefits and services by minority Veterans. Public Law 103–446 defines ''minority group member'' as a Veteran who is: Asian American; Black; Hispanic/Latino; Native American (including American Indian, Alaskan Native and Native Hawaiian); or Pacific-Islander American. CMV is the Department of Veterans Affairs model for inter-and intra-agency co-operation, to ensure all Veterans receive equal service regardless of race, origin, religion or gender. CMV is focused on process improvement oriented for both internal and external customer-centric activities by assisting VA in executing its mission in the most equitable, efficient and humane way possible. CMV also supports the Administration and the VA's Secretary's Goals: Executive Order (E.O.) On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985); VA Strategic Objective 2.1—Reaching all Veterans. Dignity and an acceptable quality of life are the products we seek to deliver to ALL Veterans no matter what their circumstance.

Request for Information: CMV invites the general public, educational institutions, Veteran-serving organizations, non-profit/non-governmental organization and other Federal agencies that conduct research on and/or provide services to the aforementioned cohorts of Veterans to submit and/or comment on data and information related to the following six priority areas: Demographic/Location data; Experience; Memorialization; Health; Benefits; Social Determinants of well-being. CVM requests available data and information on utilization, equity or demographic data and potential barriers that underserved communities may face in accessing and benefitting from the agency's policies, programs and activities on minority and historically underserved Veterans as identified. CMV will utilize this input to inform CMV's effort to improve outreach, education, engagement, enrollment, advocacy and access programs for minority and underserved Veterans. CMV is specifically interested in evidence and research based quantitative and qualitative information related to these six priority areas.

Respondents should provide data and information on any activities relevant to the identified cohort of Veterans in related to the six priority areas and those that capture equity-focused health; demographics/location; benefits; experience; social determinants of health; and memorialization.

Respondents to this request for data and information should include their name, affiliation (if applicable), mailing address, telephone, email and sponsoring organization (if any) with their communications. The deadline for receipt of the requested information is August 21, 2023.

Responses to this request are voluntary. No proprietary, classified, confidential or sensitive information

should be included in responses. This request for information is for planning purposes only and is not a solicitation for applications or an obligation on the part of the U.S. Government to provide support for any ideas identified in response to the request. Please note that the U.S. Government will not pay for the preparation of any information submitted or for its use of that information.

Instructions: Response to this request for data and information is voluntary. Each individual or institution is requested to submit only one response. Electronic responses must be provided as attachments to your comment in *regulations.gov.* Comments of 7 pages or fewer (3,500 words) are requested; longer responses will not be considered. Responses should include the name of the person(s) or organization(s) filing the response. Responses containing references, studies, research and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Responses containing profanity, vulgarity, threats or other inappropriate language or content will not be considered.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on June 12, 2023, 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.

Luvenia Potts,

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

[FR Doc. 2023–13067 Filed 6–16–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. Ch. 10, that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board (hereinafter the Board) will be held on Wednesday, August 23, 2023, via Webex. The meeting will be held between 1–1:30 p.m. EST. The meeting will be partially closed to the public from 1:10–1:30 p.m. EST for the discussion, examination and reference to the research applications and scientific review. Discussions will involve reference to staff and consultant critiques of research proposals. Discussions will also deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals. As provided by Public Law 92–463 subsection 10(d), as amended by Public Law 94–409, closing the Board meeting is in accordance with 5 U.S.C. 552b(c) (6) and (9)(B).

The objective of the Board is to provide for the fair and equitable selection of the most meritorious research projects for support by VA research funds and to offer advice for research program officials on program priorities and policies. The ultimate objective of the Board is to ensure that the VA Rehabilitation Research and Development program promotes functional independence and improves the quality of life for impaired and disabled Veterans.

Board members advise the Director, Rehabilitation Research and Development Service and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects of Rehabilitation Research and Development proposals. The Board does not consider grants, contracts or other forms of extramural research.

Members of the public may attend the open portion of the meeting in listen-only mode as the time limited open agenda does not enable public comment presentations. To attend the open portion of the meeting (1–1:10 p.m. EST), the public may join by dialing the phone number 1–833–558–0712 and entering the meeting number (access code): 2760 821 8338.

Written public comments must be sent to Kristy Benton-Grover, Designated Federal Officer, Rehabilitation Research and Development Service, Department of Veterans Affairs (14RDR), 810 Vermont Avenue NW, Washington, DC 20420, or to *Kristy.Benton-Grover@va.gov* at least five days before the meeting via the email listed above. The written public comments will be shared with the Board members. The public may not attend the closed portion of the meeting as disclosure of research information could significantly obstruct implementation of proposed agency action regarding the research proposals (Pub. L. 92–463 subsection 10(d), as amended by Public Law 94–409, closing the Board meeting is in accordance with Title 5 U.S.C. 552b(c) (6) and (9)(B).

Dated: June 13, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–13010 Filed 6–16–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Agency Information Collection Activity Under OMB Review: Appointment of Veterans Service Organization as Claimant's Representative and Appointment of Individual as Claimant's Representative

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 (VBA), 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. 2900–0321.

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. 2900–0321'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 5701, 5702, 5902, 5903, and 7332, 38 CFR 14.631 and 1.525.

Title: Appointment of Veterans Service Organization as Claimant's Representative (VA Form 21–22) and Appointment of Individual as Claimant's Representative (VA Form 21–22a).

OMB Control Number: 2900–0321.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Forms 21–22 and 21–22a are used to collect the information needed to determine whom claimants have appointed to represent them in the preparation, presentation, and prosecution of claims for VA benefits. The information is also used to determine the extent of representatives' access to claimants' records.

No changes have been made to these forms. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

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 232 on December 5, 2022, page 74474.

Affected Public: Individuals and households.

Estimated Annual Burden: 61,249 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 735,004.

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. 2023–13022 Filed 6–16–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Tuesday,
No. 117 June 20, 2023

Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Microwave Ovens; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0023]

RIN 1904–AE00

Energy Conservation Program: Energy Conservation Standards for Microwave Ovens

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

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including microwave ovens. 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 whether they would result in significant energy savings. In this final rule, DOE is adopting amended energy conservation standards for microwave ovens. It has determined that the amended energy conservation standards for these products would result in significant conservation of energy and are technologically feasible and economically justified.

DATES: The effective date of this rule is August 21, 2023. Compliance with the amended standards established for microwave ovens in this final rule is required on and after June 22, 2026.

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0023.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5649. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

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I. Synopsis of the Final Rule

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include microwave ovens, the subject of this 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 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 is adopting amended energy conservation standards for microwave ovens. The adopted standards, which are expressed in watts (''W''), are shown in Table I.1. These standards apply to all products listed in Table I.1 and manufactured in, or imported into, the United States starting on June 22, 2026.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS (COMPLIANCE STARTING JUNE 22, 2026)

Product class	Maximum allowable average standby power, (watts)
PC 1: Microwave-Only Ovens and Countertop Convection Microwave Ovens.	0.6 W
PC 2: Built-In and Over-the-Range Convection Microwave Ovens.	1.0 W

A. Benefits and Costs to Consumers

Table I.2 summarizes DOE's evaluation of the economic impacts of the adopted standards on consumers of microwave ovens, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[3] The average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of microwave ovens, which is estimated to be 10.78 years (see section IV.F of this document).

TABLE I.2—IMPACTS OF ADOPTED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF MICROWAVE OVENS

Product class	Average LCC savings (2021$)	Simple payback period (years)
PC 1: Microwave-Only Ovens and Countertop Convection Microwave Ovens	0.99	1.3
PC 2: Built-In and Over-the-Range Convection Microwave Ovens	0.83	0.8

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

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 (2023–2055). Using a real discount rate of 8.5 percent, DOE estimates that the INPV for manufacturers of microwave ovens in the case without amended standards is $1,426 million in 2021 dollars. Under the adopted standards, DOE estimates the change in INPV to range from −$37.2 million, which represents a change of −2.6 percent, to no change in INPV. In order to bring products into compliance with amended standards, it is estimated that industry will incur total conversion costs of $46.1 million.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in sections IV.J and V.B.2 of this document.

C. National Benefits and Costs [4]

DOE's analyses indicate that the adopted energy conservation standards for microwave ovens would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for microwave ovens purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2026–2055), amount to 0.06 quadrillion British thermal units (''Btu''), or quads.[5] This represents a savings of 19 percent relative to the energy use of these products in the case without amended standards (referred to as the ''no-new-standards case'').

[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] 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.9] of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (*see* section IV.C of this document).

[4] All monetary values in this document are expressed in 2021 dollars. and, where appropriate, are discounted to 2023 unless explicitly stated otherwise.

[5] The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1 of this document.

The cumulative net present value (''NPV'') of total consumer benefits of the standards for microwave ovens ranges from $0.16 (at a 7-percent discount rate) to $0.35 (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for microwave ovens purchased in 2026–2055.

In addition, the adopted standards for microwave ovens are projected to yield significant environmental benefits. DOE estimates that the standards will result in cumulative emission reductions (over the same period as for energy savings) of 1.87 million metric tons (''Mt'') [6] of carbon dioxide (''CO_2''), 0.85 thousand tons of sulfur dioxide (''SO_2''), 2.88 thousand tons of nitrogen oxides (''NO_X''), 12.64 thousand tons of methane (''CH_4''), 0.02 thousand tons of nitrous oxide (''N_2O''), and 0.005 tons of mercury (''Hg'').[7] The estimated cumulative reduction in CO_2 emissions through 2030 amounts to 0.10 Mt, which is equivalent to the emissions resulting from the annual electricity use of more than 19 thousand homes.

DOE estimates the value of climate benefits from a reduction in greenhouse gases (GHG) using four different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O''). Together these represent the social cost of GHG (SC–GHG). DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).[8] The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are estimated to be $0.10 billion. DOE does not have a single central SC–GHG point estimate and DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.[9]

DOE estimated the monetary health benefits of SO_2 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 $0.07 billion using a 7-percent discount rate, and $0.17 billion using a 3-percent discount rate.[10] DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects, such as health benefits, from reductions in direct $PM_{2.5}$ emissions.

Table I.3 summarizes the monetized benefits and costs expected to result from the amended standards for microwave ovens. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

TABLE I.3—SUMMARY OF MONETIZED BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

	Billion $2021
3% discount rate	
Consumer Operating Cost Savings	0.43
Climate Benefits *	0.10
Health Benefits **	0.17
Total Benefits †	0.70
Consumer Incremental Product Costs ‡	0.08
Net Benefits	0.62
7% discount rate	
Consumer Operating Cost Savings	0.21
Climate Benefits * (3% discount rate)	0.10
Health Benefits **	0.07
Total Benefits†	0.38
Consumer Incremental Product Costs ‡	0.05
Net Benefits	0.34

Note: This table presents the costs and benefits associated with microwave ovens shipped in 2026 − 2055. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026–2055.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards-case, which reflects key assumptions in the *Annual Energy Outlook 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.

[8] *See* Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021 (''February 2021 SC–GHG TSD''*). www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[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] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

* Climate benefits are calculated using four different estimates of the social cost of carbon ($SC–CO_2$), methane ($SC–CH_4$), and nitrous oxide ($SC–N_2O$) (model average at 2.5-percent, 3-percent, and 5-percent discount rates; 95th percentile at 3-percent discount rate) (*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.

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

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

‡ 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 health benefits of emission reductions, all annualized.[11]

The national operating cost savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of microwave ovens shipped in 2026–2055. The benefits associated with reduced emissions achieved as a result of the adopted standards are also calculated based on the lifetime of microwave ovens shipped in 2026–2055. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section V.B.8 of this document.

Table I.4 presents the total estimated monetized benefits and costs associated with the standards adopted in this rule, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards adopted in this rule is $4.3 million per year in increased equipment costs, while the estimated annual benefits are $19.5 million in reduced equipment operating costs, $5.2 million in climate benefits, and $6.9 million in health benefits. In this case, the net benefit would amount to $27.3 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the amended standards is $4.3 million per year in increased equipment costs, while the estimated annual benefits are $23.5 million in reduced operating costs, $5.2 million in climate benefits, and $9.2 million in health benefits. In this case, the net benefit would amount to $33.5 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS FOR MICROWAVE OVENS

	Million 2021 $/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	23.5	22.2	25.0
Climate Benefits *	5.2	5.1	5.4
Health Benefits **	9.2	9.0	9.4
Total Benefits †	37.9	36.3	39.8
Consumer Incremental Product Costs ‡	4.3	4.3	4.2
Net Benefits	33.5	31.9	35.6
7% discount rate			
Consumer Operating Cost Savings	19.5	18.6	20.5
Climate Benefits * (3% discount rate)	5.2	5.1	5.4
Health Benefits **	6.9	6.7	7.1
Total Benefits †	31.6	30.4	32.9
Consumer Incremental Product Costs ‡	4.3	4.3	4.2

[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2022, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2022. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS FOR MICROWAVE OVENS—Continued

	Million 2021 $/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Net Benefits	27.3	26.1	28.7

Note: This table presents the costs and benefits associated with microwave ovens shipped in 2026–2055. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026–2055. 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.1 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (*see* section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, but DOE does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. 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 SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. *See* section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate.

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

DOE's analysis of the national impacts of the adopted standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

DOE concludes that the standards adopted in this final rule 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 standards exceed, to a great extent, the burdens of the standards.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the standards for microwave ovens is $4.3 million per year in increased product costs, while the estimated annual benefits are $19.5 million in reduced product operating costs, $5.2 million in climate benefits, and $6.9 million in health benefits. The net benefit amounts to $27.3 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.[12] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings of 0.06 quads in FFC energy use and emissions, the equivalent of the primary annual energy use of 1.6 million homes. In addition, the standards are projected to reduce CO_2 emissions by 1.87 Mt. Based on these findings, DOE has determined the energy savings from the standard levels adopted in this final rule are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these conclusions is contained in the remainder of this document and the accompanying final rule technical support document (''TSD'').

II. Introduction

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

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 microwave ovens, the subject of this document. (42 U.S.C. 6292(a)(10)) EPCA prescribed energy conservation standards for these products, and directs DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(h)(2)(A)–(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 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

[12] 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).

standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 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 microwave ovens appear at title 10 of the Code of Federal Regulations (''CFR'') § 430.23(i) and 10 CFR part 430, subpart B, appendix I (''appendix I'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including microwave ovens. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard (1) for certain products, including microwave ovens, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

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

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

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 products that has the same function or intended use if DOE determines that products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

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))

B. Background

1. Current Standards

In a final rule published on June 17, 2013 (''June 2013 Final Rule''), DOE prescribed the current energy conservation standards for microwave ovens manufactured on and after June 17, 2016. 78 FR 36316. These standards are set forth in DOE's regulations at 10 CFR 430.32(j)(3) and are repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

Product class	Maximum allowable average standby power
Microwave-Only Ovens and Countertop Convection Microwave Ovens.	1.0 W.
Built-In and Over-the-Range Convection Microwave Ovens.	2.2 W.

2. History of Standards Rulemaking for Microwave Ovens

EPCA prescribed an energy conservation standard for kitchen ranges and ovens, and directed DOE to conduct two cycles of rulemakings to determine whether to amend standards for these products. (42 U.S.C. 6295(h)(2)(A)–(B)) DOE completed the first of these rulemaking cycles by publishing a final rule on September 8, 1998, that codified the prescriptive design standard for gas cooking products established in EPCA, but found that no standards were justified for electric cooking products, including microwave ovens, at that time. 63 FR 48038, 48053–48054. DOE completed the second rulemaking cycle and published a final rule on April 8, 2009, in which it determined, among other things, that standards for microwave oven active mode energy use were not economically justified. 74 FR 16040.

DOE published the June 2013 Final Rule, adopting energy conservation standards for microwave ovens. 78 FR 36316. In the June 2013 Final Rule, DOE maintained its prior determination that active mode standards are not warranted for microwave ovens and prescribed energy conservation standards that address the standby and off mode energy use of microwave ovens. 78 FR 36316, 36317.

In support of the present review of the microwave oven energy conservation standards, DOE published an early assessment request for information on August 13, 2019, which identified various issues on which DOE sought comment to inform its determination of whether the standards need to be amended. 84 FR 39980.

DOE subsequently published a notice of proposed determination (''NOPD'') on August 12, 2021, in which DOE initially determined that current standards for microwave ovens do not need to be amended. 86 FR 44298. (''August 2021 NOPD'') In the August 2021 NOPD, DOE tentatively determined that there are technology options that would improve the efficiency of microwave ovens. 86 FR 44298, 44310. Based on the analysis conducted for the August 2021 NOPD, DOE estimated that amended standards for microwave oven standby power at the maximum technologically feasible (''max-tech'') level would result in 0.1 quads of energy saved over a 30-year period (representing an estimated 8 percent reduction in site energy use of microwave ovens). 86 FR 44298, 44310.

In evaluating the significance of the estimated energy savings for the August 2021 NOPD, DOE applied a two-part numeric threshold test that was then applicable under section 6(b) of appendix A to 10 CFR part 430 subpart C (Jan. 1, 2021 edition). Specifically, the threshold required that an energy conservation standard result in a 0.30 quads reduction in site energy use over a 30-year analysis period or a 10-percent reduction in site energy use over that same period. See 85 FR 8626, 8670 (Feb. 14, 2020). In the August 2021 NOPD, DOE stated that the estimated site energy savings at the max-tech level was under the 0.3-quads/10-percent threshold and tentatively determined that amended energy conservation standards for microwave oven standby power would not result in significant conservation of energy. 86 FR 44298, 44310. DOE also noted that the two-part numeric threshold was under reconsideration. 86 FR 44298, 44302.

On December 13, 2021, DOE published in the **Federal Register** a final rule that amended appendix A to 10 CFR part 430 subpart C (''appendix A''). 86 FR 70892 (''December 2021 Final Rule''). The December 20201 Final Rule, in part, removed the numeric threshold in section 6(b) of appendix A for determining when the significant energy savings criterion is met, reverting to DOE's prior practice of making such determinations on a case-by-case basis. 86 FR 70892.

After the publication of the NOPD, DOE conducted investigative testing and manufacturer discussions, and updated the engineering analysis to be used in a subsequently published supplemental notice of proposed rulemaking (''SNOPR'') on August 24, 2022. 87 FR 52282. (''August 2022 SNOPR'') In the August 2022 SNOPR, DOE revised the efficiency levels, manufacturer selling price (''MSP'')-efficiency relationships, and LCC and PBP analyses to evaluate the economic impacts of potential energy conservation standards for microwave ovens on individual consumers. The amended energy conservation standards for microwave ovens proposed in the August 2022 SNOPR are shown in Table II.2. DOE requested comment on these proposed standards and associated analyses and results.

TABLE II.2—AUGUST 2022 SNOPR PROPOSED ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

Product class	Maximum allowable average standby power (watts)
PC 1: Microwave-Only Ovens and Countertop Convection Microwave Ovens.	0.6 W.
PC 2: Built-In and Over-the-Range Convection Microwave Ovens.	1.0 W.

DOE held a public meeting on October 11, 2022, to solicit feedback from stakeholders concerning the August 2022 SNOPR, and received 5 comments in response to the August 2022 SNOPR from the interested parties listed in Table II.3.

TABLE II.3—AUGUST 2022 SNOPR WRITTEN COMMENTS

Commenter(s)	Abbreviation	Comment number in the docket	Commenter type
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance.	The Joint Commenters.	31	Efficiency Organizations.
Association of Home Appliance Manufacturers	AHAM	28	Trade Association.
Center for Climate and Energy Solutions, Institute for Policy Integrity at New York University School of Law, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists, Institute for Policy Integrity.	C2ES	29	Efficiency Organizations.

TABLE II.3—AUGUST 2022 SNOPR WRITTEN COMMENTS—Continued

Commenter(s)	Abbreviation	Comment number in the docket	Commenter type
Whirlpool Corporation	Whirlpool	30	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[13] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the October 11, 2022 webinar, DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

III. General Discussion

DOE developed this final rule 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. Scope of Coverage

This final rule covers those consumer products that meet the definition of ''microwave oven'' as codified at 10 CFR 430.2, which defines ''microwave oven'' as a category of cooking products which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens. This includes any microwave oven(s) component of a combined cooking product. Any product meeting the definition of microwave oven is included in DOE's scope of coverage.

For this final rule, DOE considered the two product classes of microwave ovens prescribed in the current energy conservation standards: (1) Microwave-Only Ovens and Countertop Convection Microwave Ovens, and (2) Built-In and Over-the-Range Convection Microwave Ovens.

For these two classes of microwave ovens, DOE's current test procedure measures the energy consumption in standby mode and off mode only. Consequently, DOE's current energy conservation standards for microwave ovens are also expressed in terms of standby mode and off mode power. There are currently no active mode energy conservation standards; nor is there a prescribed test procedure for measuring the active mode energy use or efficiency (*e.g.,* cooking efficiency) of microwave ovens.

The Joint Commenters commented that adopting a standard for active mode energy consumption could achieve ''significantly greater'' savings than proposed standby power standards, and that DOE should develop a test procedure and standards for active mode power consumption. (Joint Commenters, No. 31 at p. 2) DOE previously rejected developing an active mode test procedure in the microwave oven test procedure final rule published on March 30, 2022, (''March 2022 TP Final Rule'') due to undue burden on manufacturers and the lack of an available test procedure that accounts for the efficiency improvements of inverter microwave ovens. 87 FR 18261. As there is no test procedure for measuring the active mode efficiency of a microwave oven, and since development of such a test procedure is out of the scope of this document, DOE is not currently proposing to adopt an active mode energy usage standard.

See section IV.2 of this document for discussion of the product classes analyzed in this final rule.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE will finalize a test procedure establishing methodologies used to evaluate proposed energy conservation standards prior to publication of a NOPR proposing new or amended energy conservation standards. Section 8(d)(1) of appendix A. As discussed, DOE amended the test procedure for microwave ovens, set forth in appendix I, in the March 2022 TP Final Rule. DOE's current energy conservation standards for microwave ovens are expressed in terms of watts of standby power. (*See* 10 CFR 430.23(j)(3).)

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of appendix A.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety and (4) unique-pathway proprietary technologies. Sections 6(b)(3)(ii) through (v) and sections 7(b)(2) through (5) of appendix A. Section IV.B of this document discusses the results of the screening analysis for microwave ovens, 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 final rule 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

[13] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for microwave ovens. (Docket No. EERE–2017–BT–STD–0023, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

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 microwave ovens, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this document and in chapter 5 of the final rule TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of the TSL to microwave ovens purchased in the 30-year period that begins in the year of compliance with the amended standards (2026–2055).[14] The savings are measured over the entire lifetime of products purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet models to estimate national energy savings (''NES'') from potential amended standards for microwave ovens. 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.[15] 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. For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and FFC effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis. As stated, the standard levels adopted in this final rule are projected to result in national FFC energy savings of 0.06 quads, the equivalent of the electricity use of 1.6 million homes in one year. DOE has determined the energy savings from the standard levels adopted in this final rule are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

E. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential amended standards on manufacturers, DOE conducts a Manufacturer Impact Analysis (''MIA''), as discussed in section IV.J of this document. DOE uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and payback period (''PBP'') associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its

[14] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this rule are described in section V.A of this document. DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[15] 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).

installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.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 adopted in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a 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)) To assist the Department of Justice (''DOJ'') in making such a determination, DOE transmitted copies of the August 2022 SNOPR and the SNOPR TSD to the Attorney General for review, with a request that the DOJ provide its determination on this issue. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for microwave ovens are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General's assessment at the end of this final rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the adopted standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The adopted standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the 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 of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to microwave ovens. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation

standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this rulemaking: *www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/48.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*'') for the emissions and utility impact analyses.

1. 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 microwave ovens. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

AHAM commented that it disagrees with DOE addressing European efficiency programs as a part of its analysis for the August 2022 SNOPR. AHAM stated that DOE is improperly making direct comparisons to the European market and should not look to Europe or any other jurisdiction for guidance without first understanding the differences between products in those markets and those in the United States. (AHAM, No. 28 at p. 10) In response to AHAM's comment, DOE notes that its analysis of foreign regulatory programs is only to reduce additional manufacturer burden in complying with conflicting standards. DOE did not find any conflicting foreign regulatory programs, nor did it develop trial standards levels based on any foreign regulations. In the case of this rulemaking, foreign regulations had no bearing on DOE's analysis.

2. 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 such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (*Id.*)

Any product meeting the definition of a microwave oven, as codified in 10 CFR 430.2, is included in DOE's scope of coverage. ''Microwave oven'' is defined as a category of cooking products which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens. This includes any microwave oven(s) component of a combined cooking product.

For this proposal, DOE considered the two product classes of microwave ovens prescribed in the current energy conservation standards: (1) Microwave-Only Ovens and Countertop Convection Microwave Ovens, and (2) Built-In and Over-the-Range Convection Microwave Ovens.

For these two classes of microwave ovens, DOE's current test procedure measures the energy consumption in standby mode and off mode only. Consequently, DOE's current energy conservation standards for microwave ovens are also expressed in terms of standby mode and off mode power. There are currently no active mode energy conservation standards nor a prescribed test procedure for measuring the active mode energy use or efficiency (*e.g.,* cooking efficiency) of microwave ovens.

In response to the August 2022 SNOPR, AHAM and Whirlpool requested that DOE consider changing microwave oven product classes to align with the three general chassis designs: countertop, built-in, and over-the-range. AHAM commented that the feature sets, design requirements, consumer use patterns, and standby powers are more correlated to chassis type than the presence of convection functionality. (AHAM, No. 28 at p. 12) AHAM further stated that, on a shipment-weighted average basis, countertop models consume 0.6 W of standby power, followed by over-the-range models, and built-in models consuming 0.81 W and 1.65 W of standby power, respectively. (AHAM, No. 28 at p. 13) Whirlpool added that task lights, exhaust fans, and environmental sensors are some of the unique features of many over-the-range microwave ovens. (Whirlpool, No. 30 at p. 6).

In the June 2013 Final Rule, DOE discussed its rationale for establishing the current product class structure. In that rulemaking, DOE acknowledged that over-the-range microwave ovens contain additional relays for components that are not found in countertop units, such as exhaust or cooling fans and cooktop lighting. However, these components were not found in DOE's analysis to require larger power supplies that would affect standby power consumption, and thus would not warrant a separate product class for over-the-range microwave-only ovens from countertop microwave ovens. 78 FR 36328. For this rulemaking, DOE's teardown and analyses of the Compliance Certification Database (''CCD [16]'') showed that microwave ovens have a wide variety of features independent of chassis type. DOE found various sensors, display types, and connectivity features in over-the-range, built-in and countertop microwave ovens. As such, DOE determines that performance-related features are fully reflected by the current product class structure. Additionally, AHAM claims via its shipment-weighted average standby power consumption data that the only meaningful differentiation for product classes is installation configuration. AHAM however did not provide shipments data with sufficient granularity to contradict DOE's previous data and conclusions (*i.e.,* to justify eliminating product class differentiation on the basis of convection features and instead defining product classes solely by installation configuration). As a result, DOE is unable to rely on AHAM's data to revise the product classes. Further, DOE is not aware of, nor did AHAM provide, any data demonstrating that consumer utility varies by chassis type and has impacts on energy use that would justify establishing separate product classes. As a result, DOE is

[16] Available at *www.regulations.doe.gov/certification-data.*

opting to maintain its current product class structure.

3. Technology Options

In the preliminary market analysis and technology assessment for the August 2022 SNOPR, DOE identified four technology options initially determined to improve the efficiency of microwave ovens, as measured by the DOE test procedure:

TABLE IV.1—MICROWAVE OVEN TECHNOLOGY OPTIONS

Mode	Technology option
Standby	Lower-power display technologies.
Standby	Cooking sensors with no standby power requirement.
Standby	More efficient power supply and control board options.
Standby	Automatic power-down of most power-consuming components, including the clock display.

In support of the analysis for its August 2022 SNOPR, DOE purchased and tested 33 microwave ovens representing the two proposed product classes, and the results confirmed that microwave oven models currently on the market can achieve standby power consumption values in-between the very low levels enabled by automatic power-down microwave ovens and the proposed levels (*i.e.,* 0.6 W for Product Class 1 and 1.0 W for Product Class 2). 87 FR 52283. Further, DOE's testing suggested that microwave ovens are frequently rated conservatively, such that their certified standby power level is higher than actual values obtained when tested in accordance with appendix I. Therefore, DOE was unable to accurately assess the relationship between specific standby power levels and utilized technology options based on data from the CCD. Instead, DOE used the measured standby power levels of microwave oven models in its test sample as a proxy to determine the representative distribution of standby power levels among microwave ovens on the market, as shown in Table *IV.2.* Details of the methodology and results from DOE's investigative testing are included in chapter 3 and chapter 5 of the SNOPR TSD as well as the final rule TSD.[17]

[17] The final rule TSD as well as the SNOPR TSD are available on the docket, *www.regulations.gov/document/EERE-2017-BT-STD-0023-0022.*

TABLE IV.2—ESTIMATED MARKET DISTRIBUTION OF MICROWAVE OVENS

Standby power (W)	Market share (%)
Microwave-Only Ovens and Countertop Convection Microwave Ovens	
1	15
0.8	45
0.6	29
0.4	11
Built-in and Over-the-Range Convection Microwave Ovens	
2.2	0
1.5	36
1	59
0.5	5

AHAM commented that it disagreed with DOE's use of tested values rather than CCD reported values in the August 2022 SNOPR, a practice it says undermines the practice of conservatively reporting standby power to allow some ''buffer'' to ensure consumers are getting what they are promised. (AHAM, No. 28 at p. 9) AHAM further commented that conservative rating ensures compliance with applicable standards by providing a safety factor to account for unavoidable variation in the manufacturing process. DOE notes that its tested values were often much lower than the reported values in the CCD, with differences as great as 1.43 W (approximately 65 percent) for Product Class 2 microwave ovens and 0.6192 W (approximately 61 percent) for Product Class 1 microwave ovens. DOE determines these current ratings to be significantly more conservative than is necessary, considering electronics manufacturing processes are sufficiently advanced. Furthermore, DOE did not see any variation in standby power greater than 0.1 W in the duplicate test units.

AHAM additionally commented that the products that use significantly less power than rated undermine the need for new standards, as there is little to gain. (AHAM, No. 28 at p. 9)

DOE reiterates that its analysis uses an efficiency distribution based on tested values that shows the existing market to be more efficient compared to that based on overly conservative rated values. As discussed further in section V.C.1 of this document, DOE's analysis demonstrates that despite the use of a more efficient distribution in its analysis as a starting point, the benefits of the standard exceed, to a great extent, the burdens at TSL 2 and an amended standard set at this level for microwave ovens would be economically justified. Additionally, AHAM's comment underscores the importance of testing units rather than relying solely on data from the CCD.

As part of the analysis for the August 2022 SNOPR, DOE subsequently tore down all 33 microwave ovens, but was unable to isolate a unique set of technology options associated with each standby power level. As such, DOE concluded that models demonstrating lower standby power consumption than the current energy conservation standards are not implementing specific technology options; rather, they are incorporating a comprehensive, system-level control board redesign that prioritizes standby power performance from the ground up. Examples of possible redesign strategies include (1) the replacement of microcontrollers with modern ones that demonstrate significantly lower quiescent current consumption and (2) firmware that emphasizes the shutting down of any subassemblies that are not in use while idle. DOE estimated that while these improvements would not contribute to the incremental manufacturer production cost (''MPC'') of a control board, the redesign would result in significant conversion costs for manufacturers as they attempt to bring their microwave oven models into compliance with any proposed standards. *See* section IV.J.2.a of this document.

In the August 2022 SNOPR, DOE requested feedback on its tentative conclusion that reducing the standby power consumption of a microwave oven would require a whole-board redesign, and that manufacturers would incur a one-time conversion cost without any additional MPC. AHAM and Whirlpool agreed with DOE's assessment that standby power reduction is a system-level redesign challenge, and that standby power often cannot be reduced with simple component changes. (AHAM, No. 28 at p. 5; Whirlpool, No. 30 at p. 6) AHAM and Whirlpool disagreed with DOE's conclusion that redesign would not impact overall MPC of a given product. Whirlpool commented that the new classes of microprocessors, display backlight circuits, display deep sleep technologies, and power switches may be necessary to reach higher efficiencies, and that this will add to the MPC for more efficient microwave ovens. (Whirlpool, No. 30 at p. 7) AHAM commented that changes to the control board may require manufacturers to evaluate and replace or remove components affected by the control board (*e.g.,* displays, sensors,

and clock) to reach amended standard levels. (AHAM, No. 28 at p. 5)

In response to AHAM and Whirlpool's comments, DOE notes that the analysis of the 33 microwave ovens noted above included product teardowns and establishing costed bill of materials. DOE examined the datasheets for components used in each design but was unable to establish a strong relationship between the use of better components and a microwave oven's overall standby performance. DOE found that while standby performance could be improved by opting for a better component, such as in the case of microcontrollers with deep sleep states, the cost differentials were often zero or negative. In all situations, DOE found that overall circuit design rather than component selection itself had a greater impact on standby performance cost. In the absence of additional cost data showing a clear MPC-efficiency relationship, DOE maintains its conclusion that any system-level redesign would not contribute to an incremental MPC increase.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

Sections 6(b)(3) and 7(b) of appendix A.

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include 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

DOE considers whether a technology option will adversely impact consumer utility and product availability. To that end, DOE has previously stated it is uncertain the extent to which consumers value the function of a continuous display clock, but that loss of such function may result in significant loss of consumer utility. 78 FR 36316, 36362. Consistent with this prior concern, DOE has screened out ''automatic power-down'' as a technology option due to its impact on consumer utility in this final rule.

2. Remaining Technologies

Through a review of each technology, DOE concludes that all of the other identified technologies listed in section IV.B.2 of this document meet all five screening criteria to be examined further as design options in DOE's final rule analysis. In summary, DOE did not screen out the following technology options:

(1) Lower-power display technologies;

(2) Cooking sensors with no standby power requirement; and

(3) More efficient power supply and control board options.

DOE determines that these technology options are technologically feasible because they are being used or have previously been used in commercially-available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the final rule TSD.

AHAM and Whirlpool asserted that DOE's revised standards will cause an unacceptable loss of product functionality, and that future features will not be able to be added to microwave ovens due to feature power draw and DOE's practice of undermining conservative ratings. (AHAM, No. 28 at pp. 3–4, 8; Whirlpool, No. 30 at p. 5) AHAM provided a confidential list of various features that it states would be impossible to implement at DOE's updated standards. (AHAM, No. 28 at p. 4) AHAM additionally commented that manufacturers will also be unable to incorporate indoor air quality (''IAQ'') sensors, which may be required by future state building codes and could be impossible to implement due to EPCA's backsliding provision. (*Id.* at pp. 3, 13) AHAM and Whirlpool commented that other sensors may also need to be removed as well, driving consumers to use less efficient methods of cooking, and Whirlpool added that it was not aware of any humidity sensors that do not impact standby power. (AHAM, No. 28 at p. 4; Whirlpool, No. 30 at pp. 4, 7) Finally, AHAM stated that updated microwave oven standby power standards could lead to a loss of connectivity features in microwave ovens. (AHAM, No 28 at p. 3)

The Joint Commenters commented that they were able to find many Product Class 1 [18] units from various manufacturers with reported powers below 0.6 W that incorporated sensor technologies. (Joint Commenters, No. 31 at p. 3)

In response to these comments, DOE concludes that IAQ monitoring sensors (smoke and carbon monoxide(''CO'')) are technologically mature enough to be implemented without any significant impact to microwave oven standby power budgets due to the prevalence and maturity of low-power smoke and carbon monoxide detectors required by most state building codes.[19] DOE researched additional sensors that might be applicable for use in microwave ovens, and found low-power options for IAQ, such as the Bosch BME688, with an average current consumption of 0.1 milliamps (''mA'') at 3.6 volts (''V'') in low power mode, and the Renesas ZMOD4410 with an average power consumption of 0.16 milliwatts in ultra-low power mode. Similarly, DOE found

[18] Product Class 1 comprises microwave-only ovens and countertop convection microwave ovens.

[19] DOE found that the First Alert BRK PRC710 and Kidde P3010CU combination smoke and CO detectors include sealed batteries meant to last 10 years.

flame detection sensors, such as the Kemet QFS series, with an average current draw of 3.5 microamps (''μA'') at 3.6 V and PM sensors, such as the Sensirion SPS30, with an idle current draw of 330 μA and a sleep current draw of 50 μA.

Regarding AHAM's comment that updated standards impact connectivity features, DOE notes that section 2.1.1 of appendix I instructs that if a microwave oven can communicate through a network (*e.g.,* Bluetooth® or internet connection), the network function is disabled for the duration of standby mode and off mode testing, if it is possible to disable it by means provided in the manufacturer's user manual. Furthermore, DOE's testing did not find any correlation between presence of connected features and standby power consumption. Similarly, DOE did not find any standby power impact from humidity sensors in the microwave ovens tested and torn down. An additional review of available humidity sensors showed multiple models without a listed electrical warm-up time, as well as sensors with power requirements less than 0.005 W (*e.g.* review of datasheets for humidity sensors from component manufacturers such as Reneas, Amphenol, and Texas Instrument shows typical supply currents in the range of 1 to 200 μA).

With regards to loss of features and functionality, DOE notes that many of the features discussed confidentially by AHAM were already present in the microwave ovens torn down by DOE and therefore were captured by DOE in its analysis. DOE also determines that those features discussed by AHAM that were not seen in DOE's teardown analysis would not impact standby power, as the microwave oven would not be in standby mode while those features are activated. Instead, the features would be disconnected, turned off, or put into a quiescent state [20] in order to place the microwave oven in standby mode for testing. As such, DOE determines that amending standards would neither impact the types of sensors that can be used in microwave oven designs nor adversely impact consumer utility.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of microwave ovens. 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 microwave ovens, 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/equipment at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the ''max-tech'' level (particularly in cases where the ''max-tech'' level exceeds the maximum efficiency level currently available on the market).

In this rulemaking, DOE applied the efficiency-level approach. As discussed, DOE was unable to use the design-option approach because it did not identify specific design options associated with each standby power level.

a. Baseline Efficiency/Energy Use

For each product class, DOE generally selects a baseline model as a reference point against which to measure changes resulting from energy conservation standards. 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.

For microwave-only ovens and countertop convection microwave ovens (''Product Class 1''), the baseline standby power level is equal to the current standard of 1.0 W. For the built-in and over-the-range convection microwave ovens product class (''Product Class 2''), the baseline standby power consumption used for the analysis is equal to the current standard of 2.2 W. This maximum allowable average standby power consumption for Product Class 2 is higher than that allowed for Product Class 1 microwave ovens because, in the June 2013 Final Rule, DOE concluded that built-in and over-the-range convection microwave ovens require a larger power supply to support additional features, such as an exhaust fan, additional relays, and additional lights, and that the larger power supply contributes to a higher standby power consumption. 78 FR 36316, 36328. Nonetheless, DOE expects that certain available design options for reducing standby power consumption for Product Class 2 microwave ovens would be similar to those for Product Class 1 microwave ovens.

b. Higher Efficiency Levels

Using the efficiency-level approach, the higher efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). As noted in section IV.A.2 of this document, DOE's testing suggests that microwave ovens are frequently rated conservatively, such that their certified standby power level is higher than actual values obtained when tested in accordance with appendix I. DOE therefore used the measured standby power levels of microwave oven models in its test sample as a proxy to determine the representative distribution of standby power levels among microwave ovens currently on the market, as shown in Table IV.2.

According to this efficiency distribution, 85 percent of Product Class 1 microwave ovens achieve a standby power consumption lower than the

[20] In electronics design, Quiescent state or Quiescent mode is defined as a state of inactivity or dormancy, with attributes of very low current draw.

current standard of 1.0 W, with 45 percent of the market estimated to be achieving 0.8 W, 29 percent achieving 0.6 W, and 11 percent achieving 0.4 W, all without the use of automatic power-down. For Product Class 1, therefore, DOE analyzed three efficiency levels (''ELs'') above the baseline, which correspond to these three standby power levels, as shown in Table IV.3.

The test results also showed that all of the Product Class 2 test units achieved a standby power consumption in the range of 0.5 W to 1.5 W, lower than the current standard of 2.2 W. As such, DOE analyzed higher efficiency levels for this product class at standby power values evenly distributed within that range: EL 1 at 1.5 W, EL 2 at 1.0 W, and EL 3 (max-tech) at 0.5 W. DOE estimates that there are currently no built-in and over-the-range convection microwave ovens in the market at the baseline standby power consumption of 2.2 W.

In summary, DOE analyzed the following efficiency levels for this rule:

TABLE IV.3—ANALYZED EFFICIENCY LEVELS FOR MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

Efficiency level	Standby power (W)
Baseline	1.00
1	0.8
2	0.6
3 (Max-Tech)	0.4

TABLE IV.4—ANALYZED EFFICIENCY LEVELS FOR BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

Efficiency level	Standby power (W)
Baseline	2.2
1	1.5
2	1.0
3 (Max-Tech)	0.5

The Joint Commenters requested that DOE analyze an additional efficiency level above max-tech, citing a number of microwave ovens in the CCD with reported standby powers of less than 0.3 W. The Joint Commenters further stated that many of these microwave ovens do not utilize the screened-out automatic power-down technology option, making this a viable efficiency level for manufacturers.

With regard to the Joint Commenters request, DOE's review of the market has shown that the majority of the microwave ovens at or below 0.3 W utilize other screened-out technology options (no clock, no display, and automatic power-down) to achieve a low standby power, and that an EL above max-tech would require designing microwave ovens with a significant impact to consumer utility. Also, as discussed further in section V.C of this document, DOE has determined that there is uncertainty as to whether or not a standard at max-tech would stifle innovation and risk impacting customer utility. Accordingly, DOE has elected not to analyze an efficiency level above the max-tech discussed in the August 2022 SNOPR.

AHAM and Whirlpool commented that electromagnetic interference (''EMI'') filtration boards draw a significant amount of power that DOE's analysis did not take into account. (AHAM, No. 28 at p. 6; Whirlpool, No. 30, at pp. 2–3) Furthermore, AHAM stated that EMI filters that draw less power than those currently in use may not be as effective at filtering out conducted electromagnetic fields (''EMF''). Whirlpool stated that effective filter designs can account for up to 0.3 W of standby power in a microwave oven. (Whirlpool, No. 30 at p. 4) AHAM commented that a survey of the current market found filter board power contributions of 0.17 W for countertop microwave ovens, 0.22 W for over-the-range microwave ovens, and 0.08 W for built-in microwave ovens (AHAM, No. 28 at p. 6).

As detailed in chapter 5 of the final rule TSD, DOE conducted a number of additional standby power tests on a sample of nine microwave ovens from both product classes after removing their input power filtration boards. Tested units included inverter microwave ovens, which tend to have more expensive and complex filtration boards, and units with different sensors and WiFi functionality.

DOE found that the sampled power filtration boards, on average, account for only 0.012 W of power during standby testing, calculated as the difference between the standby power with the filter installed and the standby power without the filter installed. This average measured value of 0.012 W is approximately 25 times less than Whirlpool's estimate (0.3 W) and about 10 times less than the shipment-weighted average of AHAM's reported values (0.173 W) using shipment weights provided by Whirlpool in its comments. (Whirlpool, No. 30 at p. 6) DOE conducted a single-tailed T-test to determine whether AHAM's reported mean differs in a statistically significant way from the measured mean. The resulting p-value rejected the null hypothesis (*i.e.,* the difference is indeed statistically significant and not due to sampling artifices). Whirlpool commented that DOE's tested models may not utilize the highest levels of filtering. (Whirlpool, No. 30 at p. 4) Since neither AHAM nor Whirlpool provided any further information identifying brands and models used to arrive at these values, DOE cannot verify the comments that EMI filtration boards take up a significant amount of a microwave's standby power budget, nor that DOE's tests were not representative of the market.

DOE performed additional teardown analysis of power filter boards from tested microwave ovens. All boards were passive filtration boards that utilize (1) a selection of capacitors and a common mode choke for mains power filtration; (2) a safety capacitor bleed resistor used to discharge capacitors that might otherwise shock a user when unplugging the unit from the wall; and (3) In some cases, a metal oxide varistor likely for voltage transient suppression. The primary standby power draw of this circuit is the always-connected bleeder resistor, which can be further eliminated with minimal impact to EMI filtration quality by using any number of automatic safety capacitor discharge circuits. However, this approach to reducing standby power with an automatic safety capacitor discharge circuit would only be relevant and meaningful if the power consumption of EMI filters with regular bleed resistors were significant. As discussed previously, DOE's testing showed power consumption of EMI filters to be a fraction of what AHAM and Whirlpool commented. The use of automatic capacitor discharge circuits would therefore not be meaningful and/or necessary.

Additionally, AHAM commented that microwave ovens account for 40.51 percent of consumer-reported nuisance trips when connected to a mains line with an arc-fault circuit interrupter (''AFCI'') circuit breaker. (AHAM, No. 28 at p. 8) AHAM stated that manufacturers traditionally outfit microwave ovens with EMI filters designed to only meet emissions limits established by the Federal Communications Commission (''FCC'') in 47 CFR part 15 and 47 CFR part 18 (referred to as ''Part 15'' and ''Part 18''), and that actual limits for avoiding accidental ''nuisance'' tripping are much more stringent and require EMI filters that consume more power. (AHAM, No. 28 at pp. 6–8) With increasing use of AFCIs in homes, Whirlpool commented that DOE must account for the additional power draw

of AFCI-compliant EMI filters when amending standards or risk losing other features that provide consumer utility. (Whirlpool, No. 30 at p. 4)

DOE researched guidance for appliance manufacturers on ensuring compatibility with AFCI outlets. As part of its efforts to promote the use of AFCIs, the National Electrical Manufacturer's Association (''NEMA'') has published guidelines [21] for appliance manufacturers that wish to design appliances that are compatible with AFCI outlets. These guidelines were developed by the Molded Case Circuit Breaker Product Group of the Low Voltage Distribution Equipment Section of NEMA. At the time of publication, this group included ABB Control, Inc.; Eaton Corporation; General Electric; Siemens Industry, Inc.; and Schneider Electric USA, all manufacturers of AFCIs. Although it is unclear how many of these members participated in the development of NEMA's guidance, DOE has not found contradicting guidance from any AFCI manufacturers.

NEMA's white paper describes the emission limits recommendations for appliance manufacturers. Specifically, NEMA recommends that manufacturers meet Part 15 requirements for Class B devices, even if appliances are not subject to these regulations. DOE notes that the Part 15 requirements for conducted emissions of Class B devices are the same as the Part 18 requirements for consumer devices other than induction cooking ranges and ultrasonic equipment. Thus, if manufacturers are designing microwave ovens to meet Part 18 requirements as AHAM states, they are following the leading industry guidance for avoiding AFCI nuisance tripping.

Although AHAM commented that AFCIs are being improperly tripped by normal microwave use, DOE recognizes that there are many potential sources of arcing in a microwave oven that may be difficult for consumers to recognize, potentially leading to an over-reporting of nuisance tripping. Unwanted arcing can occur during cooking if there are materials that reflect microwaves; the microwave is improperly loaded (ran empty or nearly empty); or there is a stalled stirrer blade or non-rotating antenna, which may not be visible to the consumer, resulting in reflected microwaves. In all three of these cases, the AFCI is performing its function correctly by detecting arcs and preventing further power draw, though consumers may not be aware that these arcs are occurring. Microwave ovens also rely on a number of relays to control various functionality. Relays, if not properly implemented, can also be prone to producing excessive arcing that may trip AFCIs. Thus, AFCIs can correctly trip from detected arcs that may be invisible to consumers.

In sum, DOE does not find that future EMI filter board designs would substantively alter the standby power levels that microwave ovens can achieve and concludes, therefore, that EMI filtration board power draw will not prohibit future innovation in microwave ovens. Further, DOE determined that microwave ovens are already meeting the leading guidance for avoiding nuisance tripping and will continue to do so as long as manufacturers design according to mandatory FCC standards.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, and the availability and timeliness of purchasing the microwave oven 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.

For microwave ovens, DOE attempted to estimate the MPC of attaining each efficiency level using the physical teardowns approach described previously. As stated in section IV.A.2 of this document, DOE tore down all 33 microwave ovens in its test sample but was unable to isolate a unique set of technology options associated with each standby power level. As such, DOE concludes that models demonstrating lower standby power consumption than the current energy conservation standards are not implementing specific technology options, but rather incorporate a comprehensive system-level control board design that prioritizes standby power performance from the ground up. Examples of possible design strategies include the replacement of microcontrollers and switch mode controllers with modern ones that demonstrate significantly lower quiescent current consumption at no additional cost compared to those found in inefficient systems and firmware that emphasizes the shutting down of all subassemblies that are not in use while idle. DOE estimates that, while these improvements would not contribute to an increase in the MPC of a control board (*i.e.,* incremental MPC of $0), the redesign would result in conversion costs for manufacturers as they bring their microwave oven models into compliance with any proposed standards. *See* section IV.J.2.a of this document. To account for manufacturers' non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting 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 household cooking appliance manufacturing and whose combined product range includes microwave ovens.

3. Cost-Efficiency Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of MPC (in dollars) versus standby power consumption (in W). For the reasons discussed in sections IV.A.2 and IV.C.2 of this document, DOE estimated an incremental MPC of $0 at all higher efficiency levels, compared to the baseline MPC, for both of the product classes, as shown in Table IV.5 and Table IV.6 of this document. *See* chapter 5 of the final rule TSD for additional detail on the engineering analysis.

[21] National Electrical Manufacturer's Association. *Recommendations on AFCI/Home Electrical Product Compatibility.* 2011. Rosslyn, VA.

TABLE IV.5—ANALYZED EFFICIENCY LEVELS AND INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

Efficiency level	Standby power (W)	Incremental MPC (2021$)
Baseline	1.00	.....
1	0.8	0.0
2	0.6	0.0
3	0.4	0.0

TABLE IV.6—ANALYZED EFFICIENCY LEVELS AND INCREMENTAL MANUFACTURER PRODUCTION COSTS FOR BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

Efficiency level	Standby power (W)	Incremental MPC (2021$)
Baseline	2.20	.....
1	1.5	$0.0
2	1.00	$0.0
3	0.5	$0.0

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

For microwave ovens, DOE further developed baseline and incremental markups for each link in the distribution chain (after the product leaves the manufacturer). Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[22]

DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups. Specifically, DOE used the 2017 Annual Retail Trade Survey for the ''electronics and appliance stores'' sector to develop retailer markups.[23]

Chapter 6 of the final rule TSD provides details on DOE's development of markups for microwave ovens.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of microwave ovens 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 microwave ovens efficiency. The energy use analysis estimates the range of energy use of microwave ovens in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

For this final rule, DOE used the same methodology as that described in section IV.D of the August 2022 SNOPR. In the June 2013 Final Rule, DOE determined the average hours of operation for microwave ovens to be 44.9 hours per year.[24] [25] To calibrate the average annual operating hours, DOE primarily used data from the EIA's 2020 *Residential Energy Consumption Survey* (''*RECS*'').[26] *RECS 2020* provides information on the frequency of microwave oven usage per week for each household. DOE calculated the *RECS* microwave oven usage factor for each household in the sample by dividing the weighted-average usage based on the entire *RECS* samples. DOE then multiplied the usage factor by the annual operating hours (*i.e.,* 44.9 hours) for each household in the *RECS.* DOE subtracted field microwave ovens operating hours from the total number of hours in a year and multiplied that difference by the standby mode power usage at each efficiency level to determine annual standby mode and off mode energy consumption.

Chapter 7 of the final rule TSD provides details on DOE's energy use analysis for microwave ovens.

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 microwave ovens. 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

[22] 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.

[23] US Census Bureau, Annual Retail Trade Survey. 2017. *www.census.gov/programs-surveys/arts.html.*

[24] Uniform Test Method for Measuring the Energy Consumption of Cooking Products. 10 CFR part 430, subpart B, appendix I, *www.law.cornell.edu/cfr/text/10/appendix-I_to_subpart_B_of_part_430.*

[25] Williams, *et al.* 2012. Surveys of Microwave Ovens in U.S. Homes. LBNL–5947E *www.osti.gov/biblio/1172657.*

[26] U.S. Department of Energy-Energy Information Administration, Residential Energy Consumption Survey, 2020 Public Use Microdata Files, 2015. Washington, DC. Available online at: *www.eia.doe.gov/emeu/recs/recspubuse20/pubuse20.html.*

total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

• 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 microwave ovens in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples from the *RECS 2020*. For each sample household, DOE determined the energy consumption for the microwave ovens and the appropriate energy price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of microwave ovens.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC 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 microwave ovens user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[27] 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 microwave ovens as if each were to purchase a new product in the first year of required compliance with new or amended standards. Amended standards apply to microwave ovens manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(g)(10)(B)) Therefore, DOE used 2026 as the first year of compliance with any amended standards for microwave ovens.

Table IV.5 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 final rule TSD and its appendices.

TABLE IV.5—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.	Assumed no change with efficiency level.
Annual Energy Use.	The total annual energy use multiplied by the hours per year. Average number of hours based on field data. Variability: Based on the RECS 2020.
Energy Prices	Electricity: Based on EEI 2021. Variability: Regional energy prices determined for nine regions.
Energy Price Trends.	Based on *AEO2022* price projections.
Repair and Maintenance Costs.	Assumed no change with efficiency level.
Product Lifetime.	Average: 10.78 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.	2026.

* 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 final rule TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or ''experience'' curves. An experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level. To derive the learning rate parameter for microwave ovens, DOE obtained historical Producer Price Index (''PPI'') data for microwave ovens from the Bureau of Labor Statistics (''BLS''). A PPI for ''Household Cooking Appliance Manufacturing: Electric (Including Microwave) Household Ranges, Ovens, Surface Cooking Units,

[27] Crystal Ball™ is a commercially-available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/technetwork/middleware/crystalball/overview/index.html* (last accessed December 13, 2022).

and Equipment'' was available for the time period between 1972 and 2020.[28] Inflation-adjusted price indices were calculated by dividing the PPI series by the gross domestic product index from the Bureau of Economic Analysis for the same years. Using data from 1972–2020, the estimated learning rate (defined as the fractional reduction in price expected from each doubling of cumulative production) is 10.7 percent.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from 2022 to estimate the baseline installation cost for microwave ovens. DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a microwave oven at different efficiency levels using the approach described previously in section IV.E of this document.

4. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2022 using data from Edison Electric Institute (''EEI'') Typical Bills and Average Rates reports.[29] 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).[30] For the commercial sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2019).[31]

DOE's methodology allows electricity prices to vary by sector, region, and season. In the analysis, variability in electricity prices is chosen to be consistent with the way the consumer economic and energy use characteristics are defined in the LCC analysis. For microwave ovens, DOE derived electricity prices in 2022 using data from EEI. DOE used the EEI data to define a marginal price as the ratio of the change in the bill to the change in energy consumption. *See* chapter 8 of the final rule TSD for details.

To estimate energy prices in future years, DOE multiplied the 2020 energy prices by the projection of annual average price changes for each of the nine census divisions from the Reference case in *AEO2022,* which has an end year of 2050.[32] To estimate price trends after 2050, the 2046–2050 average was used for all subsequent years.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency entail no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products. In this final rule analysis, DOE included no changes in maintenance or repair costs for microwave ovens that exceed baseline efficiency.

6. Product Lifetime

For microwave ovens, DOE developed a distribution of lifetimes from which specific values are assigned to the appliances in the samples. DOE conducted an analysis of actual lifetime in the field using a combination of historical shipments data, the stock of the considered appliances in the *American Housing Survey,* and responses in *RECS* on the age of the appliances in the homes. The data allowed DOE to estimate a survival function, which provides an average appliance lifetime. This analysis yielded a lifetime probability distribution with an average lifetime for microwave ovens of approximately 10.78 years. *See* chapter 8 of the final rule TSD for further details.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for microwave ovens 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.[33] The LCC analysis estimates net present value over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's triennial Survey of Consumer

[28] U.S. Bureau of Labor Statistics, PPI Industry Data, Major household appliance manufacturers, Product series ID: PCU 33522033522011. Data series available at: *www.bls.gov/ppi/.*

[29] Edison Electric Institute. Typical Bills and Average Rates Report. 2020. Winter 2020, Summer 2020: Washington, DC

[30] 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. *ees.lbl.gov/publications/residential-electricity-prices-review.*

[31] Coughlin, K. and B. Beraki. 2019. Non-residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001203. *ees.lbl.gov/publications/non-residential-electricity-prices.*

[32] U.S. Department of Energy—Energy Information Administration. *Annual Energy Outlook 2018 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed December 13, 2022).

[33] 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; and 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.

Finances [34] (''SCF'') starting in 1995 and ending in 2019. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent.

See chapter 8 of the final rule TSD for further details on the development of consumer discount rates.

8. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the energy efficiency distribution of microwave ovens for 2026, DOE used data from the engineering analysis. The estimated market shares for the no-new-standards case for microwave ovens are shown in Table IV.6. *See* chapter 8 of the final rule TSD for further information on the derivation of the efficiency distributions.

TABLE IV.6—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR MICROWAVE OVENS IN 2026

TSL	Product class 1: microwave-only and countertop convection microwave ovens		Product class 2: built-in and over-the-range convection microwave ovens	
	Standby power (W)	Market share (%)	Standby power (W)	Market share (%)
Baseline	1.00	15	2.20	0
1	0.8	45	1.5	36
2	0.6	29	1.0	59
3	0.4	11	0.5	5

In response to the August 2023 SNOPR, AHAM stated that the CCD is not an accurate determination of efficiency distributions. (AHAM, No. 28 at p. 10) DOE agrees that shipment-weighted efficiency distributions would be preferable to shares based on model counts, but such data were not available for microwave ovens, and there is no firm basis to make an adjustment to the model count market shares. DOE's approach may well overstate the market share of higher-efficiency products in the absence of new standards, but this would mean that the energy and economic benefits estimated by DOE for new standards are minimum amounts. The justification for the adopted standards would be even stronger if DOE were able to use actual shipment data for the model counts.

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the microwave oven purchased by each sample household in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions.

9. Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. DOE refers to this as a ''simple PBP'' because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[35] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

Total shipments for microwave ovens are developed by considering the demand from replacements for units in stock that fail and the demand from new installations in newly constructed homes. DOE calculated shipments due to replacements using the retirement function developed for the LCC analysis and historical data from AHAM. DOE calculated shipments due to new installations using estimates from the microwave oven saturation rate in new homes in *RECS 2020* and projections of new housing starts from *AEO2022. See*

[34] U.S. Board of Governors of the Federal Reserve System. Survey of Consumer Finances. 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. Available at *www.Federalreserve.gov/econresdata/scf/scfindex.htm* (last accessed December 13, 2022).

[35] 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.

chapter 9 of the final rule TSD for details.

For this final rule analysis, DOE used data from a market research report and estimated the market share for built-in and over-the-range convection microwave ovens at 4 percent.[36]

DOE considers the impacts on shipments from changes in product purchase price and operating cost associated with higher energy efficiency levels using a price elasticity and an efficiency elasticity. DOE employs a 0.2-percent efficiency elasticity rate and a price elasticity of −0.45 in its shipments model.[37] The market impact is defined as the difference between the product of price elasticity of demand and the change in price due to a standard level, and the product of the efficiency elasticity and the change in operating costs due to a standard level.

H. National Impact Analysis

The NIA assesses the NES and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[38] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of microwave ovens sold from 2026 through 2055.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.7 summarizes the inputs and methods DOE used for the NIA analysis for the final rule. Discussion of these inputs and methods follows the table. *See* chapter 10 of the final rule TSD for further details.

TABLE IV.7—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2026.
Efficiency Trends	Standards cases: ''Roll up'' equipment to meet potential efficiency level.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Price Trends	*AEO2022* projections (to 2050) and extrapolation thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2022.*
Discount Rate	Three and seven percent.
Present Year	2023.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard. To project the trend in efficiency absent amended standards for microwave ovens over the entire shipments projection period, DOE used the shipments-weighted standby power (''SWSP'') as a starting point. DOE assumed that the shipment-weighted efficiency would not increase annually for the microwave oven product classes. The approach is further described in chapter 10 of the final rule TSD.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2026). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products between each TSL and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO2022.*

[36] Euromonitor International. 2021. *Air treatment products in the U.S.* December.

[37] Fujita, K. (2015) Estimating Price Elasticity using Market-Level Appliance Data. Lawrence Berkeley National Laboratory, LBNL–188289.

[38] The NIA accounts for impacts in the 50 states.

Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. DOE did not find any data on the rebound effect specific to microwave ovens; therefore, no rebound was applied.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [39] that EIA uses to prepare its *Annual Energy Outlook.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the final rule TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy 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 microwave oven 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 2055, which is the end date of the projection period, the average microwave oven price is projected to drop 11 percent relative to 2021. DOE's projection of product prices is described in appendix 10C of the final rule TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for microwave ovens. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a high price decline case based on ''electric household cooking products'' PPI series from 1993 to 2021 and (2) a low price decline case based on the same PPI series from 1972 to 1992. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the final rule TSD.

The energy cost savings are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential energy price changes in the Reference case from *AEO2022,* which has an end year of 2050. To estimate price trends after 2050, the 2046–2050 average was used for all years. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *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 final rule TSD.

In considering the consumer welfare gained due to the direct rebound effect, DOE accounted for change in consumer surplus attributed to additional cooling from the purchase of a more efficient unit. Overall consumer welfare is generally understood to be enhanced from rebound. The net consumer impact of the rebound effect is included in the calculation of operating cost savings in the consumer NPV results. *See* appendix 10F of the final rule TSD for details on DOE's treatment of the monetary valuation of the rebound effect.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[40] 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 final rule, 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 *RECS 2020* sample composed of households that meet the criteria for the considered subgroups. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 of the final rule TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of microwave ovens and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected

[39] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2009,* DOE/EIA–0581(2009), October 2009. Available at *www.eia.gov/forecasts/aeo/index.cfm* (last accessed December 13, 2022).

[40] 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 December 13, 2022).

industry cash flows, the INPV, investments in research and development (''R&D'') and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the 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 (TSLs). To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the final rule TSD.

DOE prepared a profile of the microwave oven manufacturing industry based on the market and technology assessment, current information from DOE's CCD, and information from the June 2013 Final Rule. (78 FR 36316) This included a top-down analysis of microwave oven manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; SG&A expenses; and R&D expenses).

Additionally, 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.

DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers, niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B of this document, ''Review under the Regulatory Flexibility Act'' and in chapter 12 of the final rule 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, 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 amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2023 (the base year of the analysis) and continuing to 2055. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of microwave ovens, DOE used a real discount rate of 8.5 percent, which was the same real discount rate used in the June 2013 Final Rule and that was verified during manufacturer interviews for that rulemakings analysis.

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 standards 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 information used in the June 2013 Final Rule. 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 final rule TSD.

a. Manufacturer Production Costs

Manufacturing more efficient products is typically more expensive than manufacturing baseline products due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry. As previously stated in the engineering analysis in section IV.C.3 of this document, DOE estimated an incremental MPC of $0 at all efficiency levels, compared to the baseline MPC. DOE did not make any changes to the MPCs from the August 2022 SNOPR.

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 2023 (the base year) to 2055 (the end year of the analysis period). *See* chapter 9 of the final rule TSD for additional details. DOE slightly updated the shipments analysis from the August 2022 SNOPR.

c. Product and Capital Conversion Costs

Amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) product

conversion costs and (2) capital conversion costs. 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. 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.

DOE used a bottom-up cost estimate to arrive at a total industry conversion cost at each efficiency level for both product classes. First, DOE estimated the investments manufacturers are likely to incur in redesigning a single microwave oven control board to be able to meet the analyzed energy conservation standards. These per-board conversion costs were based on manufacturer interviews and include both per-board capital conversion costs (*e.g.,* investments in machinery and tooling) as well as product conversion costs (*e.g.,* investments in R&D and testing). Based on manufacturer feedback, DOE assigned a smaller level of investment necessary to achieve lower efficiency levels and a larger level of investment to achieve higher efficiency levels.

Next, based on engineering teardowns and market research, DOE estimated the total number of unique control boards used across all covered microwave ovens. DOE used the percentage of unique microwave oven models for each product class that were certified in DOE's publicly available CCD to estimate the number of unique control boards for each product class. Then DOE used the efficiency distribution from the shipments analysis to estimate the number, for each product class, of unique control boards specific to each efficiency level. Once DOE estimated the number of unique control boards, DOE used the per-board redesign costs specific to achieve each analyzed efficiency level in order to arrive at the total industry conversion costs.

DOE did not make any changes to the capital and product conversion costs estimates used in the August 2022 SNOPR. In general, 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 amended standards. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. *See* chapter 12 of the final rule TSD for additional information on the estimated capital and product conversion costs.

d. 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 non-production cost markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these markups in the standards case yields different sets of impacts on manufacturers. As in the August 2022 SNOPR, DOE used a manufacturer markup of 1.298 for both product classes in the no-new-standards case. (87 FR 52282, 52296)

For the MIA, DOE modeled two standards-case markup scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) a conversion cost recovery scenario; and (2) a constant price scenario. These scenarios lead to different manufacturer markup values at each TSL that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the conversion cost recovery scenario, DOE modeled a scenario in which manufacturers increase their manufacturer markups in response to amended energy conservation standards. Because DOE's engineering analysis assumed there were no increases in the MPCs at higher efficiency levels compared to the baseline MPCs, and that microwave oven manufacturers would incur conversion costs to redesign non-compliant models, DOE modeled a manufacturer markup scenario in which microwave oven manufacturers attempt to recover these investments through an increase in their manufacturer markup. Therefore, in the standards cases, the manufacturer markup of models that would need to be re-designed is a value larger than the 1.298 manufacturer markup used in the no-new-standards case. DOE calibrated these manufacturer markups for each product class at each efficiency level to cause manufacturer INPV in the standards cases to be equal to the INPV in the no-new-standards case. Because manufacturer markups used in this scenario are calculated using the shipments analysis as inputs and the shipments analysis was updated from the August 2022 SNOPR to this final rule analysis, the calibrated manufacturer markups used in the conversion cost recovery scenario for this final rule analysis are slightly different than those values that were calculated in the August 2022 SNOPR. However, the methodology used to calculate these manufacturer markup values are the same as those used in the August 2022 SNOPR.

The conversion cost recovery scenario represents the upper-bound of manufacturer profitability, as microwave oven manufacturers are no worse off, as measured by INPV, with energy conservation standards than in the no-new-standards case (*i.e.,* if DOE did not amend energy conservation standards).

Under the constant price scenario, DOE applied the same manufacturer markup, 1.298, for all efficiency levels in the no-new-standards case and the standards cases. Because DOE's engineering analysis assumed there were no increases in the MPCs at higher efficiency levels and that microwave oven manufacturers would incur conversion costs to redesign non-compliant models, microwave oven manufacturers do not earn any additional revenue in the standards cases than in the no-new-standards case, despite incurring conversion costs to redesign non-compliant microwave oven models. The constant price scenario represents the lower-bound of manufacturer profitability, as microwave oven manufacturers incur conversion costs but do not receive any additional revenue from these redesign efforts. The manufacturer markups in the constant price scenario are the same as those used in the August 2022 SNOPR.

A comparison of industry financial impacts under the two markup scenarios is presented in section V.B.2.a of this document.

3. Discussion of MIA Comments

AHAM commented on the August 2022 SNOPR that DOE correctly decided to incorporate conversion costs into the LCC analysis as part of the August 2022 SNOPR. However, AHAM stated that DOE should amortize these conversion costs over a 6-year period instead of amortizing these conversion costs over a 30-year period, which is what was done in the August 2022 SNOPR. (AHAM, No. 28 at p. 11)

In the SNOPR analysis, DOE used the GRIM to calculate a higher manufacturer markup in the standards cases that results in an equivalent manufacturer INPV in the standards cases compared to the no-new-standards case. The conversion cost recovery scenario is the manufacturer markup scenario incorporated into all downstream analyses, including the LCC analysis, in the standards cases. In this scenario, manufacturers make investments, both

in machinery and tooling (capital conversion costs) and in redesign and testing (product conversion costs), prior to the compliance date of energy conservation standards. After compliance with energy conservation standards manufacturers increase their manufacturer markup, thereby increasing revenue and free cash flow for the remainder of the 30-year analysis period. Amortizing these conversion costs over a 6-year period would create a scenario where manufacturer INPV increases in all analyzed TSLs in the standards cases compared to the no-new-standards case. DOE maintains that amortizing these conversion costs over the 30-year analysis period reflects an accurate upper-bound to industry profitability in the standards cases as manufacturers do not lose INPV in the conversion cost recovery scenario in the standards cases compared to the no-new-standards case.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions in emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the final rule TSD. The analysis presented in this final rule uses projections from *AEO2022.* Power sector emissions of CH_4 and N_2O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the Environmental Protection Agency (EPA).[41]

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2, are estimated based on the methodology described in chapter 15 of the final rule TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO,* which incorporates the projected impacts of existing air quality regulations on emissions. *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.[42]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (''DC''). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015 and has been subsequently updated.[43] *AEO2022* incorporates implementation of CSAPR, including the Revised CSAPR Update issued in April 2021. 86 FR 23054. Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, for States subject to SO_2 emissions limits under CSAPR, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

Beginning in 2016, SO_2 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 SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation will generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *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 cases, 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

[41] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed December 13, 2022).

[42] 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 December 13, 2022).

[43] CSAPR requires States to address annual emissions of SO_2 and NO_X, precursors to the formation of fine particulate matter (''$PM_{2.5}$'') pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (''NAAQS''). CSAPR also requires certain States to address the ozone season (May-September) emissions of NO_X, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five States in the CSAPR ozone season program; 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule). In 2021, EPA issued the Revised CSAPR Update for the 2008 Ozone NAAQs (Revised CSAPR Update) promulgating EGU NO_X ozone season emission budgets for 12 states. 86 FR 23054, 23059 (Apr. 30, 2021).

reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in States covered by CSAPR. Standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used *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 final rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this final rule.

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. DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

AHAM commented that DOE should not use 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 commented 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. 28 at p. 13)

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. *See* 42 U.S.C. 6295(o)(2)(B)(i)(VI). 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 final rulemaking in the absence of the social cost of greenhouse gases.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the social cost of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable Executive orders, and DOE would reach the same conclusion presented in this final 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 (IWG) or by another means, did not affect the rule ultimately proposed by DOE.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions (*i.e.,* SC–GHGs) using the estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, published in February 2021 by the IWG. The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs therefore reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O, and CH_4 emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, 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 a transparent process, peer-reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, which included DOE and other executive branch agencies and offices, was established to ensure that agencies were using the best available science and to promote consistency in the social cost of carbon (SC–CO_2) values used across agencies. The IWG published SC–CO_2 estimates in 2010 that were developed from an ensemble of three widely cited

integrated assessment models (IAMs) that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO_2 emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO_2 concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016, the IWG published estimates of the social cost of methane (SC–CH_4) and nitrous oxide (SC–N_2O) using methodologies that are consistent with the methodology underlying the SC–CO_2 estimates. The modeling approach that extends the IWG SC–CO_2 methodology to non-CO_2 GHGs has undergone multiple stages of peer review. The SC–CH_4 and SC–N_2O estimates were developed by Marten *et al.*[44] and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC–CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide,* and recommended specific criteria for future updates to the SC–CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process.[45] Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC–CO_2 estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (E.O. 13783, Section 5(c)). Benefit-cost analyses following E.O. 13783 used SC–GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021 are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature. The February 2021 SC–GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O.13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC–GHG. Examples of omitted effects from the E.O. 13783 estimates include: (1) direct effects on U.S. citizens, assets, and investments located abroad; (2) supply chains;(3) U.S. military assets and interests abroad; (4) tourism; and (5) 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 underestimate 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 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 exploring 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

[44] Marten, A. L., E. A. Kopits, C. W. Griffiths, S. C. Newbold, and A. Wolverton. Incremental CH_4 and N_2O mitigation benefits consistent with the US Government's SC–CO_2 estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

[45] 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.

context [46] and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3 percent and 7 percent discount rates as ''default'' values, Circular A–4 also reminds agencies that ''different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' On discounting, Circular A–4 recognizes that ''special ethical considerations arise when comparing benefits and costs across generations,'' and Circular A–4 acknowledges that analyses may appropriately ''discount future costs and consumption benefits. . .at a lower rate than for intragenerational analysis.'' In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that ''Circular A–4 is a living document'' and ''the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A–4 itself.'' Thus, DOE concludes that a 7-percent discount rate is not appropriate to apply to value the social cost of greenhouse gases presented in this analysis.

To calculate the present and annualized values of climate benefits, DOE uses the same discount rate as the rate used to discount the value of damages from future GHG emissions, for internal consistency. That approach to discounting follows the same approach that the February 2021 SC–GHG TSD recommends ''to ensure internal consistency—*i.e.,* future damages from climate change using the SC–GHG at 2.5 percent should be discounted to the base year of the analysis using the same 2.5 percent rate.'' DOE has also consulted the National Academies' 2017 recommendations on how SC–GHG estimates can ''be combined in RIAs 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 is working to assess how best to incorporate the latest peer-reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and were subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3-percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. DOE agrees with the update explained in the February 2021 SC–GHG TSD, which 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.

A number of limitations and uncertainties are 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.[47] 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; furthermore, 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 due to high temperatures, and the inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO_2 estimates. However, as discussed in the February 2021 SC–GHG

[46] Interagency Working Group on Social Cost of Carbon. Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866. 2010. United States Government. Available at *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf* (last accessed April 15, 2022). Interagency Working Group on Social Cost of Carbon. Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866. 2013 Available at *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact* (last accessed April 15, 2022). Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016. Available at *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf* (last accessed January 18, 2022). Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. Available at *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf* (last accessed January 18, 2022).

[47] 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/.*

TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this final rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–CO_2, SC–N_2O, and SC–CH_4 values used for this rule are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

The C2ES commented that DOE appropriately applies the social cost estimates developed by the IWG to its analysis of emissions reduction benefits generated by the proposed rule. The C2ES commented that DOE should expand upon its rationale for adopting a global damages valuation and for the range of discount rates it applies to climate effects, as there are additional legal, economic, and policy reasons for such methodological decisions that can further bolster DOE's support for these choices. C2ES added that DOE should consider conducting a sensitivity analysis using a sound domestic-only social cost estimate as a backstop, and should explicitly conclude that the rule is cost-benefit justified even using a domestic-only valuation that may still undercount climate benefits. The C2ES urged DOE to consider providing an additional sensitivity analysis using discount rates lower than 2.5 percent for climate impacts. (C2ES, No. 29 at p. 2)

DOE maintains that the reasons for using global measures of the SC–GHG previously discussed are sufficient for the purposes of this rulemaking. DOE notes that further discussion of this topic is contained in the February 2021 SC–GHG TSD, and DOE agrees with the assessment therein. Regarding conducting sensitivity analysis using a domestic-only social cost estimate, DOE agrees with the assessment in the February 2021 SC–GHG TSD that the only currently available quantitative characterization of domestic damages from GHG emissions is both incomplete and an underestimate of the share of total damages that accrue to the citizens and residents of the United States. Therefore, it would be of questionable value to conduct the suggested sensitivity analysis at this time. DOE considered performing sensitivity analysis using discount rates lower than 2.5 percent for climate impacts, as suggested by the IWG, but it concluded that such analysis would not add meaningful information in the context of this rulemaking.

a. Social Cost of Carbon

The SC–CO_2 values used for this final rule were based on the values developed for the IWG's February 2021 TSD. Table IV.8 shows the updated sets of SC–CO_2 estimates from the IWG's TSD in 5-year increments from 2020 to 2050. The full set of annual values that DOE used is presented in appendix 14–A of the final rule TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CO_2 values, as recommended by the IWG.[48]

TABLE IV.8.—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per Metric Ton CO_2]

Year	Discount rate and statistic			
	5% Average	3% Average	2.5% Average	3% 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

For 2051 to 2070, DOE used SC–CO_2 estimates published by EPA, adjusted to 2020$.[49] These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG (which were based on EPA modeling). DOE expects additional climate benefits to accrue for any longer-life furnaces after 2070, but a lack of available SC–CO_2 estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC–CO_2 value for that year in each of the four cases. DOE adjusted the values to 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–CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this final rule were based on the values developed for the February 2021 SC–GHG TSD. Table IV.9 shows the updated sets of SC–CH_4 and SC- N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14A of the final rule TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC- N_2O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–CO_2.

[48] 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.

[49] *See* EPA, Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis, Washington, DC, December 2021. Available at *nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013ORN.pdf* (last accessed January 13, 2023). (last accessed January 20, 2023).

TABLE IV.9.—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton]

Year	SC–CH_4				SC–N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5% Average	3% Average	2.5% Average	3% 95th percentile	5% Average	3% Average	2.5% Average	3% 95th percentile
2020 ..	670	1,500	2,000	3,900	5,800	18,000	27,000	48,000
2025 ..	800	1,700	2,200	4,500	6,800	21,000	30,000	54,000
2030 ..	940	2,000	2,500	5,200	7,800	23,000	33,000	60,000
2035 ..	1,100	2,200	2,800	6,000	9,000	25,000	36,000	67,000
2040 ..	1,300	2,500	3,100	6,700	10,000	28,000	39,000	74,000
2045 ..	1,500	2,800	3,500	7,500	12,000	30,000	42,000	81,000
2050 ..	1,700	3,100	3,800	8,200	13,000	33,000	45,000	88,000

2. Monetization of Other Emissions Impacts

For the final rule, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using benefit-per-ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[50] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025 and 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 range; for years beyond 2040 the values are held constant. DOE combined the EPA benefit per ton estimates with regional information on electricity consumption and emissions to define weighted-average national values for NO_X and SO_2 as a function of sector (see. appendix 14B of the final rule TSD).

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 final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity, and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the BLS. BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[51] 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 final rule using an input/output model of the U.S. economy called Impact of Sector Energy

[50] Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors. Available at *www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

[51] *See* U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (''RIMS II'').* 1997. U.S. Government Printing Office: Washington, DC. Available at *https://www.bea.gov/sites/default/files/methodologies/RIMSII_User_Guide.pdf* (last accessed January 20, 2023).

Technologies version 4 (''ImSET'').[52] 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 change 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, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the final rule 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 microwave ovens. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for microwave ovens, and the standards levels that DOE is adopting in this final rule. Additional details regarding DOE's analyses are contained in the final rule 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 final rule, DOE analyzed the benefits and burdens of three TSLs for microwave ovens. DOE developed TSLs that combine efficiency levels for each analyzed product class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the final rule TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for microwave ovens. TSL 3 represents the maximum technologically feasible (''max-tech'') energy efficiency for all product classes. TSL 2 and TSL 1 represent interim energy efficiency levels between the current standard level and the max-tech energy efficiency level.

TABLE V.1—TRIAL STANDARD LEVELS FOR MICROWAVE OVENS

Product class	TSL 1	TSL 2	TSL 3
	Maximum allowable average standby power (W)		
PC 1: Microwave-Only and Countertop Convection	0.8	0.6	0.4
PC 2: Built-In and Over-the-Range Convection	1.5	1.0	0.5

DOE constructed the TSLs for this final rule to include efficiency levels representative of efficiency levels with similar characteristics (*i.e.,* using similar technologies and/or efficiencies, and having roughly comparable equipment availability). The use of representative efficiency levels provided for greater distinction between the TSLs. While representative efficiency levels were included in the TSLs, DOE considered all efficiency levels as part of its analysis.[53]

The Joint Commenters requested DOE to consider an additional TSL that evaluates Product Class 1 at a level more stringent than what DOE proposed in the August 2022 SNOPR. Specifically, the Joint Commenters requested that DOE evaluate a modified TSL with Product Class 1 at 0.4W and Product Class 2 at 1.0W, noting that this approach would alleviate DOE's concerns of net cost to consumers while roughly doubling the national energy savings relative to the proposed levels. (Joint Commenters, No. 31 at p. 2)

As discussed in section V.B.2.c of this document, DOE assumes manufacturers will meet amended energy conservation standards for microwave ovens by re-designing the control boards of non-compliant models. DOE estimates that approximately 89 percent of Product Class 1 shipments will need to be redesigned to meet the efficiency levels of the modified TSL suggested by the Joint Commenters. This represents a need to redesign models accounting for approximately 10.5 million units with manufacturers expressing concern that a redesign effort of this extent may not be possible in a three-year time period. Manufacturers would most likely stop offering lower-volume non-compliant models to consumers, choosing instead to focus their resources on remodeling the highest-volume selling models first. Due to the potential impact on consumer choice, DOE did not evaluate the additional TSL suggested by the Joint Commenters in this rulemaking.

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on microwave oven 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

[52] Livingston, O. V., S. R. Bender, M. J. Scott, and R. W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User's Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

[53] Efficiency levels that were analyzed for this NOPR are discussed in section IV.C.4 of this document. Results by efficiency level are presented in final rule TSD chapters 8, 10, and 12.

and a discount rate. Chapter 8 of the final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.5 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, the impacts are measured relative to the efficiency distribution in the in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS FOR PC 1: MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

TSL	EL	Standby power (W)	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	.....	$254.16	$1.26	$11.38	$265.54	.....	10.78
1	1	0.8	254.24	1.02	9.20	263.44	0.3	10.78
2	2	0.6	254.80	0.78	7.02	261.81	1.3	10.78
3	3	0.4	255.57	0.54	4.83	260.40	2.0	10.78

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PC 1: MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1	1	$0.25	0
2	2	0.99	5
3	3	2.16	12

* The savings represent the average LCC for affected consumers.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR PC 2: BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

TSL	EL	Standby power (W)	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
			Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	.....	$546.11	$2.74	$24.75	$570.86	.....	10.78
1	1	1.5	546.11	1.89	17.11	563.22	0.0	10.78
2	2	1.0	547.28	1.29	11.65	558.93	0.8	10.78
3	3	0.5	551.36	0.69	6.19	557.55	2.6	10.78

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The simple PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PC 2: BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

TSL	EL	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
1	1	$0.00	0
2	2	0.83	7

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PC 2: BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS—Continued

TSL	EL	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost
3	3	1.95	42

* 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.6 and Table V.7 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for both product classes. In most cases, the average LCC savings and PBP for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the final rule TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.6—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PC 1: MICROWAVE-ONLY OVENS AND COUNTERTOP CONVECTION MICROWAVE OVENS

TSL	EL	Average life-cycle cost savings * (2021$)			Simple payback period (years)			Net cost (%)		
		Low-income ‡	Senior-only §	Nation	Low-income	Senior-only	Nation	Low-income	Senior-only	Nation
1	1	$0.25	$0.25	$0.25	0.3	0.3	0.3	0	0	0
2	2	0.99	0.97	0.99	1.3	1.3	1.3	6	5	5
3	3	2.13	2.12	2.16	2.0	2.0	2.0	13	12	12

* The savings represent the average LCC for affected consumers.
‡ Low-income households represent 12.5 percent of all households for this product class.
§ Senior-only households represent 24.7 percent of all households for this product class.

TABLE V.7—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PC 2: BUILT-IN AND OVER-THE-RANGE CONVECTION MICROWAVE OVENS

TSL	EL	Average life-cycle cost savings * (2021$)			Simple payback period (years)			Net cost (%)		
		Low-income ‡	Senior-only §	Nation	Low-income	Senior-only	Nation	Low-income	Senior-only	Nation
1	1	$0.00	$0.00	$0.00	0.0	0.0	0.0	0	0	0
2	2	0.76	0.76	0.83	0.8	0.8	0.8	8	8	7
3	3	1.79	1.79	1.95	2.6	2.6	2.6	43	43	42

* The savings represent the average LCC for affected consumers.
‡ Low-income households represent 12.5 percent of all households for this product class.
§ Senior-only households represent 24.7 percent of all households for this product class.

c. Rebuttable Presumption Payback

As discussed in section III.E.2 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedures for microwave ovens. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.8 presents the rebuttable-presumption payback periods for the considered TSLs for microwave ovens. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this rule are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.8—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Product class	1	2	3
	(years)		
PC 1: Microwave-Only and Countertop Convection	2.1	2.2	2.2
PC 2: Built-In and Over-the-Range Convection	0.0	2.2	2.7

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of microwave ovens. The next section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. The following tables summarize the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of microwave ovens, as well as the conversion costs that DOE estimates manufacturers of microwave ovens would incur at each TSL. To evaluate the range of cash-flow impacts on the microwave oven industry, DOE modeled two manufacturer markup scenarios using different assumptions that correspond to the range of anticipated market responses to amended energy conservation standards: (1) the conversion cost recovery scenario and (2) the constant price scenario.

To assess the lowest magnitude of the range of potential impacts, DOE modeled a conversion cost recovery scenario in which manufacturers are able to increase their manufacturer markups in response to amended energy conservation standards. To assess the largest magnitude of the range of potential impacts, DOE modeled a constant price scenario in which manufacturers incur conversion costs but do not receive any additional revenue from these redesign efforts.

As noted in the MIA methodology discussion (*see* section IV.J of this document), in addition to manufacturer markup scenarios, the MPCs, shipments, and conversion cost assumptions also affect INPV results.

The results in Table V.9 and Table V.10 present potential INPV impacts for microwave oven manufacturers. Table V.9 reflects the lowest magnitude of potential impacts (conversion cost recovery scenario), and Table V.10 represents the largest magnitude of potential impacts (constant price scenario). In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case that results from the sum of discounted cash flows from 2023 (the reference year) through 2055 (the end of the analysis period).

TABLE V.9—MANUFACTURER IMPACT ANALYSIS RESULTS—CONVERSION COST RECOVERY SCENARIO

	Units	No-new-standards case	Trial standard level *		
			1	2	3
INPV	*2021$ millions*	1,426	1,426	1,426	1,426
Change in INPV	*2021$ millions*		0.0	0.0	0.0
	%		0.0	0.0	0.0
Product Conversion Costs	*2021$ millions*		2.8	23.6	55.0
Capital Conversion Costs	*2021$ millions*		2.5	22.5	53.3
Total Conversion Costs	*2021$ millions*		5.3	46.1	108.3

* Parentheses indicate negative values. Numbers may not sum exactly due to rounding.

TABLE V.10—MANUFACTURER IMPACT ANALYSIS RESULTS—CONSTANT PRICE SCENARIO

	Units	No-new-standards case	Trial standard level *		
			1	2	3
INPV	*2021$ millions*	1,426	1,422	1,389	1,339
Change in INPV	*2021$ millions*		(4.2)	(37.2)	(87.5)
	%		(0.3)	(2.6)	(6.1)
Product Conversion Costs	*2021$ millions*		2.8	23.6	55.0
Capital Conversion Costs	*2021$ millions*		2.5	22.5	53.3
Total Conversion Costs	*2021$ millions*		5.3	46.1	108.3

* Parentheses indicate negative values. Numbers may not sum exactly due to rounding.

At TSL 1, DOE estimates impacts on INPV will range from −$4.2 million, which represents a change of −0.3 percent, to no change in INPV. At TSL 1, industry free cash flow decreases to $98 million, which represents a decrease of approximately 2.1 percent, compared to the no-new-standards case value of $100 million in 2025, the year leading up to the compliance date.

TSL 1 would set the energy conservation standard for both product classes at EL 1. DOE estimates that 85 percent of Product Class 1 shipments and 100 percent of Product Class 2 shipments would already meet or exceed the efficiency levels required at TSL 1. DOE expects microwave oven manufacturers to incur approximately

$2.8 million in product conversion costs to redesign and re-test non-compliant models and approximately $2.5 million in capital conversion costs to purchase new tooling and equipment necessary to produce these redesigned models.

At TSL 2, DOE estimates that impacts on INPV will range from −$37.2 million, which represents a change of −2.6 percent, to no change in INPV. At TSL 2, industry free cash flow decreases to $82 million, which represents a decrease of approximately 18.4 percent, compared to the no-new-standards case value of $100 million in 2025, the year leading up to the compliance date.

TSL 2 would set the energy conservation standard for both product classes at EL 2. DOE estimates that 40 percent of Product Class 1 shipments and 64 percent of Product Class 2 shipments would already meet or exceed the efficiency levels required at TSL 2. DOE expects microwave oven manufacturers to incur approximately $23.6 million in product conversion costs to redesign and re-test non-compliant models and approximately $22.5 million in capital conversion costs to purchase new tooling and equipment necessary to produce these redesigned models.

At TSL 3, DOE estimates impacts on INPV will range from −$87.5 million, which represents a change of −6.1 percent, to no change in INPV. At TSL 3, industry free cash flow decreases to $57 million, which represents a decrease of approximately 43.3 percent compared to the no-new-standards case value of $100 million in 2025, the year leading up to the compliance date.

TSL 3 would set the energy conservation standard for both product classes at max-tech (EL 3). DOE estimates that 11 percent of Product Class 1 shipments and 5 percent of Product Class 2 shipments would already meet the efficiency levels required at TSL 3. DOE expects microwave oven manufacturers to incur approximately $55.0 million in product conversion costs to redesign and re-test non-compliant models and approximately $53.3 million in capital conversion costs to purchase new tooling and equipment necessary to produce these redesigned models.

b. Direct Impacts on Employment

DOE estimates that over 95 percent of microwave oven manufacturing occurs outside the United States. Furthermore, none of the analyzed efficiency levels require additional labor and would not impact current manufacturing labor practices. Therefore, DOE estimates that there will be no direct impacts on domestic employment at any of the analyzed TSLs.

c. Impacts on Manufacturing Capacity

DOE assumes manufacturers will meet amended energy conservation standards for microwave ovens by re-designing the control boards of non-compliant models. DOE estimates that approximately 89 percent of Product Class 1 shipments and 95 percent of Product Class 2 shipments will need to be redesigned to meet the efficiency levels required at TSL 3. This represents a need to redesign models accounting for approximately 10.5 million Product Class 1 units and 0.4 million Product Class 2 units. Manufacturers have expressed concern that redesigning 90 percent of all microwave oven models in a three-year time period might not be possible.

At TSL 2, DOE estimates that approximately 60 percent of Product Class 1 shipments and 36 percent of Product Class 2 shipments will need to be redesigned to meet the efficiency levels; at TSL 1, DOE estimates that approximately 15 percent of Product Class 1 shipments and no Product Class 2 shipments will need to be redesigned to meet the efficiency levels. Both of the redesign requirements at TSL 1 and TSL 2 are unlikely to cause a significant capacity concern for most microwave oven manufacturers.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. Using average cost assumptions developed for an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For the microwave oven industry, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup—small manufacturers. The Small Business Administration (''SBA'') defines a ''small business'' as having 1,500 employees or fewer for the North American Industry Classification System (''NAICS'') code 335220, ''Major Household Appliance Manufacturing.'' [54] For a discussion of the impacts on the small manufacturer subgroup, *see* the regulatory flexibility analysis in section VI.B of this document and chapter 12 of the final rule TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

DOE evaluates product-specific regulations that will take effect approximately 3 years before or after the estimated 2026 compliance date of any amended energy conservation standards for microwave ovens. This information is presented in Table V.11.

[54] Available at *www.sba.gov/document/support-table-size-standards* (last accessed on Jan. 11, 2023).

TABLE V.11—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING MICROWAVE OVEN MANUFACTURERS

Federal energy conservation standard	Number of mfrs *	Number of manufacturers affected from today's rule **	Approx. standards year	Industry conversion costs (millions$)	Industry conversion costs/product revenue *** (%)
Portable Air Conditioners, 85 FR 1378 (Jan. 10, 2020)	11	2	2025	$320.9 (2015$)	6.7
Room Air Conditioners ‡	8	3	2026	$24.8 (2021$)	0.4
Consumer Clothes Dryers, 87 FR 51734 (Aug. 23, 2022) †	15	9	2027	$149.7 (2020$)	1.8
Consumer Conventional Cooking Products, 88 FR 6818 (Feb. 1, 2023) ††	34	10	2027	$183.4 (2021$)	1.2
Residential Clothes Washers, 88 FR 13520 (Mar. 3, 2023) ††	19	5	2027	$690.8 (2021$)	5.2
Refrigerators, Refrigerator-Freezers, and Freezers, 88 FR 12452 (Feb. 27, 2023) ††	49	12	2027	$1,323.6 (2021$)	3.8
Miscellaneous Refrigeration Products, 88 FR 19382 (Mar. 31, 2023) ††	38	7	2029	$126.9 (2021$)	3.1

* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of manufacturers producing microwave ovens that are also listed as manufacturers in the listed 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 energy conservation standard. The conversion period typically ranges from 3 to 5 years, depending on the rulemaking.

‡ At the time of issuance of this microwave ovens rulemaking, the rulemaking has been issued and is pending publication in the **Federal Register**. Once published, the room air conditioners final rule will be available at: *www.regulations.gov/docket/EERE-2014-BT-STD-0059*.

†† Indicates a proposed rulemaking. Values could change upon publication of a final rule.

In addition to the rulemakings listed in Table V.11, DOE has other ongoing rulemakings for products that microwave oven manufacturers produce: dishwashers [55] and dehumidifiers.[56]

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for microwave ovens, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2026–2055). Table V.12 presents DOE's projections of the national energy savings for each TSL considered for microwave ovens. The savings were calculated using the approach described in section IV.H.2 of this document.

TABLE V.12—CUMULATIVE NATIONAL ENERGY SAVINGS FOR MICROWAVE OVENS; 30 YEARS OF SHIPMENTS

[2026–2055]

	Trial standard level		
	1	2	3
	(quads)		
Primary energy	0.01	0.05	0.12
FFC energy	0.01	0.06	0.12

OMB Circular A–4 [57] 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

[55] *www.regulations.gov/docket/EERE-2014-BT-STD-0021*.

[56] *www.regulations.gov/docket/EERE-2019-BT-STD-0043*.

[57] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed January 13, 2023).

to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[58] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to microwave ovens. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.13. The impacts are counted over the lifetime of microwave ovens purchased in 2026–2055.

TABLE V.13—CUMULATIVE NATIONAL ENERGY SAVINGS FOR MICROWAVE OVENS; 9 YEARS OF SHIPMENTS
[2026–2055]

	Trial standard level		
	1	2	3
	(quads)		
Source energy	0.003	0.014	0.034
FFC energy	0.003	0.015	0.035

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 microwave ovens. In accordance with OMB's guidelines on regulatory analysis,[59] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.14 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2026–2055.

TABLE V.14—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR MICROWAVE OVENS; 30 YEARS OF SHIPMENTS
[2026–2055]

Discount rate	Trial standard level		
	1	2	3
	(billion 2021$)		
3 percent	0.080	0.353	0.710
7 percent	0.039	0.164	0.320

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.15. The impacts are counted over the lifetime of products purchased in 2026–2055. 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.15—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR MICROWAVE OVENS; 9 YEARS OF SHIPMENTS
[2026–2055]

Discount rate	Trial standard level		
	1	2	3
	(billion 2021$)		
3 percent	0.030	0.127	0.266
7 percent	0.020	0.079	0.160

[58] 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.

[59] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed December 13, 2022).

The previous results reflect the use of a default trend to estimate the change in price for microwave ovens 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 final rule TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE estimates that amended energy conservation standards for microwave ovens will reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2026–2031), where these uncertainties are reduced.

The results suggest that the adopted standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section IV.C.1.b of this document, DOE has concluded that the standards adopted in this final rule will not lessen the utility or performance of the microwave ovens under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the adopted standards.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.E.1.e of this document, EPCA directs the Attorney General of the United States (''Attorney General'') to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination in writing to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. To assist the Attorney General in making this determination, DOE provided the Department of Justice (''DOJ'') with copies of the August 2022 SNOPR and the SNOPR TSD for review. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for microwave ovens are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General's assessment at the end of this final rule.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 of the final rule TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards for microwave ovens is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.16 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the final rule TSD.

TABLE V.16—CUMULATIVE EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

	Trial standard level		
	1	2	3
Power Sector Emissions			
CO_2 (*million metric tons*)	0.33	1.74	3.92
CH_4 (*thousand tons*)	0.03	0.14	0.31
N_2O (*thousand tons*)	0.00	0.02	0.04
SO_2 (*thousand tons*)	0.16	0.84	1.89
NO_X (*thousand tons*)	0.17	0.88	1.98
Hg (*tons*)	0.00	0.01	0.01
Upstream Emissions			
CO_2 (*million metric tons*)	0.03	0.13	0.30
CH_4 (*thousand tons*)	2.39	12.50	28.14
N_2O (*thousand tons*)	0.00	0.00	0.00
SO_2 (*thousand tons*)	0.00	0.01	0.02
NO_X (*thousand tons*)	0.38	2.00	4.51
Hg (*tons*)	0.00	0.00	0.00
Total FFC Emissions			
CO_2 (*million metric tons*)	0.36	1.87	4.21
CH_4 (*thousand tons*)	2.41	12.64	28.45

TABLE V.16—CUMULATIVE EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055—Continued

	Trial standard level		
	1	2	3
N_2O (*thousand tons*)	0.00	0.02	0.04
SO_2 (*thousand tons*)	0.16	0.85	1.91
NO_X (*thousand tons*)	0.55	2.88	6.49
Hg (*tons*)	0.00	0.01	0.01

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for microwave ovens. Section IV.L of this document discusses the estimated SC–CO_2 values that DOE used. Table V.17 presents the value of CO_2 emissions reduction at each TSL for each of the SC–CO_2 cases. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

TABLE V.17—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	SC–CO_2 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(million 2021$)			
1	3.63	15.19	23.58	46.17
2	19.00	79.47	123.39	241.61
3	42.78	178.91	277.80	543.96

As discussed in section IV.L.2 of this document, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N_2O that DOE estimated for each of the considered TSLs for microwave ovens. Table V.18 presents the value of the CH_4 emissions reduction at each TSL, and Table V.19 presents the value of the N_2O emissions reduction at each TSL. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

TABLE V.18—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	SC–CH_4 case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(million 2021$)			
1	1.11	3.22	4.46	8.51
2	5.82	16.83	23.33	44.56
3	13.10	37.90	52.52	100.31

TABLE V.19—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	SC–N_2O Case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
	(million 2021$)			
1	0.01	0.06	0.09	0.15
2	0.08	0.29	0.45	0.78
3	0.17	0.66	1.02	1.76

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes, however, that the adopted standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the economic benefits associated with NO_X and SO_2 emissions reductions anticipated to result from the considered TSLs for microwave ovens. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.20 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.21 presents similar results for SO_2 emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the selected TSL in chapter 14 of the final rule TSD.

TABLE V.20—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	7% Discount rate	3% Discount rate
	(million 2021$)	
1	10.11	23.20
2	52.89	121.38
3	119.07	273.27

TABLE V.21—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR MICROWAVE OVENS SHIPPED IN 2026–2055

TSL	7% Discount rate	3% Discount rate
	(million 2021$)	
1	4.17	9.26
2	21.80	48.47
3	49.08	109.13

Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_X, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM and other co-pollutants may be significant. DOE has not included monetary benefits of the reduction of Hg emissions because the amount of reduction is very small.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.22 presents the NPV values that result from adding the estimates of the economic benefits resulting from reduced GHG and NO_X and SO_2 emissions to the NPV of consumer benefits calculated for each TSL considered in this rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of products shipped in 2026–2055. 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 microwave ovens shipped in 2026–2055.

TABLE V.22—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3
Using 3% discount rate for Consumer NPV and Health Benefits (billion 2021$)			
5% Average SC–GHG case	0.1	0.5	1.1
3% Average SC–GHG case	0.1	0.6	1.3
2.5% Average SC–GHG case	0.1	0.7	1.4
3% 95th percentile SC–GHG case	0.2	0.8	1.7
Using 7% discount rate for Consumer NPV and Health Benefits (billion 2021$)			
5% Average SC–GHG case	0.1	0.3	0.5
3% Average SC–GHG case	0.1	0.3	0.7
2.5% Average SC–GHG case	0.1	0.4	0.8
3% 95th percentile SC–GHG case	0.1	0.5	1.1

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))

In the August 2022 SNOPR, DOE proposed energy conservation standards for microwave ovens at TSL 2, as constructed for that analysis. The minimum wattages corresponding to TSL 2 from the August 2022 SNOPR are shown in Table V.23. 87 FR 52282 (Aug. 25, 2022).

TABLE V.23—PROPOSED ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

Product class	Maximum allowable average standby power (watts)
PC 1: Microwave-Only Ovens and Countertop Convection Microwave Ovens	0.6 W
PC 2: Built-In and Over-the-Range Convection Microwave Ovens	1.0 W

For this final rule, DOE considered the impacts of amended standards for microwave ovens at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

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

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

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy 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 final rule TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[60]

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.[61] 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 Microwave Ovens Standards

Table V.24 and Table V.25 summarize the quantitative impacts estimated for each TSL for microwave ovens. The national impacts are measured over the lifetime of microwave ovens purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2026–2055). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. DOE is presenting monetized benefits in accordance with the applicable Executive orders and DOE would reach the same conclusion presented in this notice in the absence of the social cost of greenhouse gases, including the Interim Estimates presented by the Interagency Working Group. The efficiency levels contained in each TSL are described in section V.A of this document.

[60] 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.*

[61] Sanstad, A.H. *Notes on the Economics of Household Energy Consumption and Technology Choice.* 2010. Lawrence Berkeley National Laboratory. Available at *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf* (last accessed July 1, 2021).

TABLE V.24—SUMMARY OF ANALYTICAL RESULTS FOR MICROWAVE OVENS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3
Cumulative FFC National Energy Savings			
Quads	0.01	0.06	0.12
Cumulative FFC Emissions Reduction			
CO_2 (*million metric tons*)	0.36	1.87	4.21
CH_4 (*thousand tons*)	2.41	12.64	28.45
N_2O (*thousand tons*)	0.00	0.02	0.04
SO_2 (*thousand tons*)	0.55	2.88	6.49
NO_X (*thousand tons*)	0.16	0.85	1.91
Hg (*tons*)	0.00	0.01	0.01
Present Value of Benefits and Costs (3% discount rate, billion 2021$)			
Consumer Operating Cost Savings	0.08	0.43	0.98
Climate Benefits *	0.02	0.10	0.22
Health Benefits **	0.03	0.17	0.38
Total Benefits †	0.13	0.70	1.58
Consumer Incremental Product Costs ‡	0.00	0.08	0.27
Consumer Net Benefits	0.08	0.35	0.71
Total Net Benefits	0.13	0.62	1.31
Present Value of Benefits and Costs (7% discount rate, billion 2021$)			
Consumer Operating Cost Savings	0.040	0.211	0.475
Climate Benefits *	0.018	0.097	0.217
Health Benefits **	0.014	0.075	0.168
Total Benefits †	0.073	0.382	0.860
Consumer Incremental Product Costs ‡	0.002	0.047	0.154
Consumer Net Benefits	0.039	0.164	0.320
Total Net Benefits	0.072	0.336	0.706

Note: This table presents the costs and benefits associated with microwave ovens shipped in 2026–2055. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026–2055.

* Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4, and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown, 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.

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

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

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

TABLE V.25—SUMMARY OF ANALYTICAL RESULTS FOR MICROWAVE OVENS TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3
Industry NPV (*million 2021$*) (No-new-standards case INPV = 1,426)	1,422–1,426	1,389–1,426	1,339–1,426
Industry NPV (*% change*)	(0.3)–0.0	(2.6)–0.0	(6.1)–0.0
Consumer Average LCC Savings (2021$)			
PC 1	$0.25	$0.99	$2.16
PC 2	$0.00	$0.83	$1.95
Shipment-Weighted Average *	$0.24	$0.98	$2.15
Consumer Simple PBP (years)			
PC 1	0.3	1.3	2.0
PC 2	0.0	0.8	2.6
Shipment-Weighted Average *	0.3	1.3	2.0

TABLE V.25—SUMMARY OF ANALYTICAL RESULTS FOR MICROWAVE OVENS TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3
Percent of Consumers that Experience a Net Cost			
PC 1	0%	5%	12%
PC 2	0%	7%	42%
Shipment-Weighted Average *	0%	5%	13%

DOE first considered TSL 3, which represents the max-tech efficiency levels. TSL 3 would save an estimated 0.12 quads of energy, an amount that DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $0.32 billion using a discount rate of 7 percent, and $0.71 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 4.21 Mt of CO_2, 1.91 thousand tons of SO_2, 6.49 thousand tons of NO_X, 0.012 tons of Hg, 28.45 thousand tons of CH_4, and 0.04 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 3 is $0.22 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 3 is $0.17 billion using a 7-percent discount rate and $0.38 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 3 is $0.71 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $1.31 billion. The estimated total NPV is provided for additional information; however, DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 3, the average LCC impact is a savings of $2.16 for Product Class 1 and $1.95 for Product Class 2. The simple payback period is 2.0 years for Product Class 1 and 2.6 years for Product Class 2. The fraction of consumers experiencing a net LCC cost is 11.7 percent for Product Class 1 and 42.2 percent for Product Class 2.

At TSL 3, the projected change in manufacturer INPV ranges from a decrease of approximately $87.5 million, which corresponds to a decrease of approximately 6.1 percent, to no change in INPV. At this TSL, free cash flow is estimated to decrease by 43.3 percent compared to the no-new-standards case value in the year before the compliance year. DOE estimates that industry must invest $108.3 million to comply with standards set at TSL 3. DOE estimates that approximately 11 percent of Product Class 1 (microwave-only oven and countertop convection microwave oven) shipments and approximately 5 percent of Product Class 2 (built-in and over-the-range convection microwave oven) shipments would meet the efficiency levels analyzed at TSL 3, in the no-new-standards case. Redesigning approximately 90 percent of microwave ovens models, which represents approximately 11 million annual shipments, will significantly strain manufacturers' limited resources during the 3-year compliance period, given the number of microwave oven models that need to be redesigned during this time-period. It is unclear if most microwave oven manufacturers will have the engineering capacity to complete the necessary redesigns within the 3-year compliance period. If manufacturers require more than three years to redesign all their non-compliant microwave oven models, they will likely prioritize redesigns based on sales volume, which could lead to some microwave oven models being temporary or permanent unavailable.

DOE has determined through its engineering analysis that many of the features which comprise the full complement of existing consumer functionality are implemented in microwave ovens currently available on the market at or near the max-tech efficiency levels at TSL 3. DOE has not, however, identified or analyzed any currently available microwave ovens that include all such features in the same unit. Furthermore, DOE is aware of several emerging technologies (*e.g.,* television displays and interior cameras) which would provide additional consumer utility distinct from existing products. Although DOE research suggests that the implementation of these emerging technologies would not require a significant amount of standby power, because microwave ovens that incorporate them are not yet commercially available, DOE is unable to verify that products that implemented these technologies along with the complete set of features that would maintain full consumer utility could meet the efficiency levels at TSL 3. Accordingly, there is uncertainty as to whether or not a standard at TSL 3 may stifle innovation and risk impacting customer utility.

The Secretary concludes that at TSL 3 for microwave ovens, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the uncertainty of impacts to customer utility and product innovation and the percentage of consumers in Product Class 2 that would experience a net LCC cost. Consequently, the Secretary has concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which represents efficiency level 2 for microwave ovens. TSL 2 would save an estimated 0.06 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.16 billion using a discount rate of 7 percent, and $0.35 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 1.87 Mt of CO_2, 0.85 thousand tons of SO_2, 2.88 thousand tons of NO_X, 0.005 tons of Hg, 12.64 thousand tons of CH_4, and 0.02 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 2 is $0.10 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 2 is $0.07 billion using a 7-percent discount rate and $0.17 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 2 is $0.34 billion.

Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 2 is $0.62 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 2, the average LCC impact is a savings of $0.99 for Product Class 1 and $0.83 for Product Class 2. The simple payback period is 1.3 years for Product Class 1 and 0.8 years for Product Class 2. The fraction of consumers experiencing a net LCC cost is 5.1 percent for Product Class 1 and 7.4 percent for Product Class 2.

At TSL 2, the projected change in manufacturer INPV ranges from a decrease of approximately $37.2 million, which corresponds to a decrease of approximately 2.6 percent, to no change in INPV. At this TSL, free cash flow is estimated to decrease by 18.4 percent compared to the no-new-standards case value in the year before the compliance year. DOE estimates that industry must invest $46.1 million to comply with standards set at TSL 2. DOE estimates that approximately 40 percent of Product Class 1 (microwave-only oven and countertop convection microwave oven) shipments and approximately 64 percent of Product Class 2 (built-in and over-the-range convection microwave oven) shipments would meet or exceed the efficiency levels analyzed at TSL 2, in the no-new-standards case. Manufacturers would be required to redesign approximately 60 percent of all microwave oven models, representing 7.3 million annual shipments, to meet the efficiency levels required at TSL 2.

DOE has determined that the standby power requirements of TSL 2 provide sufficient power budgets for manufacturers to implement the full complement of features that currently provide consumer utility. In addition, based on DOE's assessment of the expected standby power requirements for identified emerging technologies, DOE has concluded that the standby power levels at TSL 2 do not preclude the implementation of these technologies or stifle further innovation.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that a standard set at TSL 2 for microwave ovens would be economically justified. At this TSL, the average LCC savings for both product classes of microwave ovens is positive. An estimated 5 percent of Product Class 1 consumers and 7 percent of Product Class 2 consumers would experience a net cost. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 2, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over four times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 2 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $0.10 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $0.17 billion (using a 3-percent discount rate) or $0.07 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

Accordingly, the Secretary has concluded that TSL 2 would offer the maximum improvement in efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy. Although results are presented here in terms of TSLs, DOE analyzes and evaluates all possible ELs for each product class in its analysis. For both Product Class 1 (microwave-only oven and countertop convection microwave oven) and Product Class 2 (built-in and over-the-range convection microwave oven), TSL 2 is comprised of the highest efficiency level below max-tech. The ELs one level below max-tech, representing the finalized standard levels, result in positive LCC savings for both classes, reduce the number of consumers experiencing a net cost, and reduce the decrease in INPV and conversion costs to the point where DOE has concluded they are economically justified, as discussed for TSL 2 in the preceding paragraphs.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. The walk-down is not a comparative analysis, as a comparative analysis would result in the maximization of net benefits instead of energy savings that are technologically feasible and economically justified, which would be contrary to the statute. 86 FR 70892, 70908.

Therefore, based on the previous considerations, DOE adopts the energy conservation standards for microwave ovens at TSL 2. The amended energy conservation standards for microwave ovens, which are expressed as watts, are shown in Table V.26.

TABLE V.26—AMENDED ENERGY CONSERVATION STANDARDS FOR MICROWAVE OVENS

Product class	Maximum allowable average standby power (watts)
PC 1: Microwave-Only Ovens and Countertop Convection Microwave Ovens	0.6
PC 2: Built-In and Over-the-Range Convection Microwave Ovens	1.0

2. Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2020$) of the benefits from operating products that meet the adopted standards (consisting primarily of operating cost savings from using less energy), minus increases in product purchase costs, and (2) the annualized monetary value of the climate and health benefits.

Table V.27 shows the annualized values for microwave ovens under TSL 2, 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 SO_2 reductions, and the 3-percent discount rate case for GHG social costs, the estimated cost of the adopted standards for microwave ovens is $4.3 million per year in increased equipment installed costs, while the estimated annual benefits are $19.5 million from

reduced equipment operating costs, $5.2 million in GHG reductions, and $6.9 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $27.3 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the adopted standards for microwave ovens is $4.3 million per year in increased equipment costs, while the estimated annual benefits are $23.5 million in reduced operating costs, $5.2 million from GHG reductions, and $9.2 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $33.5 million per year.

TABLE V.27—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS (TSL 2) FOR MICROWAVE OVENS

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	23.5	22.2	25.0
Climate Benefits*	5.2	5.1	5.4
Health Benefits**	9.2	9.0	9.4
Total Benefits†	37.9	36.3	39.8
Consumer Incremental Product Costs‡	4.3	4.4	4.1
Net Benefits	33.5	31.9	35.7
7% discount rate			
Consumer Operating Cost Savings	19.5	18.6	20.5
Climate Benefits* (3% discount rate)	5.2	5.1	5.4
Health Benefits**	6.9	6.7	7.1
Total Benefits†	31.6	30.4	32.9
Consumer Incremental Product Costs‡	4.3	4.3	4.1
Net Benefits	27.3	26.0	28.9

Note: This table presents the costs and benefits associated with microwave ovens shipped in 2026–2055. These results include benefits to consumers which accrue after 2055 from the products shipped in 2026–2055. 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.1 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 SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section IV.L of this document for more details.

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

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

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011) and E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to

use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final rule does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

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

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

For manufacturers of microwave ovens, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. (*See* 13 CFR part 121.) The size standards are listed by NAICS code and industry description and are available at *www.sba.gov/document/support-table-size-standards.* Manufacturing microwave ovens is classified under NAICS 335220, ''Major Household Appliance Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category.

DOE identified manufacturers using DOE's CCD,[62] the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[63] and prior microwave oven rulemakings. DOE used the publicly available information and subscription-based market research tools (*e.g.,* reports from DB Hoovers [64]) to identify 37 companies that sell microwave ovens covered by this rulemaking in the United States. Of these 37 companies that sell microwave ovens in the United States, 19 are private labelers. These private labelers out-source the manufacturing of the microwave ovens to other companies. Therefore, DOE estimates there are 18 original equipment manufacturers (''OEMs'') that manufacture microwave ovens covered by this rulemaking. Of the 18 OEMs, DOE was not able to identify any OEMs of microwave ovens covered by this rulemaking with fewer than 1,500 total employees (including parent companies and subsidiaries), and that are domestically located. Therefore, DOE did not identify any companies that meet SBA's definition of a ''small business.''

DOE did not receive any comments on the August 2022 SNOPR, which stated that there were not any small businesses that manufactured microwave ovens sold in the United States. Therefore, DOE concludes and certifies that this final rule would not have a significant economic impact on a substantial number of small entities and has not prepared a FRFA for this rulemaking.

C. Review Under the Paperwork Reduction Act

Manufacturers of microwave ovens must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for microwave ovens, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including microwave ovens. (*See generally* 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (''NEPA''), DOE has analyzed this proposed action rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that

[62] DOE's Compliance Certification Database is available at *www.regulations.doe.gov/ccms* (last accessed January 11, 2023).

[63] California Energy Commission's MAEDbS is available at *cacertappliances.energy.ca.gov/Login.aspx* (last accessed January 11, 2023).

[64] D&B Hoovers reports can be accessed at: *app.dnbhoovers.com.*

would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a) and section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, Sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

DOE has concluded that this final rule may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include (1) investment in research and development and in capital expenditures by microwave ovens 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 microwave ovens, 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 final rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section and the TSD for this final 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 rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. In accordance with 42 U.S.C. 6295(m), this final rule establishes amended energy conservation standards for microwave ovens that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 6295(o)(2)(A) and 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this final rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

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

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published

at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf*. DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth amended energy conservation standards for microwave ovens, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and prepared a report describing that peer review.[65] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve DOE's analyses. DOE is in the process of evaluating the resulting report.[66]

M. Congressional Notification

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

VII. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

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

[65] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (Last accessed January 23, 2023).

[66] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards*.

Signing Authority

This document of the Department of Energy was signed on April 20, 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 June 13, 2023.

Treena V. Garrett,

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

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

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Section 430.32 is amended by revising paragraph (j)(3) to read as follows:

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

* * * * *

(j) * * *

(3) Microwave ovens:

(i) Microwave-only ovens and countertop convection microwave ovens manufactured on or after June 17, 2016, and before June 22, 2026, shall have an average standby power not more than 1.0 watt. Built-in and over-the-range convection microwave ovens manufactured on or after June 17, 2016, and before June 22, 2026, shall have an average standby power not more than 2.2 watts.

(ii) Microwave-only ovens and countertop convection microwave ovens manufactured on or after June 22, 2026, shall have an average standby power not more than 0.6 watts. Built-in and over-the-range convection microwave ovens manufactured on or after June 22, 2026,

shall have an average standby power not more than 1.0 watt.

* * * * *

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

U.S. Department of Justice
Antitrust Division
Jonathan S. Kanter
Assistant Attorney General
Main Justice Building
950 Pennsylvania Avenue NW
Washington, DC 20530–0001
(202) 514–2401/(202) 616–2645 (Fax)

XXXX XX, 2023

Ami Grace-Tardy
Assistant General Counsel for
Legislation, Regulation and Energy
Efficiency
U.S. Department of Energy
Washington, DC 20585
Ami.Grace-Tardy@hq.doe.gov

Dear Assistant General Counsel Grace-Tardy:

I am responding to your August 25, 2022 letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for microwave ovens. Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (EPCA), 42 U.S.C. 6295(o)(2)(B)(i)(V) and 42 U.S.C. 6316(a), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g). The Assistant Attorney General for the Antitrust Division has authorized me, as the Policy Director the Antitrust Division, to provide the Antitrust Division's views regarding the potential impact on competition of proposed energy conservation standards on his behalf.

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice or increasing industry concentration. A lessening of competition could result in higher prices to manufacturers and consumers. We have reviewed the proposed standards contained in the Supplemental Notice of Proposed Rulemaking (87 FR 52282 August 24, 2022), and the related technical support documents. We also reviewed the transcript from the public meeting held on October 11, 2022, and reviewed public comments submitted by industry members in response to DOE's Request for Information in this matter.

Based on the information currently available, we do not believe that the proposed energy conservation standards for microwave ovens are likely to have a significant adverse impact on competition.

Sincerely,

David G.B. Lawrence,

Policy Director.

[FR Doc. 2023–12958 Filed 6–16–23; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 88 Tuesday,
No. 117 June 20, 2023

Part III

Securities and Exchange Commission

17 Parts 240 and 242
Removal of References to Credit Ratings From Regulation M; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 242

[Release No. 34–97657; File No. S7–11–22]

RIN 3235–AL14

Removal of References to Credit Ratings From Regulation M

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting rule amendments to implement section 939A(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which requires, among other things, that the Commission remove from its regulations any references to credit ratings and substitute in their place alternative standards of creditworthiness. The amendments remove certain existing rule exceptions that reference credit ratings for nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities and substitute in their place new exceptions that are based on alternative standards of creditworthiness. These substitutes include exceptions for nonconvertible debt securities and nonconvertible preferred securities (together, ''Nonconvertible Securities'') of issuers who meet a specified probability of default threshold, as well as exceptions for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on a certain form that is tailored to asset-backed securities offerings. The Commission is also adopting an amendment to a recordkeeping rule applicable to broker-dealers in connection with their reliance on an exception involving probability of default determinations.

DATES: *Effective date:* The final rules are effective on August 21, 2023.

FOR FURTHER INFORMATION CONTACT: Jessica Kloss, Attorney-Adviser, Laura Weber, Branch Chief, Josephine Tao, Assistant Director, Office of Trading Practices, or Carol McGee, Associate Director, Office of Derivatives Policy and Trading Practices, at (202) 551–5777, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is amending the following rules adopted under the Securities Exchange Act of 1934 (''Exchange Act''):

Commission reference	CFR citation
Rule 17a–4	17 CFR 240.17a–4
Regulation M: [1]	
Rule 100	17 CFR 242.100
Rule 101	17 CFR 242.101
Rule 102	17 CFR 242.102

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I. Introduction

To reduce reliance on credit ratings,[2] section 939A(b) of the Dodd-Frank Act requires the Commission, among other things, to ''remove any reference to or requirement of reliance on credit ratings'' and ''substitute in such regulations such standard of credit-worthiness'' as the Commission determines to be appropriate for those regulations.[3] In making such a determination, the Commission must seek to establish, to the extent feasible, uniform standards of creditworthiness for use by the Commission, taking into account the entities it regulates and the purposes for which those entities would rely on such standards of creditworthiness.[4]

Regulation M, which is a set of prophylactic anti-manipulation rules

[1] 17 CFR 242.100 through 242.105. Regulation M is also adopted under the Securities Act of 1933 (''Securities Act'') and under the Investment Company Act of 1940.

[2] *See* Joint Explanatory Statement of the Committee of Conference, Conference Committee Report No. 111–517, to accompany H.R. 4173, 864–79, 870 (June 29, 2010).

[3] *See* Public Law 111–203, sec. 939A(b), 124 Stat. 1376, 1872–90 (2010). Section 939A of the Dodd-Frank Act also requires the Commission to ''review any regulation issued by [the Commission] that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings.'' Public Law 111–203, sec. 939A(a). The Commission must transmit a report to Congress upon the conclusion of the review required in section 939A(a). Public Law 111–203, sec. 939A(c); *see* U.S. Securities and Exchange Commission Staff, Report on Review of Reliance on Credit Ratings: As Required by Section 939A(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2011), *available at https://www.sec.gov/news/studies/2011/939astudy.pdf.* Staff reports, Investor Bulletins, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[4] Public Law 111–203, sec. 939A(b).

that is designed to preserve the integrity of the securities trading markets as independent pricing mechanisms by prohibiting activities that could artificially influence the market for an offered security, contains references to credit ratings in identical exceptions under 17 CFR 242.101 (''Rule 101'') and 242.102 (''Rule 102'') for investment grade Nonconvertible Securities and asset-backed securities.[5] The Investment Grade Exceptions are two of several exceptions to Rule 101's and Rule 102's general prohibitions: in connection with a distribution [6] of covered securities,[7] distribution participants,[8] issuers, selling security holders, and their affiliated purchasers are prohibited from, directly or indirectly, bidding for, purchasing, or attempting to induce any person to bid for or purchase, a covered security [9] during the applicable ''restricted period.'' [10] These prohibitions exist to protect the integrity of the offering process by precluding activities that could artificially influence the market for the offered security.[11]

In adopting the Investment Grade Exceptions, the Commission stated that certain securities and activities should be excepted to allow for activities that are necessary for the distribution to occur; to limit adverse effects to the trading market that could result from these prohibitions absent such exceptions; and to permit conduct that is not likely to have a manipulative impact.[12] The Investment Grade Exceptions were premised on the principle that investment grade Nonconvertible Securities and asset-backed securities are less likely to be subject to the type of manipulation that Regulation M seeks to address because they are largely fungible and trade primarily on the basis of yield and creditworthiness (traditionally measured by credit ratings),[13] rather than the identity of the particular issuer.[14]

In accordance with section 939A(b)'s requirements, in 2022, the Commission proposed rule amendments to remove the Investment Grade Exceptions and substitute them with new exceptions that are based on alternative standards of creditworthiness.[15] The Commission proposed to except from Rule 101 (1) Nonconvertible Securities of issuers who meet a specified probability of default threshold,[16] and (2) asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3.[17] The Commission proposed to eliminate, without replacing, the Investment Grade Exception from Rule 102.[18] The Commission also proposed to amend 17 CFR 240.17a (''Rule 17a–4''), specifically paragraph (b) of Rule 17a–4 (''Rule 17a–4(b)''), to require broker-dealers to preserve written probability of default determinations pursuant to Rule 101.[19]

The Commission received comments from an industry group, a data provider, nonprofit organizations, and individuals.[20] Commenters broadly recognized and acknowledged the objectives of the Proposal. Some commenters, including individual commenters, provided general support for the Proposal [21] and stated that reliance on credit ratings is outdated [22] and can be harmful to investors or the markets.[23] Another commenter

[5] *See* 17 CFR 242.101(c)(2) (''Rule 101(c)(2)''), 17 CFR 242.102(d)(2) (''Rule 102(d)(2)''). Both of these rules except Nonconvertible Securities and asset-backed securities that are rated by at least one nationally recognized statistical rating organization, as that term is used in 17 CFR 240.15c3–1 (''Rule 15c3–1''), in one of its generic rating categories that signifies investment grade. Throughout this release, each exception in Rule 101(c)(2) or Rule 102(d)(2) that references credit ratings is referred to as an ''Investment Grade Exception,'' and, together, those exceptions are referred to as the ''Investment Grade Exceptions,'' as applicable.

[6] *See* 17 CFR 242.100(b) (''Rule 100(b)'') (defining ''distribution'' as ''an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods'').

[7] *See* 17 CFR 242.100(b) (defining ''covered security'' as any security that is the subject of a distribution or any reference security, and ''reference security'' as a security into which a security that is the subject of a distribution may be converted, exchanged, or exercised or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security'').

[8] *See* 17 CFR 242.100(b) (defining ''distribution participant'' as any ''underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution'').

[9] *See* 17 CFR 242.100(b) (defining ''covered security'' as any security that is the subject of a distribution or any reference security, and ''reference security'' as a security into which a security that is the subject of a distribution may be converted, exchanged, or exercised or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security).

[10] *See* 17 CFR 242.100(b).

[11] *Anti-Manipulation Rules Concerning Securities Offerings,* Release No. 34–38067 (Dec. 20, 1996) [62 FR 520 (Jan. 3, 1997)] (''Regulation M Adopting Release''), 62 FR 521. Rule 101's prohibitions apply to distribution participants and their affiliated purchasers, while Rule 102's prohibitions apply to issuers, selling security holders, and their affiliated purchasers.

[12] *See Trading Practices Rules Concerning Securities Offerings,* Release No. 34–37094 (Apr. 11, 1996) [61 FR 17108 (Apr. 18, 1996)] (''Regulation M Proposing Release''), 61 FR17111, 17120.

[13] *See* Regulation M Adopting Release, 62 FR 527; *see also infra* note 38 (discussing how the ability to substitute similar securities in the market for the security in distribution limits the potential impact a covered person might attempt to exert on the market and distribution of such security). The Investment Grade Exceptions trace back to a 1975 Commission staff no-action position regarding Exchange Act Rule 10b–6, the predecessor to Rules 101 and 102 of Regulation M. *See* Letter from Robert C. Lewis, Assoc. Dir., Div. Mkt. Reg., SEC, to Donald M. Feuerstein, Gen. Partner & Counsel, Salomon Bros. (Mar. 4, 1975) (emphasizing the following representations from the lead underwriter-requestor in taking its position: (1) ''because the non-convertible bonds of particular issuers are not considered unique and because of the concept of relative value, it is simply not possible to manipulate the price of a corporate bond that has broad investor interest,'' and (2) purchasing activities in such securities generally are ''unlikely to materially affect the price of [a nonconvertible debt security being offered] because of the availability of large amounts of securities of other issuers which have comparable quality yield [spreads]''). For a further discussion of the history of the Investment Grade Exceptions, see *Removal of References to Credit Ratings From Regulation M,* Release No. 34–94499 (Mar. 23, 2022) [87 FR 18312 (Mar. 30, 2022)] (''Proposal''), 87 FR 18315.

[14] Regulation M Proposing Release, 61 FR 17112.

[15] *See* Proposal, 87 FR 18316–24. The Commission previously proposed two alternatives to the Investment Grade Exceptions. *See Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934,* Release No. 34–64352 (Apr. 27, 2011) [76 FR 26550 (May 6, 2011)]; *References to Ratings of Nationally Recognized Statistical Rating Organizations,* Release No. 34–58070 (July 1, 2008) [73 FR 40088 (July 11, 2008)] (''2008 Proposing Release''), 73 FR 40095–97. The Commission did not adopt any rule amendments with regard to the Investment Grade Exceptions based on either of these proposals.

[16] *See* Proposal, 87 FR 18317–19.

[17] *See* Proposal, 87 FR 18321–22.

[18] *See* Proposal, 87 FR 18323–24.

[19] *See* Proposal, 87 FR 18324–25.

[20] Comments received in response to the Proposal are contained in File No. S7–11–2022, *available at https://www.sec.gov/comments/s7-11-22/s71122.htm.*

[21] *See, e.g.,* Letter from Chris Carr (May 19, 2022); Letter from Daniel Kuo (May 19, 2022); Letter from Fred Carter (May 19, 2022); Letter from Biren Patel (May 19, 2022); Letter from Robert Tso (May 23, 2022); Letter from Stephen W. Hall, Legal Dir. & Secs. Specialist, Better Mkts, Inc., to Vanessa A. Countryman, Sec'y, SEC (May 23, 2022) (''Better Markets Letter''), at 3.

[22] *See, e.g.,* Letter from Alexandra Merz (May 18, 2022) (''Merz Letter''); Letter from Gerhard Krohmer (May 19, 2022); Andriy Granovsky (May 19, 2022); Letter from Jason Smith (May 20, 2022); Letter from Craig Faison (May 20, 2022); Letter from Jaymin Patel (May 20, 2022); Letter from Paul K. Sacco (May 21, 2022); Letter from David Navari (May 22, 2022) (''Navari Letter''); Letter from Jim Protsenko (May 24, 2022); Letter from John Hall (May 26, 2022); Letter from Andrew Macafee (May 30, 2022). The Commission also received two anonymous comments on May 19, 2022, both of which stated that credit rating agencies ''have become obsolete.''

[23] *See, e.g.,* Merz Letter; Letter from Robert Long (May 19, 2022); Letter from James R. Brown (May 19, 2022); *see also* Letter from William Desavigny (May 19, 2022); Letter from Kevin Price (May 19, 2022); Letter from Jason MacKenzie (May 19, 2022); Letter from James Zarbock (May 19, 2022); Letter from Carsten Hensch (May 19, 2022); Letter from Thomas Sutton (May 19, 2022); Letter from Harold VanPatten (May 19, 2022); Letter from Aaron Grimshaw (May 19, 2022); Letter from Andre M (May 19, 2022); Letter from Andrew Oshea (May 19, 2022); Letter from Steven Calvino (May 19, 2022);

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supported the Proposal and stated that its adoption will lead to increased market competition.[24] Some commenters opposed or expressed concerns about the Proposal, and offered certain recommendations with regard to particular aspects of the proposed rule amendments,[25] which are addressed below, in Parts II.A through C. After reviewing and carefully considering the public comments and recommendations, and in accordance with the requirements of section 939A(b), the Commission is adopting final rule amendments, with targeted modifications to address comments received and to streamline and clarify the rule text from the Proposal. As discussed below in Parts II.A and II.B, the Commission believes that its original basis for excepting investment grade Nonconvertible Securities and asset-backed securities from Rules 101 and 102 continues to apply to the securities that are captured by the amendments' substitute standards of creditworthiness.

II. Discussion of the Final Rule Amendments

The amendments remove the existing Investment Grade Exceptions from both Rule 101 and Rule 102 of Regulation M. For distributions of Nonconvertible Securities, the Commission is adopting two new exceptions—one in 17 CFR 242.101(c)(2)(i) (''Rule 101(c)(2)(i)''), for reliance by distribution participants and their affiliated purchasers, and one in 17 CFR 242.102(d)(2)(i) (''Rule 102(d)(2)(i)''), for reliance by issuers, selling security holders, and their affiliated purchasers. Both exceptions are based on the requirements more fully described in Parts II.A.1 and B.1 that relate to the determination of an issuer's probability of default as derived from a structural credit risk model.[26] As discussed below, in Part II.A.1, final Rule 101(c)(c)(i) differs from the Proposal with regard to the exception's conditions involving who is eligible to make probability of default determinations pursuant to Rule 101(c)(2)(i) and when such probability of default determination must be made to rely on the exception. While the Proposal would have allowed any distribution participant to make the probability of default determination in meeting the conditions of Rule 101(c)(2)(i), the final amendments require the probability of default determination to be made by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution.[27] In addition, final Rule 101(c)(2)(i) will require five additional business days before the price determination date from what was proposed to make the probability of default determination in satisfying the exception's conditions.[28] Finally, the Commission is making some technical, non-substantive changes from the Proposal with regard to the wording of the standard,[29] as well as some clarifying changes to the proposed definition of ''structural credit risk model.'' [30]

Because the term ''structural credit risk model'' is used identically in both Rule 101(c)(2)(i) and Rule 102(d)(2)(i), as amended, the Commission is adding a definition for the term ''structural credit risk model'' in Rule 100(b) of Regulation M.[31] In addition, the Commission is adopting new paragraph (b)(17) of Rule 17a–4 (''Rule 17a–4(b)(17)'') requiring the preservation of the written probability of default determination, relied upon by a broker-dealer, pursuant to new Rule 101(c)(2)(i) or new Rule 102(d)(2)(i), as applicable, to facilitate Commission staff examinations.[32]

For distributions of asset-backed securities, the Commission is adopting identical, new exceptions—one in 17 CFR 242.101(c)(2)(ii) (''Rule 101(c)(2)(ii)''), for reliance by distribution participants and their affiliated purchasers, and one in 17 CFR 242.102(d)(2)(ii) (''Rule 102(d)(2)(ii)''), for reliance by issuers, selling security holders, and their affiliated purchasers—requiring that such securities be offered pursuant to an effective shelf registration statement filed on Form SF–3.[33]

A. Rule 101(c)(2) of Regulation M: Implementing Section 939A(b) in Certain Exceptions for Distribution Participants

The application of Rule 101's prohibitions to distributions of Nonconvertible Securities and asset-backed securities generally is limited because, under Regulation M, bids for and purchases of outstanding Nonconvertible Securities are not restricted unless the security being purchased is identical in all of its terms to the security being distributed.[34] For example, Rule 101's restrictions do not apply for a security if there is a single basis point difference in coupon rates or a single day's difference in maturity dates from the security in distribution.[35] In addition, as stated in the Proposal, commenters on the Commission's previously proposed alternatives to the Investment Grade Exception [36] stated that reliance on the Investment Grade Exceptions largely is limited to two situations: re-openings (*e.g.,* when an issuer may want to make a series of offerings of its fixed-income securities via a re-opening to match its funding needs or the desires of its target investor class, or when a foreign sovereign issuer may conduct a re-opening for public financing purposes) and sticky offerings.[37] The securities that meet the

Letter from Dennis Smith (May 19, 2022); Letter from Devin Dasbach (May 19, 2022); Letter from Mark A. Fritzke (May 19, 2022); Letter from Cameron Beebe (May 19, 2022); Letter from Nick Parasiris (May 19, 2022).

[24] *See* Letter from Jacob Rajan (May 19, 2022).

[25] *See, e.g.,* Letter from Joseph Corcoran, Managing Dir. & Assoc. Gen. Counsel, Secs. Indus. & Fin. Mkts. Ass'n, to Vanessa Countryman, Sec'y, SEC (May 23, 2022) (''SIFMA Letter 1''); Better Markets Letter.

[26] *See* 17 CFR 242.101(c)(2)(i), as amended, 242.102(d)(2)(i), as amended (requiring, for reliance by issuers, selling security holders, and their affiliated purchasers, that the distribution participant acting as the lead manager (or in a similar capacity) of a distribution have made the probability of default determination, as applicable to the subject security, pursuant to Rule 101(c)(2)(i), as amended).

[27] *See infra* Part II.A.1.

[28] *See infra* Part II.A.1.

[29] *See infra* note 126.

[30] *See infra* Part II.A.1.

[31] *See* 17 CFR 242.100(b).

[32] *See* 17 CFR 240.17a–4(b)(17), as amended.

[33] *See* 17 CFR 242.101(c)(2)(ii), as amended, 242.102(d)(2)(ii), as amended.

[34] Regulation M Adopting Release, 62 FR 524.

[35] *See* Regulation M Adopting Release, 62 FR 524. To illustrate with a simple example, absent an exception, a broker-dealer who is participating in a distribution of XYZ Corp.'s 3% bonds maturing 12/31/2029 would be prohibited from making a market in bonds with those terms prior to completing the distribution. The broker-dealer would not, however, be prohibited from making a market in XYZ Corp.'s 3% bonds maturing 12/31/2030 because the date of maturity, a term of the bond, is different from that of the security in distribution.

[36] *See supra* note 15.

[37] Proposal, 61 FR 18316. In addition, the Commission also stated in the Proposal that another example provided by a commenter is a ''best-efforts'' offering. Proposal, 61 FR 18316. One commenter on the Proposal stated that firms rely on the Investment Grade Exceptions in the context of ''sticky deals'' and ''re-openings'' of debt issuances. *See* SIFMA Letter 1, at 4. As discussed below, in Part V.E.5, any offering can become a sticky offering. In such case, it may become challenging for the issue to trade based solely on its yield and maturity, notwithstanding the issuer's creditworthiness. Therefore, a sticky offering does not necessarily indicate a lack of creditworthiness on the part of the issuer. In the Proposal, the Commission asked if sticky offerings of creditworthy issuers disprove the underlying premise for excepting certain Nonconvertible Securities. *See* Proposal, 87 FR 18320. The Commission also asked if the Investment Grade Exception should be removed from Rule 101, without a replacement, because whether an offering will become sticky is unknown at the beginning of the Regulation M restricted period. *See* Proposal, 87 FR 18320. One commenter stated that it is unaware of any manipulative issues associated with reliance on the Investment Grade Exceptions in connection with sticky offerings. *See* SIFMA Letter 1, at 2.

requirements of Rule 101's Investment Grade Exception are less likely to be subject to the type of manipulation that Rule 101 seeks to prevent because these securities trade on the basis of their yield and creditworthiness (traditionally measured by credit ratings), rather than the identity of the particular issuer, and are largely fungible.[38]

1. Rule 101(c)(2)(i): Nonconvertible Securities of Issuers Who Meet a Specified Probability of Default Threshold

The Commission proposed to except the Nonconvertible Securities of issuers for which the probability of default, estimated as of the day of the determination of the offering pricing and over the horizon of 12 calendar months from such day, is less than 0.055%, as determined and documented in writing by the distribution participant as derived from a structural credit risk model.[39] The Commission included a definition for the term ''structural credit risk model'' as a *proviso* in proposed Rule 101(c)(2)(i) to mean ''any commercially or publicly available model that calculates the probability that the value of the issuer may fall below a threshold based on an issuer's balance sheet.'' [40] Accordingly, as proposed, a distribution participant's (or its affiliated purchaser's) reliance on proposed Rule 101(c)(2)(i) would have been conditioned on a probability of default determination that was made by use of any commercially or publicly available model that calculates the probability that the value of the issuer may fall below a threshold based on an issuer's balance sheet.

As discussed in the Proposal, since 1974, structural credit risk models, such as the model first proposed by Robert C. Merton and its successor models, have become widely relied upon to determine the probability that an issuer will default on its loan obligations.[41] Many commercial data providers, as part of software suites that allow users to analyze securities, employ certain structural credit risk models that are based on the Black-Scholes option pricing model as a way to measure the creditworthiness of companies. These types of structural credit risk models typically use measures from company accounting statements and company-specific and aggregate market prices and require input variables to calculate an estimated probability of default for a specified horizon, including the market value and volatility of the assets, as well as assumptions regarding the threshold for company asset values, below which the equity owner would default on its obligations (''Default Point'').[42] In addition, these structural credit risk models provide the probability that a company's assets will fall below the Default Point at or by the expiration of a defined period.

Generally, the following variables are needed to derive an issuer's probability of default from a typical structural credit risk model: (1) the issuer's value, which can be based on observed market prices of an issuer's equity security or estimated based on an issuer's balance sheet; (2) the volatility of the issuer's equity or assets, which also can be based on market observations or estimated based on an issuer's balance sheet; (3) the risk-free rate; (4) a time horizon; and (5) the Default Point. A structural credit risk model's application may be limited in the absence of a market for an issuer's equity securities if the market price of the issuer's assets, which, as discussed above, is required to calculate the probability of default, is difficult to determine.[43]

Some commenters supported the proposed exception for Nonconvertible Securities that is based on an issuer's probability of default.[44] One commenter stated that the proposed application of a structural credit risk model requirement will provide additional transparency for investors and other market participants.[45] Another commenter agreed with the Commission that the estimated probability of default of a debt security ''is and should be a central component of the analysis of the credit risk'' [46] and that the ''expected probability of default can be independently determined by structural credit risk models based on observable market events and information available on a firm's balance sheet,'' without having to rely on an investment grade rating.[47] However, this commenter also stated that balance sheet measures frequently are inaccurate and that comparisons of market values to book values are subject to concerns about ''garbage in, garbage out.'' [48] While the Commission requested comments regarding whether the exception proposed in Rule 101(c)(2)(i) should require the issuer's balance sheet to be audited,[49] it did not receive any

However, no commenter suggested that the Commission should remove the Investment Grade Exception from Rule 101, without a replacement.

[38] *See* Regulation M Adopting Release, 62 FR 527; *see also* Regulation M Proposing Release, 61 FR 17112. For purposes of Regulation M, securities of issuers of a certain credit quality trade on the basis of their yield and creditworthiness (traditionally measured by credit ratings) and are less susceptible to manipulation because other similar Nonconvertible Securities or asset-backed securities are available to investors as an alternative. If the pricing of an offering is inconsistent with pricing in the overall secondary market for similar Nonconvertible Securities or asset-backed securities, an investor may purchase alternative securities that have a better yield, yet are of comparable creditworthiness, in relation to the security being distributed. Accordingly, the ability to substitute similar Nonconvertible Securities or asset-backed securities for the security in distribution limits the ability of a distribution participant to impact the market and distribution of such security.

[39] Proposal, 87 FR 18338. The Commission stated that, as discussed in that release, based on an analysis of the probability of default and investment grade ratings of a sample of Nonconvertible Securities available on the market as of Oct. 22, 2021, this was an appropriate substitute standard of creditworthiness in place of the reference to credit ratings in the Investment Grade Exception for Nonconvertible Securities. *See* Proposal, 87 FR 18318.

[40] Proposal, 87 FR 18338.

[41] *See generally* Proposal, 87 FR 18316–17 (providing a history and overview of structural credit risk models). Generally, these models assume that owners of a company's equity will continue to pay the company's liabilities if the company's value exceeds its liabilities. Equivalently, if the equity owners were considered to own a call option on the value of the company with a strike price equivalent to the liabilities owed, the equity owners would exercise the call on the value of the company. If, however, the company's liabilities exceed the company's value, the models assume that the equity owners will choose to default on the company's liabilities, or equivalently, the equity owners would not exercise the call on the value of the company. Accordingly, these structural credit risk models provide a method, based on the Black-Scholes option pricing model, to estimate the probability that a company might default on its liabilities. *See* Proposal, 87 FR 18317.

[42] The Default Point frequently is calculated as all short-term liabilities plus half of the long-term liabilities. *See* Mario Bondioli et al., *The Bloomberg Corporate Default Risk Model (DRSK) for Public Firms* (Mar. 2021), *available at https://ssrn.com/abstract=3911300.*

[43] These models calculate the probability of default based on inputs from an issuer's balance sheet. Transactions in equity securities frequently are used as a proxy to determine the value of the firm and the overall volatility of the issuer's assets. Even the absence of a market for an issuer's equities alone does not preclude the ability of a distribution participant to use certain structural credit risk models because the issuer's balance sheet will include the liabilities, assets, and equity, which, with further analysis, can be used to determine the inputs for the models. Distribution participants, based on their activities as an underwriter, broker-dealer, or other person who has agreed to participate in a distribution, can access an issuer's balance sheet to calculate the issuer's probability of default.

[44] Letter from Gregory Babyak, Global Head of Reg. Affairs, Bloomberg L.P., to Vanessa A. Countryman, Sec'y, SEC (May 23, 2022) (''Bloomberg L.P. Letter''), at 1; Letter from Robert E. Bishop, Fellow, Ctr. Law & Bus., UC Berkeley School of Law, & Frank Partnoy, Adrian A. Kragen Professor of Law, UC Berkeley School of Law, to Vanessa Countryman, Sec'y, SEC (May 23, 2022) (''IILF Letter''), at 2; Better Markets Letter, at 2.

[45] Bloomberg L.P. Letter, at 1.

[46] IILF Letter, at 2.

[47] IILF Letter, at 5.

[48] IILF Letter, at 6.

[49] Proposal, 87 FR 18320. Such a requirement could present operational challenges in connection with deriving an issuer's probability of default from

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comments in response to this question. In addition, the Commission considered including in the exception models that may not necessarily rely on an issuer's balance sheet to determine a firm's creditworthiness, such as reduced-form models. Reduced-form models, however, do not necessarily predict future defaults better than structural credit risk models do, and they suffer from a lack of theoretical foundation of the assumed relationships, or the intuitive interpretation of the model dependencies and why the defaults occur.[50] For these reasons, and as discussed throughout this Part, the Commission is adopting a standard that is based on the use of a structural credit risk model as it is appropriately designed to measure creditworthiness of Nonconvertible Securities in new Rule 101(c)(2)(i), in accordance with the requirements of section 939A(b).

One commenter suggested an exception based on alternative standards of creditworthiness that do not utilize structural credit risk models. First, this commenter suggested that the Commission adopt an exception for Nonconvertible Securities that are offered pursuant to an effective registration statement filed on any of the following forms: (1) Form S–3; [51] (2) Form S–4; [52] (3) Form F–3; [53] (4) Form F–4; [54] or (5) Form F–10,[55] provided that, for an offering registered on Form F–10, the offering also meets the transactional requirements of General Instruction I.B.2 of Form F–3.[56] The commenter stated several reasons for which the use of this standard would be desirable,[57] and that allowing some amount of high yield issuers to be eligible for the exception would be an acceptable compromise in light of the benefits the commenter's proposed standard otherwise provides.[58] In addition, this commenter stated that the ''consistently very high percentage of registered nonconvertible debt tranches that were investment grade demonstrates that Securities Act registration alone serves as a reliable proxy for identifying offerings of nonconvertible debt securities that trade primarily based upon their yield and creditworthiness.'' [59]

The Commission acknowledges that the commenter's suggested standard may capture a consistently very high percentage of registered nonconvertible debt tranches that were rated investment grade and may seem operationally easier to determine whether the new exception in Rule 101(c)(2)(i) for Nonconvertible Securities is available, may help to promote the conduct of offerings on a registered basis, and allow for the use of an exception that can be verified with publicly available information, among other things. The commenter's suggested standard, however, would not be appropriate because it does not sufficiently focus on creditworthiness. When the Commission revised the eligibility criteria for use of Forms S–3 and F–3 to remove any references to credit ratings, it specifically stated that the eligibility criteria included in those forms did not distinguish among issuers by the quality of their credit but rather focused exclusively on whether the issuer has a wide following in the marketplace to identify issuers who should be eligible for short-form registration and faster access to capital markets through the shelf registration process.[60] This is distinct from the basis for adopting the Investment Grade Exceptions, including under Rule 101(c)(2), which was that Nonconvertible Securities are appropriate to except from Regulation M's requirements because they are fungible and traded on the basis of their yield and creditworthiness, and therefore are less likely to be manipulated.[61]

Specifically, securities of issuers of a certain credit quality trade based on

a structural credit risk model. As discussed below, in this Part, the determinations must be ''estimated as of the sixth business day immediately preceding the determination of the offering price,'' which helps to ensure that timely information regarding the issuer is used as a model input. A lead manager may encounter difficulties in obtaining model input information from an issuer's audited balance sheet each time it needs to determine an issuer's probability of default for purposes of reliance on the exception for Nonconvertible Securities if such a determination were being made in between audits.

[50] *See infra* Part V.E.3.

[51] 17 CFR 239.13.

[52] 17 CFR 239.25.

[53] 17 CFR 239.33.

[54] 17 CFR 239.34.

[55] 17 CFR 239.40.

[56] SIFMA Letter 1, at 5–8; *see* Letter from Joseph Corcoran, Managing Dir. & Assoc. Gen. Counsel, Secs. Indus. & Fin. Mkts. Ass'n, to Vanessa Countryman, Sec'y, SEC (Oct. 28, 2022) (''SIFMA Letter 2'').

[57] SIFMA Letter 1, at 3–4 (stating that this standard would provide a straightforward, uniform standard; align with how the Commission addressed the Dodd-Frank Act-related removal of references to credit ratings from the eligibility criteria for use of certain provisions under the Securities Act and related forms; promote the conduct of offerings on a registered basis by limiting the exception to qualifying registered offerings; afford predictability; avoid complex calculations that could lead to errors or differing results, depending on the particular structural credit risk model used; allow the availability of the exception to be readily and independently verified through a review of the issuer's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database filings, which would minimize additional regulatory burdens and obviate the need for any additional broker-dealer recordkeeping obligations; ease the burden on all involved, including for regulators; and provide greater legal certainty to the affected issuers and any selling shareholders).

[58] SIFMA Letter 2, at 1; SIFMA Letter 1, at 5–7.

[59] SIFMA Letter 2, at 3.

[60] *Security Ratings,* Release No. 33–9245 (July 27, 2011) [76 FR 46603 (Aug. 3, 2011)] (''Form S–3 and Form F–3 Release''), 76 FR 46607. When the Commission revised the eligibility criteria for use of Form S–3 and Form F–3 to remove any references to credit ratings, it noted that none of the criteria are a standard of creditworthiness. Form S–3 and Form F–3 Release, 76 FR 46607 n.60. The Commission stated that ''any alternative standard for Forms S–3 and F–3 eligibility that does not refer to credit ratings should preserve the forms and access to the shelf registration process for issuers who have a wide following in the marketplace.'' Form S–3 and Form F–3 Release, 76 FR 46607. Form SF–3, the shelf registration statement form for asset-backed securities that is discussed below, in Part II.A.2, differs from these other forms raised by the commenter that rely on the eligibility criteria for use of Form S–3 or Form F–3. Whereas the eligibility criteria included in Forms S–3 and F–3 focus exclusively on whether the issuer has a wide following in the marketplace to identify issuers who should be eligible for short-form registration and faster access to capital markets through the shelf registration process, the eligibility criteria and offering requirements included in Form SF–3 help to ensure that asset-backed securities issued in shelf offerings are designed to help ensure that that the securitization is designed to produce expected cash flows that are sufficient to service payments or distributions in accordance with their terms; that obligated parties more carefully consider the characteristics and quality of the assets that are included in the pool; and that asset-backed securities shelf offerings have transactional safeguards and features that make those certain securities appropriate to be issued without prior Commission staff review. *See Asset-Backed Securities Disclosure and Registration,* Release No. 34–72982 (Sept. 4, 2014) [79 FR 57184 (Sept. 24, 2014)] (''Regulation AB II Adopting Release''), 79 FR 57267, 57278, 57283.

[61] *See* Regulation M Adopting Release, 62 FR 524; *supra* note 13. For these reasons discussed above, as related to the eligibility criteria of Forms S–3 and F–3, the commenter's suggestion of excepting Nonconvertible Securities that are offered pursuant to an effective registration statement filed on Form S–4 or F–4 would not be an appropriate substitute standard of creditworthiness in place of the reference to credit ratings in the Investment Grade Exception pursuant to section 939A(b) because Forms S–4 and F–4 include the Forms S–3 and F–3 eligibility criteria by allowing registrants that meet the registrant eligibility requirements of Form S–3 or F–3 and that are offering investment grade securities to incorporate by reference certain information. *See* Form S–3 and Form F–3 Release, 76 FR 46611 (citing General Instruction B.1 of Forms S–4 and F–4). Similarly, the commenter's suggestion of excepting Nonconvertible Securities that are offered pursuant to an effective registration statement filed on Form F–10, provided that the offering also meets the transactional requirements of General Instruction I.B.2. of Form F–3, would not be an appropriate substitute standard of creditworthiness in place of the reference to credit ratings in the Investment Grade Exception pursuant to section 939A(b) because that measure references transactional requirements that have a distinct purpose from the Commission's original basis for adopting the Investment Grade Exception. As discussed in this Part, the probability of default is an appropriate measure to identify low manipulation risk of Nonconvertible Securities because it allows for the selection of issuers whose securities trade on the basis of yield and creditworthiness.

yield and creditworthiness [62] and are less susceptible to manipulation because other similar Nonconvertible Securities are available to investors as an alternative to the security in distribution. If pricing of a Nonconvertible Security offering is inconsistent with pricing in the overall secondary market for similar Nonconvertible Securities, an investor may purchase alternative Nonconvertible Securities that have a better yield, yet are of comparable creditworthiness, than the security being distributed. Accordingly, the ability to substitute similar Nonconvertible Securities in the market for the security in distribution limits the potential impact that a distribution participant might attempt to exert on the market and distribution of such security. In addition, when debt has a very low probability of default, the cash flows are close to risk-free. Thus, the price of the debt is mainly subject to fluctuations based on aggregate interest rates rather than issuer-specific or security-specific news.

The probability of default is an appropriate measure to identify low manipulation risk of such securities, as it allows for the selection of issuers whose securities trade on the basis of yield and creditworthiness (traditionally measured by credit ratings). For issuers with sound creditworthiness, the pricing of securities is unrelated to other risks associated with the identity of the issuer, greatly reducing their uncertainty and manipulation risk. A standard based on a criterion such as being widely followed in the market does not allow for such a clear distinction because such a standard does not differentiate securities that are traded solely on their yield and creditworthiness from securities that trade solely on the issuer's identity and thus could present a high manipulation risk.[63] Accordingly, it is appropriate to implement the section 939A(b) mandate by adopting an exception that is based on a standard that is likewise premised specifically on creditworthiness rather than on whether a particular issuer has a wide following in the marketplace.

Second, the commenter suggested that its recommended standard described above, which is based on the Forms S–3 and F–3 eligibility criteria, could be modified by prohibiting reliance on the exception for Nonconvertible Securities that include both a ''limitation on restricted payments covenant'' and a ''limitation on sales of assets and subsidiary stock covenant,'' which the commenter stated are two covenants that typically are associated with non-investment grade debt securities and are almost never used in investment grade debt securities.[64]

However, despite the commenter's suggestions, the covenant restrictions are features of current market practices [65] but are not necessarily inherent characteristics of the securities related to their creditworthiness. Conditioning the exception on the absence of certain covenants poses the risk that, should market practice change, the exception would quickly become outdated. Therefore, even with the commenter's two suggested modifications, a standard that is focused on the Form S–3 or Form F–3 eligibility criteria and is premised exclusively on whether an issuer is widely followed,[66] rather than on an issuer's creditworthiness, is not an appropriate substitute standard of creditworthiness in place of the references to credit ratings in Rule 101's Investment Grade Exception for Nonconvertible Securities to sufficiently respond to the requirements of section 939A(b).

Finally, this commenter suggested that the Commission adopt a modified version of the 2008 Proposing Release involving a well-known seasoned issuer (''WKSI'') standard [67] to except: (1) a WKSI that, as of a date within 60 days of the applicable determination date, has a worldwide market value of its outstanding voting and non-voting common equity held by non-affiliates of $700 million or more; and (2) a non-WKSI to the extent it is carved out of the WKSI definition solely by virtue of the application of paragraph (1)(v), (vi), or (ix) of the definition of ''ineligible issuer'' under Rule 405 under the Securities Act.[68] The Commission recognizes the advantage a WKSI-based standard might have in terms of its simplicity and straightforward calculation. As noted in the Proposal, however, a WKSI-based standard as proposed in 2008 was criticized for allowing many risky, high-yield issues to be excepted and preventing issues by smaller but otherwise credit-worthy issuers from being eligible for the exception.[69] This WKSI-based standard, however, unlike the probability-of-default-based standard, would fail to capture the pricing point where the sound creditworthiness of the issuer eliminates other risks associated with the issuer identity. The Nonconvertible Securities of such issuers trade solely based on their yields and creditworthiness and not on issuer characteristics, where pricing uncertainty and manipulation risk are at their minimum.[70] The WKSI-based standard, therefore, is a less effective measure of manipulation risk as compared to the probability of default measure.

For these reasons, and pursuant to the requirements of section 939A(b), the probability of default measure is a more appropriate substitute of creditworthiness for the reference to credit ratings in the existing Investment Grade Exception than is the commenter's suggested WKSI-based standard.[71] As discussed above, in this Part, when debt has a very low probability of default, its price fluctuations are mainly based on aggregate interest rates rather than on company-specific or security-specific news. The probability of default measure, in contrast to the commenter's suggested WKSI-based standard, continues to rely on the premise underlying the Investment Grade Exception: Nonconvertible Securities

[62] Bonds trade among investors and dealers in secondary markets at prices that depend on economy-wide interest rates, as well as on market perceptions regarding the likelihood that the issuing company will make the promised payments. Hendrik Bessembinder & William Maxwell, *Markets: Transparency and the Corporate Bond Market,* 22 J. ECON. PERSP. 217, 220 (2008).

[63] *See infra* Part V.E.3.

[64] SIFMA Letter 1, at 8.

[65] *See, e.g.,* SIFMA Letter 1, at 8.

[66] Form S–3 and Form F–3 Release, 76 FR 46607.

[67] In 2008, prior to the enactment of the Dodd-Frank Act, the Commission proposed to substitute credit ratings references in Rules 101 and 102 with a standard for Nonconvertible Securities that was based primarily on the WKSI concept from 17 CFR 230.405 (''Rule 405''), as well as a standard for asset-backed securities that were registered on Form S–3. *See* 2008 Proposing Release, 73 FR 40095–97. The WKSI-based approach, consistent with the definition of WKSI under Rule 405, would have excepted the Nonconvertible Securities of companies that have issued at least $1 billion aggregate principal amount of nonconvertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act. *See* 17 CFR 230.405, paragraph (1)(i)(B)(*1*) of the definition of WKSI; *see also* 2008 Proposing Release, 73 FR 40096.

[68] *See* SIFMA Letter 1, at 10. This commenter stated that its suggested exception based on Forms S–3 and F–3 is more appropriate than this WKSI-based approach because the Form S–3/F–3-based approach ''recognizes several different means of qualifying under the transactional requirement, only one of which is based upon the aggregate principal amount of non-convertible securities issued over the preceding three years.'' SIFMA Letter 1, at 9–10. For the reasons discussed in this Part, neither of these approaches is an appropriate standard of creditworthiness in place of the reference to credit ratings in the Investment Grade Exception.

[69] Proposal, 87 FR 18334–35.

[70] *See infra* Part V.E.3.

[71] *See* Proposal, 87 FR 18317. Similar to how securities covered by the existing Investment Grade Exception are excepted from Rule 101's prohibitions, Nonconvertible Securities that trade based on their yield and creditworthiness would be excepted under Rule 101 as amended to include the probability of default-based standard.

that trade primarily based on their yield and creditworthiness are less susceptible to the type of manipulation that Rule 101 seeks to prevent.

Some commenters stated that the Commission should specify a particular structural credit risk model to be used by all parties in making probability of default calculations.[72] These commenters stated their concerns regarding the potential for inconsistent outcomes resulting from the discretion to choose what structural credit risk models to apply.[73] One commenter stated that the adoption of the proposed model-based standard would create the risk that the new standard would be manipulated because firms would have a wide variety of models from which to select.[74] This commenter stated that, while the proposed probability-of-default-based standard is a reasonable alternative standard of creditworthiness, the use of structural credit risk models would create challenges for the Commission, with regard to implementing the probability of default standard, and for investors, with regard to confidence in the consistency and reliability of determinations made under the new standard.[75] In addition, this commenter stated that setting no minimum standards for the models and allowing market participants the discretion to choose among a wide range of models threatens to create a ''race to the bottom'' as market participants seek to avoid competitive disadvantages that will arise from having an appropriately rigorous risk of default evaluation.[76] Another commenter, however, stated that it would be ''risky'' for the Commission to engage in ''model preferencing.''[77]

The Commission agrees with the comment against requiring the use of a specific structural credit risk model.[78] On balance, the use of a structural credit risk model to derive an issuer's probability of default pursuant to Rule 101(c)(2)(i), as amended, provides an appropriate degree of flexibility in terms of model selection while also providing certainty to distribution participants as to the standards for the structural credit risk model required for purposes of compliance in making probability of default determinations. The ability to use an unrestricted universe of models for purposes of meeting the conditions of new Rule 101(c)(2)(i) could provide distribution participants with the opportunity to choose model specifications that enable abuse of the exception for Nonconvertible Securities. In this regard, the definition of ''structural credit risk model,'' as discussed below in this Part, sets minimum standards for the structural credit risk models that may be used to derive an issuer's probability of default to meet the conditions of new Rule 101(c)(2)(i). These minimum standards include that the model be a commercially or publicly available model and that it calculate, based on an issuer's balance sheet, the probability that the value of the issuer will fall below the Default Point, at or by the expiration of a defined period. As discussed below, in Part V.C.3, the standard's use of structural credit risk models could incentivize lead managers to select models and estimation specifics in such a way to ensure the resulted estimates are below the threshold, thus allowing securities of issuers with low creditworthiness and high manipulation risk to be eligible for the exception. The public availability of alternative estimates for investors, however, should mitigate this concern.[79] Specifically, the limitation that the structural credit risk model must be a commercially or publicly available model would limit a distribution participant's ability to develop models for the purpose of abusing the exception.[80] In this regard, use of a structural credit risk model that is not commercially or publicly available, or one that does not calculate, based on an issuer's balance sheet, the probability that the value of the issuer will fall below the Default Point, at or by the expiration of a defined period, would not be permissible in meeting the conditions of the exception.

While a standard that relies on the use of a structural credit risk model retains a certain level of subjectivity,[81] this standard also leaves room for improvement if the market adopts more accurate structural credit risk models in the future. As the Commission stated in the Proposal, the use of any model to estimate creditworthiness necessarily provides an imperfect measure.[82] This flexibility in selection may result in an outcome-oriented selection of structural credit risk models, as one commenter suggested.[83] However, a selection that meets the definition of ''structural credit risk model,'' as provided in Rule 100(b), as well as the requirements of new Rule 101(c)(2)(i), would be consistent with the aims of section 939A as well as those of Regulation M.[84] In addition, the new record preservation requirement set forth in Rule 17a–4(b)(17), as discussed below in Part II.C, is designed to aid Commission examinations of broker-dealers who rely on the exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i), as amended, and can help deter improper adjusting of the estimation to meet the conditions of either of the exceptions.[85]

The Commission requested comment on whether there are ''any reasons why the Rule should not permit a distribution participant to perform its own calculation (subject to recordkeeping requirements, as proposed).''[86] To address concerns that the proposed flexibility in structural

[72] *See* SIFMA Letter 1, at 10; Better Markets Letter, at 5.

[73] *See* SIFMA Letter 1, at 5; Better Markets Letter, at 4.

[74] Better Markets Letter, at 4 (stating, in part, that the use of structural credit risk models will create a lack of uniformity that conflicts with the mandate in section 939A(b) for the Commission to establish, to the extent feasible, uniform standards of creditworthiness). *But see* Bloomberg L.P. Letter, at 2 (stating that, although the application of a particular threshold across multiple models may have some unintended consequences (*e.g.,* different point-in-time probability of default models may produce different results for the same issuance), the proposed exception provides an alternative measure of creditworthiness that is practical, appropriately based on objective factors, and can be consistently applied by market participants). The mandate in section 939A(b) to seek to establish uniform standards of creditworthiness is limited ''to the extent [that it is] feasible.'' Public Law 111–203, sec. 939A(b). As discussed in this Part, the use of structural credit risk models to derive an issuer's probability of default is an appropriate standard of creditworthiness in accordance with section 939A(b)'s requirements.

[75] Better Markets Letter, at 4.

[76] Better Markets Letter, at 4.

[77] *See* IILF Letter, at 6 (stating that requiring a particular type of model could potentially distort the behavior of market participants in their estimations of probability of default and discouraging further and alternative inquiries into the probability of default). The use of structural credit risk models is required only for purposes of deriving an issuer's probability of default pursuant to new Rule 101(c)(2)(i). Distribution participants, as well as other market participants, may use other types of models in evaluating the creditworthiness of an issuer outside of making a Rule 101(c)(2)(i) probability of default determination.

[78] *See* IILF Letter, at 6.

[79] Also, as discussed below, in Part II.C, because probability of default estimates may be subjective to some extent and not comparable across different issuers or for the same issuer across different issues if estimates are based on different models, or done by different researchers or vendors, the requirement associated with reliance on new Rule 101(c)(2)(i) to preserve written probability of default determinations is designed to facilitate the Commission's examinations of broker-dealers who rely on the exception in new Rule 101(c)(2)(i) or new Rule 102(d)(2)(i).

[80] *See infra* Part V.C.3.

[81] *See infra* Part V.C.3; *see also* Proposal, 87 FR 18334.

[82] Proposal, 87 FR 18332.

[83] SIFMA Letter 1, at 5.

[84] *See infra* Part V.B (discussing how structural credit risk models, as defined in Rule 100(b), are designed to measure creditworthiness, and creditworthiness itself is considered to be a good measure of manipulation risk).

[85] *See* 17 CFR 240.17a–4(b)(17), as amended; *infra* Part II.C.

[86] Proposal, 87 FR 18320.

credit risk model selection could lead to different underwriters coming to different conclusions on the availability of an exception from Regulation M based on which structural credit risk model they use, as well that this flexibility could contribute to inefficiencies, confusion, and dissension among distribution participants,[87] the final amendments limit the universe of those who are eligible to determine an issuer's probability of default under new Rule 101(c)(2)(i) to include only the distribution participant who is acting as the lead manager (or in a similar capacity) [88] of a distribution.[89] This limitation will help to ensure consistent reliance on the exception across all distribution participants for the same distribution through use of the same written probability of default determinations and through the new record preservation requirements under Rule 17a–4(b)(17).[90] The lead manager's role and responsibilities in overseeing the distribution process [91] should, for these same reasons, help alleviate concerns regarding the consistency and reliability of the determinations within any particular distribution.[92]

The lead-manager requirement is intended to broadly reflect current market practices.[93] Lead managers will be incentivized to share their probability of default determinations with other distribution participants and their affiliated purchasers (as well as with the issuer, selling security holders, and their affiliated purchasers) in order to rely on the exception for Nonconvertible Securities given their primary role and responsibilities in overseeing the distribution process, which can include providing liquidity and facilitating an orderly distribution and aftermarket in connection with the offering.[94] While Regulation M does not require the lead manager to coordinate the activities of the other syndicate members, lead managers are, as a practical matter, concerned that the other underwriters in the syndicate are, among other things, complying with Regulation M's trading prohibitions [95] so as not to extend the Regulation M restricted period.[96] However, Rule 101(c)(2)(i), as amended, does not require that the lead manager making the probability of default determination share the determination with other distribution participants or their affiliated purchasers in order for those parties to rely on the exception.[97] Therefore, non-lead manager distribution participants and their affiliated purchasers (as well as issuers, selling security holders, and their affiliated purchasers, as discussed below, in Part II.B.1) may not be able to rely on the exception for Nonconvertible Securities if the lead manager does not share the probability of default determination or there is no distribution participant to act as the lead manager for the distribution, such as with self-underwritten offerings, at-the-market offerings, or other shelf offerings, to the extent such an offering meets the definition of a ''distribution'' under Rule 100(b) of Regulation M. [98]

This potential impact is mitigated, however, if the syndicate adjusts the way it interacts with lead managers. For example, the syndicate could decide, by contract (*e.g.,* in an agreement among underwriters) and for the same reason of consistency as discussed above, to specifically authorize the lead manager

[87] SIFMA Letter 1, at 5.

[88] Distribution participants who act as the ''lead manager'' of a distribution for purposes of the exception in Rule 101 may, as a practical matter, also use or be known by different titles, such as ''lead underwriter,'' ''managing lead underwriter,'' ''syndicate manager,'' ''stabilizing manager,'' ''lead bookrunner,'' or ''co-managing underwriter.'' The parenthetical ''(or in a similar capacity)'' is included in FINRA's underwriting-related rules, such as FINRA Rule 5110, to recognize this common industry practice, as well as to prevent evasion by persons attempting to avoid regulatory responsibility under a particular provision by using a different title or term to refer to themselves, even though they perform the same or similar function.

[89] *See* 17 CFR 242.101(c)(2)(i), as amended.

[90] As discussed below, in Part II.C, broker-dealers who rely on the new exception for Nonconvertible Securities in new Rule 101(c)(2)(i) or new Rule 102(d)(2)(i), as applicable, must preserve certain records pursuant to Rule 17a–4 under the Exchange Act. New paragraph (b)(17) of Rule 17a–4 requires broker-dealers to preserve the written probability of default determination, relied upon pursuant to the exception for Nonconvertible Securities. Accordingly, broker-dealers relying on the exception for Nonconvertible Securities are required to preserve for a period of not less than three years, the first two years in an easily accessible place, the written probability of default determination.

[91] The term ''lead manager'' under new Rule 101(c)(2)(i) is consistent with how the term ''manager'' is applied, for recordkeeping purposes, in 17 CFR 240.17a–2(b)(1) with respect to any person who acts as a manager of a distribution for its sole account or for the account of a syndicate or group in which it is a participant with respect to keeping records of any syndicate covering transactions, penalty bids, and all related stabilizing activity, all three of which are governed under 17 CFR 242.104, which cross-references the recordkeeping requirement in 17 CFR 240.17a–2, as well as the ''managing underwriter'' in connection with TRACE-reporting of eligible fixed-income securities, or FINRA Rule 5131's requirement that the lead managing underwriter of a distribution disclose indications of interest and final allocation information to the issuer's pricing committee, or notify the issuer of any impending release or waiver of lock-ups. Thus, similar to the traditional role played by the lead or managing underwriter in firm commitment offerings—which generally include overseeing the offering process to ensure that the marketing, pricing, and allocation processes all go smoothly; providing critical advice on the structure, size, timing, and price of the offering; and advising on how to best present the issuer's business in the prospectus or other offering documents—the distribution participant acting as the lead manager (or in a similar capacity) of a distribution is the only market participant who is eligible to derive the issuer's probability of default for purposes of meeting the conditions of new Rule 101(c)(2)(i), in recognition that it is in the best position to do so. There may be distributions with more than one distribution participant acting as the lead manager (or in a similar capacity). In such a distribution, because the rule text refers to ''the distribution participant acting as the lead manager,'' only one of the distribution participants acting as the lead manager would be permitted to make the probability of default determination for the particular distribution.

[92] *See, e.g., infra* Part V.C.3 (discussing that the requirement related to the lead manager's probability of default determination should mitigate the subjectivity (of the analysis involved in probability of default estimation, as well as of the selection of the model and data sample specifics) and the concerns regarding non-uniform probability of default estimates for the same issue—and to some degree across issues for the same issuer to the extent the same parties are engaged by the issuer for different issues).

[93] *See, e.g., supra* notes 88, 91.

[94] *See, e.g.,* Regulation M Adopting Release, 62 FR 534–35.

[95] *See, e.g., supra* notes 88, 91; SIFMA, *Model Form of Master Agreement Among Underwriters* (Dec. 10, 2018), *https://www.sifma.org/wp-content/uploads/2017/08/SIFMA-Model-MAAU.pdf https://www.sifma.org/wp-content/uploads/2017/08/SIFMA-Model-MAAU.pdf.*

[96] *See* Regulation M Adopting Release, 62 FR 522–23 (discussing Rule 100's definition of ''completion of participation in a distribution'' when underwriters in a syndicate are involved).

[97] The Commission asked in the Proposal whether distribution participants should be required to post or make the probability of default public on their website to rely on the exception. *See* Proposal, 87 FR 18320. As discussed below, in Part II.C, one commenter stated that the Commission also could publish, or require publication of, default probability estimates that market participants derive from various models, along with default probabilities implied by both market prices and credit default swap spreads. *See* IILF Letter, at 8. However, the Commission did not receive any comment suggesting that distribution participants making probability of default determinations should be required to post or make the probability of default determinations public on their website in order to rely on the exception. Nor did the Commission receive any comment suggesting that the sharing of probability of default determinations among other covered persons should be included as a condition to the exception.

[98] Rule 100 of Regulation M defines the term ''distribution'' as ''an offering of securities, whether or not subject to registration under the Securities Act that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.'' With regard to shelf offerings, each takedown of a shelf is to be individually examined to determine whether such offering constitutes a ''distribution'' (*i.e.,* whether it satisfies the ''magnitude'' of the offering and ''special selling efforts and selling methods'' criteria of a distribution). Regulation M Adopting Release, 62 FR 526. In those situations where a broker-dealer sells shares on behalf of an issuer or selling security holder in ordinary trading transactions into an independent market (*i.e.,* without any special selling efforts), the offering will not be considered a distribution, and the broker-dealer will not be subject to Rule 101. Regulation M Adopting Release, 62 FR 526.

to share its probability of default determination with other distribution participants. The syndicate could also make the decision not to allow the lead manager to share its probability of default determination with unrelated distribution participants in order to keep a tighter control of the distribution. Because the facts and circumstances vary across issues, it is reasonable to let the syndicate decide how widely the probability of distribution determination is shared by the lead manager. If such information is shared, it must be used consistently across the syndicate to rely on the new exception in Rule 101(c)(2)(i) because such reliance is conditioned on the lead manager's probability of default determination.

The lead-manager requirement, however, could affect current market practices by resulting in fewer Nonconvertible Securities being excepted under the new standard in comparison to those currently excepted under the Investment Grade Exception if, as a practical matter, only Nonconvertible Securities that are subject to underwritten offerings become eligible for the new exception in Rule 101(c)(2)(i). With regard to the types of distributions covered, as a result of the condition requiring that the lead manager perform the probability of default determinations in order for reliance on the exception, this exception will be available to a subset of distributions of Nonconvertible Securities covered under the existing Investment Grade Exception and to a subset of the distributions that would have been captured under the Proposal.[99] Accordingly, any potential challenges, as a commenter suggested,[100] are likely to be faced in carrying out obligations in order to rely on the new exception in Rule 101(c)(2)(i). The estimated costs associated with the requirement related to the lead manager making the probability of default determination are included below, in Part V.C.1.[101]

The bright-line requirements of Rule 101(c)(2)(i), as amended, and the corresponding record preservation requirements of new Rule 17a–4(b)(17) also help to promote confidence in the consistency and reliability of the lead manager's determinations by limiting the degree to which there are variances between probability of default calculations within any one distribution as well as by deterring any improper tweaking of model inputs.[102] The bright-line threshold of 0.055%, as well as the pre-determined time horizon, are model inputs that are uniform and predictable and, thus, should provide the necessary clarity as to what is expected in evaluation and documentation. In addition, the bright-line threshold of 0.055% will help to ensure that only those Nonconvertible Securities that trade on the basis of yield and creditworthiness, and are fungible,[103] will meet the exception, regardless of the model picked. Accordingly, the probability-of-default-based standard articulates an appropriate alternative measure of creditworthiness that is practical and is appropriately based on objective factors.

One commenter stated that commercially or publicly available structural credit risk models are not used by all firms in the context of evaluating whether to underwrite a security and that such a decision, instead, is focused on the adequacy and accuracy of disclosures.[104] The Commission acknowledges that, when a firm evaluates whether to underwrite a distribution of securities, it typically focuses on the adequacy and accuracy of an issuer's disclosures. However, the adequacy and accuracy of disclosures are a separate question from the creditworthiness of securities for purposes of the exception for Nonconvertible Securities. It is possible that an accurate disclosure statement did not reveal the issuer's low creditworthiness, making the offered securities inappropriate to be eligible for the exception for Nonconvertible Securities that trade on the basis of their yield and creditworthiness.

One commenter stated that the proposed probability of default calculations would create a heightened risk for errors.[105] Another commenter stated that market participants can reliably estimate the probability of default, not only by using the proposed ''structural credit risk models'' but also by using other statistical models,[106] market measures of credit risk, and other credit risk measures.[107] This commenter encouraged the Commission to adopt a final rule that references market measures of credit risk as part of the estimation of, or as an alternative to, the probability of default.[108]

The Commission agrees with the comments that market participants can reliably estimate the probability of default derived from a structural credit risk model.[109] The Commission also acknowledges that probability of default estimates are not free of subjectivity and can vary across structural credit risk models, researchers, or vendors.[110] The use of any model or market measure to estimate issuer creditworthiness is imperfect.[111] The new exception's bright-line probability of default threshold and time horizon, however, provides predictability and allows for the exception to be applied consistently by distribution participants who are eligible to make probability of default determinations.[112] As discussed below, in Part V.E.3, the Commission has considered other types of models, such as reduced-form models, which would generally provide less stable predictions than structural credit risk models do because they can be so flexible that they suffer from a lack of theoretical foundation and a lack of intuitive interpretation of why the defaults occur. Also, unrestricted use of these models might also provide more opportunity to choose a reduced-form model specification to enable use of the exception for Nonconvertible Securities. The Commission therefore is adopting

[99] *See* Proposal, 87 FR 18330.

[100] *See* Better Markets Letter, at 4.

[101] However, as discussed below, in Parts V.C.1 and VI.C.1, some lead managers may rely on third party vendors rather than internally calculate the probability of default.

[102] As discussed below, in Part II.C, the record preservation requirements provided in new Rule 17a–4(b)(17) are sufficient to help the Commission's examinations of broker-dealers relying on the new probability-of-default-based standard.

[103] *See, e.g., supra* notes 13, 38.

[104] SIFMA Letter 1, at 5.

[105] SIFMA Letter 1, at 5.

[106] IILF Letter, at 2 (stating that the inability to reliably estimate the probability of default on a debt security using any of a variety of statistical models and market measures is strong evidence that the security should not fall within an exception to Regulation M and could also be evidence that the market participant is not in a position to trade or hold that specific security). As discussed in this Part, new Rule 101(c)(2)(i) requires that the probability of default determination be derived from a structural credit risk model. Distribution participants and their affiliated purchasers may not avail themselves of the exception in new Rule 101(c)(2)(i) with regard to any security that does not meet the requirements of that exception.

[107] IILF Letter, at 2.

[108] IILF Letter, at 2, 6–8 (stating its concerns about the use of balance sheets and suggested that the Commission reference more flexible alternatives, such as the probability of default threshold could vary annually on an ongoing basis depending on a similar analysis of more recent data going forward or peg the annual probability of default threshold based on an analysis of a sample of securities from the previous year). The Commission has considered this comment and, on balance, concerns about the use of an issuer's balance sheet should be addressed by the rigorous theoretical justification as well as by the economic interpretation of the resulting relationships between the inputs that are embedded in such structural credit risk models. *See, e.g., infra* note 243. However, allowing a more flexible threshold, as would be done under the commenter's suggestion, would result in increased subjectivity and non-uniformity of the application of the exception.

[109] IILF Letter, at 2.

[110] *See* Proposal, 87 FR 18332.

[111] *See* Proposal, 87 FR 18332.

[112] Bloomberg L.P. Letter, at 2.

an exception that is based on the use of a structural credit risk model as this model is appropriately designed to measure creditworthiness of Nonconvertible Securities in Rule 101(c)(2)(i), as amended, in accordance with the requirements of section 939A(b).

One commenter recommended that the proposed probability of default threshold should be increased to 0.5% in order to capture the maximum amount of issuers who, currently, are eligible under the existing exception (*i.e.,* the proposed threshold of 0.055% is too restrictive with regard to scoping in securities that currently are excepted).[113] Other commenters supported the proposed probability of default threshold of 0.055% as reasonable.[114] One commenter stated that the bright-line threshold of 0.055% will provide clarity as to what is expected in evaluation and documentation.[115]

The Commission has considered these comments and concluded that the 0.055% threshold appropriately calibrates the probability of default to determine the creditworthiness of an issuer whose Nonconvertible Securities trade based on their yield and creditworthiness.[116] While the higher threshold of 0.5% captures a larger set of securities of creditworthy issuers whose securities are eligible for the existing Investment Grade Exception, it also allows for an exception that captures a larger set of securities that could be prone to manipulation risk in comparison to the 0.055% threshold (*i.e.,* non-investment grade securities).[117] Because the commenter's suggested 0.5% threshold, in comparison to the 0.055% threshold, risks capturing a majority of the securities that are not traded on the basis of their yield and creditworthiness in the same way that Nonconvertible Securities excepted under the existing Investment Grade Exception are traded, too many distributions of these types of securities would be included, which reflects that a 0.5% threshold may not be an appropriate replacement standard of creditworthiness, in accordance with of section 939A(b).

Further, even if the 0.055% threshold does not capture the exact same set of Nonconvertible Securities captured by the Investment Grade Exception, the 0.055% threshold nevertheless identifies Nonconvertible Securities that are less susceptible to the manipulation that Rule 101 is designed to prevent because they trade based on their yield and creditworthiness, As discussed above, Regulation M seeks to protect the offering price of a security during a distribution, when there are heightened incentives on the part of those who are involved in the offering process to influence the subject security's price. Because these Nonconvertible Securities are traded on the basis of their yield and creditworthiness, and are largely fungible, they are less susceptible to manipulation.[118]

In other words, the ability of distribution participants and their affiliated purchasers to bid up the price of a Nonconvertible Security of an issuer that meets the 0.055% probability of default threshold is limited by investors' ability to substitute the security with other securities that are similar and of comparable creditworthiness. In contrast, a non-investment grade security that has a much higher probability of default tends to have idiosyncratic risks that make them less substitutable and hence more susceptible to manipulation. The threshold of 0.5% would capture more than the majority of non-investment grade securities (approximately 69.9% of non-investment grade securities),[119] which indicates that it may not be an appropriate measure of creditworthiness to replace the reference to credit ratings in Rule 101's Investment Grade Exception. Accordingly, the 0.055% threshold appropriately calibrates the probability of default to determine the creditworthiness of an issuer whose Nonconvertible Securities should trade based on yield and creditworthiness and is an appropriate substitute standard of creditworthiness to replace the credit ratings reference in the Investment Grade Exception pursuant to section 939A(b).

While the probability of default measure uses a threshold of 0.055%, as was proposed, the final rule text is changed from the proposed rule text of ''less than 0.055%'' to state ''0.055% or less.'' The Commission is clarifying that a determination of a 0.055% probability of default is eligible for the exception, so long as all other conditions of the exception are met. This change is consistent with the estimates included in the Proposal, including with how the Commission calibrated the probability of default threshold in the Proposal.[120]

The same commenter also suggested that the probability of default calculations should be permitted to be made within a specified duration of time in advance of pricing (rather than as of the day of determining the offering price), for example, within 10 calendar days prior to pricing of the offering, similar to the approach taken with respect to average daily trading volume (''ADTV'') calculations, to afford distribution participants adequate time to adjust their market activities as necessary.[121] The Commission acknowledges that lead managers who make probability of default determinations pursuant to Rule 101(c)(2)(i) may need additional time prior to the pricing of an offering to make the required calculations. However, in light of the comments received, the 10-calendar-day period suggested by the commenter would be unnecessarily long for the lead manager to determine and document in writing the issuer's probability of default because the determination is likely to be highly automated.[122] In addition, the suggested 10-calendar-day period may not encourage as timely of information about the issuer as possible if the model inputs are taken farther away from the day of the determination of the offering price, as proposed.

The Commission is, therefore, modifying the proposed time horizon of ''the day of the determination of the

[113] SIFMA Letter 1, at 10. The Commission estimated in the Proposal that, while the proposed threshold of 0.055% would capture approximately 90% of the investment grade securities in its sample of nonconvertible fixed income securities, a threshold of 0.5% would capture about 98.6% of investment grade securities. *See* Proposal, 87 FR 18330, 18334.

[114] *See* Bloomberg L.P. Letter, at 2; IILF Letter, at 6.

[115] Bloomberg L.P. Letter, at 2. Another commenter stated that it is not necessary to state a precise bright-line measure. IILF Letter, at 6. The exception's use of a bright-line threshold, by imposing specific and clear requirements, helps to ensure that the exception captures only those Nonconvertible Securities that trade on the basis of yield and creditworthiness. It also helps to ensure that the exception is based on objective factors and can be consistently applied by market participants. *See* Bloomberg L.P. Letter, at 2.

[116] *See infra* Part V.B; Proposal, 87 FR 18319, 18330.

[117] *See also* Proposal, 87 FR 18334. Based on an analysis of the available data as of Mar. 2023, a 0.5% threshold would make the new exception less restrictive and would result in 124 additional non-investment grade securities being captured by the standard, from 64 non-investment grade issues under the 0.055% threshold to 188 issues under the 0.5% threshold. *See infra* Part V.B. These figures differ from those included in the Proposal because they are based on an analysis of the available data as of Mar. 2023, whereas the Proposal's figures were based on an analysis of the data available as of Oct. 2021. *See infra* Part V.B.

[118] *See* Regulation M Adopting Release, 62 FR 527; *supra* note 38.

[119] *See infra* Part V.E.1.

[120] *See* Proposal, 87 FR 18330; *see also* Proposal, 87 FR 18319, 18332.

[121] SIFMA Letter 1, at 10.

[122] *See infra* Part VI.C.1. For example, because commonly available spreadsheet software can be used to calculate the probability of default, lead managers would not need 10 calendar days to derive an issuer's probability of default. *See, e.g.,* Proposal, 87 FR 18319.

offering pricing'' to allow the lead manager to make its probability of default determination as of ''the sixth business day immediately preceding the determination of the offering price'' for purposes of the new exception. This change from the proposed time horizon of ''the day of the determination of the offering price'' is being made in response to comment that additional time is needed because ''[i]t would be very damaging to the issuer to launch a re-opening, subsequently determine that there is no exception under the probability of default calculation, and then have to extend the pricing of the offering by at least one (or five) business days.'' [123] The Commission agrees with the commenter that more time would be useful to address the potential of an offering by at least one to five business days but is concerned that the model inputs supporting the probability of default determination may become stale with additional time beyond that.[124] Accordingly, the Commission is extending the time horizon to allow for the potential of an offering being extended up to five business days. Further, this will allow the determination to be made before Regulation M's otherwise applicable five-business-day restricted period (*i.e.,* preceding the determination of the offering price) and should provide a sufficient amount of additional time for the lead manager to account for any relevant market activities and timely information regarding the issuer as a model input in determining the probability of default.[125] This essentially allows these distribution participants, in relation to the proposed ''day of the determination of the offering price'' requirement, five additional business days, as defined in Rule 100(b), before the actual pricing and launch of the offering to make the probability of default determination.

In view of the nature and trading characteristics of Nonconvertible Securities, the impact, if any, of a corporate or market event in the intervening five business days would be unlikely to result in the manipulation that Regulation M seeks to prevent. Nonconvertible Securities are priced and traded differently than equity securities in that the focus (with Nonconvertible Securities) is placed on receiving periodic interest payments during the life of the instrument rather than on any potential equity upside or increase in the current trading or offering price. Therefore, trading activity in Nonconvertible Securities at or around the time of the distribution is unlikely to influence the pricing or trading of such securities, particularly during Regulation M's (otherwise applicable) restricted period.

Accordingly, the Commission is adopting, with targeted modifications in consideration of the comments received, as discussed in this Part, as well as certain technical changes,[126] a new exception in Rule 101(c)(2)(i) for Nonconvertible Securities of issuers for which the probability of default, estimated as of the sixth business day immediately preceding the determination of the offering price and over the horizon of 12 full calendar months from such day, is 0.055% or less, as determined and documented, in writing, by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution, as derived from a structural credit risk model. For the reasons discussed above, in this Part, and as supported by an analysis of the probability of default and investment grade credit ratings of a sample of Nonconvertible Securities available on the market,[127] the standard used in the new exception is an appropriate substitute standard of creditworthiness to replace the credit ratings reference in the Investment Grade Exception for Nonconvertible Securities.

Finally, the Commission is adopting, substantially as proposed, with certain clarifying [128] and technical [129] changes, a definition under Rule 100(b) of Regulation M for the term ''structural credit risk model'' that means ''any commercially or publicly available model that calculates, based on an issuer's balance sheet, the probability that the value of the issuer will fall below the threshold at which the issuer would fail to make scheduled debt payments, at or by the expiration of a defined period.'' [130] Accordingly, a covered person's reliance on Rule 101(c)(2)(i) or Rule 102(d)(2)(i), as amended, is conditioned on a probability of default determination that was derived from any commercially or publicly available structural credit risk model that calculates, based on an issuer's balance sheet, the probability that the value of the issuer will fall below the threshold at which the issuer would fail to make scheduled debt payments, at or by the expiration of a defined period.

2. Rule 101(c)(2)(ii): Asset-Backed Securities Offered Pursuant to an Effective Shelf Registration Statement Filed on Form SF–3

The Commission proposed an amendment to add a new exception in Rule 101(c)(2)(ii) for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3.

In 2014, the Commission adopted shelf eligibility criteria for asset-backed securities offerings registered on new Form SF–3 in part to implement section 939A(b) of the Dodd-Frank Act.[131] The Commission designed the shelf eligibility requirements to help ensure a

[123] SIFMA Letter 1, at 11.

[124] *See, e.g., infra* Part V.B (discussing how probabilities of default implied by structural credit risk models generally use current estimates of equity valuation and volatility based on the recent trading activity, and hence incorporate more recent news affecting the valuation and perceived volatility of the firm).

[125] *See, e.g.,* Proposal, 87 FR 18330.

[126] The final amendments make the technical change of deleting the word ''the'' from the beginning of the exception in order to mirror the beginning of new Rule 101(c)(2)(ii). The final rule amendments also make an edit to use the words ''as derived from'' instead of ''by using,'' as proposed, to clarify that a structural credit risk model must be the only method of determining an issuer's probability of default, as opposed to one method among others. This change also conforms the standard to how it was discussed in the Proposal. *See, e.g.,* Proposal, 87 FR 18318–19. The final amendments also make a conforming edit from the proposed rule text to add the word ''full'' preceding the time horizon of 12 calendar months to make the phrasing of the exception's time horizon consistent with Regulation M's other time horizons. *See, e.g.,* 17 CFR 242.100(b) (defining the terms ''ADTV,'' which uses a time horizon of ''two full calendar months,'' and ''principal market,'' which uses the time horizon of ''12 full calendar months'').

[127] *See infra* Parts V.A through E.

[128] The Commission is making clarifying changes to the proposed definition of the term ''structural credit risk model'' that conform it to its description in the Proposal. As discussed above, in Part II.A.1, the Proposal stated that a structural credit risk model ''provide[s] a probability that a firm's assets will fall below the Default Point at or by the expiration of a defined period of time.'' Proposal, 87 FR 18317. The final rule amendments conform the proposed definition to that description and clarify that the ''threshold'' referenced in the proposed definition is the Default Point.

[129] The Commission is also making a non-substantive, technical change from the proposed definition of the term ''structural credit risk model.'' As discussed below, because the final rule amendments include the term ''structural credit risk model'' in both new Rule 101(c)(2)(i) and new Rule 102(d)(2)(i), the Commission is adding to Rule 100(b) a definition for the term ''structural credit risk model.'' The addition of this definition in Rule 100(b) does not change the definition of the term ''structural credit risk model'' but rather simplifies the final text of new Rules 101(c)(2)(i) and 102(d)(2)(i) by obviating the need for a *proviso* containing a definition in each of those rules. Accordingly, use of the term ''structural credit risk model'' is identical across new Rules 101(c)(2)(i) and 102(d)(2)(i).

[130] 17 CFR 242.100(b).

[131] *See* Regulation AB II Adopting Release.

certain ''quality and character'' in light of the requirement to reduce regulatory reliance on credit ratings.[132] The shelf eligibility requirements included in Form SF–3 are designed to help ensure that the securitization is designed to produce expected cash flows that are sufficient to service payments or distributions in accordance with their terms; [133] that obligated parties more carefully consider the characteristics and quality of the assets that are included in the pool; [134] that asset-backed securities shelf offerings have transactional safeguards and features that make those certain securities appropriate to be issued without prior Commission staff review; [135] and that issuers design and prepare asset-backed securities offerings with greater oversight and care.[136] The asset-backed securities offered pursuant to an effective shelf registration statement filed on Form SF–3 should trade primarily on the basis of yield and creditworthiness, rather than on the identity of a particular issuer and its idiosyncratic risk.

One commenter supported the adoption of the proposed exception for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 and stated that it appreciated the straightforward nature of the standard, which allows all interested parties to easily determine whether the exception is available.[137]

Another commenter disagreed with the Commission's statement that an exception for asset-backed securities that is based on a probability of default threshold may be unfeasible.[138] This commenter stated that market participants are able to estimate the probability of default for these securities, not only using statistical models but also based on market measures such as credit spreads.[139] In response to Request for Comment (''RFC'') 29,[140] this commenter stated that a probability of default standard based on market measures would have indicated that the exception to Regulation M no longer applied for certain debt securities during the months leading up to the collapse of Lehman Brothers, and available data shows that, if such a market measure-based standard had been implemented, the exceptions for Regulation M would not have been available for debt securities as early as fall 2007.[141] Despite this example, the Commission has considered this comment and determined that an exception for asset-backed securities that is based on a structural credit risk model to derive an issuer's probability of default would be unfeasible because distribution participants (including those acting as the lead managers) may not be able to collect all of the information required to calculate the probability of default, such as the value and volatility of the equity.[142] In other words, practical challenges of obtaining reliable fundamental information about the equity would make a probability of default measure unfeasible for an exception for asset-backed securities that trade on the basis of their yield and creditworthiness. The Commission has also determined that a measure based on credit spreads or the use of other models, such as reduced-form models, would not be appropriate to use due to their flexible or unstructured nature, which could result in a standard that can be used to abuse the exception.[143]

The same commenter stated that ''any final rules governing asset-backed securities also could reference expected recovery in the event of default and default correlation.'' [144] The commenter suggested to require under the exception that the applicable market participant determine and document a conclusion that the credit risk associated with a security was ''minimal'' (or some other similar standard) based on these variables, without any requirement that they use a particular model.[145] The commenter's suggested exception, by conditioning reliance on a list of variables and a judgment of ''minimal'' credit risk, without any bright-line requirements to help deter abuse of the exception through self-serving conclusions, would not be sufficiently objective.

The Commission continues to believe that its original basis for excepting securities of a certain quality and character is appropriate and that such securities are less at risk of the manipulation that Regulation M addresses.[146] As discussed above, the Commission excepted investment grade asset-backed securities from Rule 101 because such securities trade primarily on the basis of yield and creditworthiness (traditionally measured by credit ratings).[147] In providing this rationale, the Commission stated that the principal focus of investors in the asset-backed securities market is on the structure of a class of securities and the nature of the assets pooled to serve as collateral for those securities rather than on the identity of a particular issuer.[148] The Commission also stated that Rule 101(c)(2) excepts investment grade securities that are ''primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.'' [149]

As discussed above, in this Part, the practical challenge of obtaining reliable fundamental information about the equity makes a probability of default determination difficult or infeasible. The Commission believes that an appropriate and pragmatic approach is

[132] *See* Regulation AB II Adopting Release, 79 FR 57189.

[133] *See* Regulation AB II Adopting Release, 79 FR 57267.

[134] *See* Regulation AB II Adopting Release, 79 FR 57278.

[135] *See* Regulation AB II Adopting Release, 79 FR 57283.

[136] Regulation AB II Adopting Release, 79 FR 57265, 57285.

[137] *See* SIFMA Letter 1, at 11.

[138] IILF Letter, at 6.

[139] IILF Letter, at 6–7 (stating that asset-backed securities are widely traded and have frequently quoted prices and credit spreads and that it is straightforward to calculate the probability of default based on these market measures). For the reasons discussed above, in Part II.A.1, the Commission is requiring that an issuer's probability of default be derived from a structural credit risk model, and not from other market measures.

[140] Proposal, 87 FR 18323 (requesting comment on whether a probability-of-default-based standard would be appropriate for the exception for asset-backed securities; whether there are models that are used to calculate a probability of default threshold for asset-backed securities that would be relevant to consider based on the type of security involved and, if so, what the threshold should be; what benefits this approach would provide; what other concerns this approach could raise; and how this approach would address potential conflicts of interest involving the distribution participant or affiliated purchaser making the determination).

[141] IILF Letter, at 7 (citing Flannery, Houston & Partnoy, *Credit Default Swap Spreads,* 158 U. PA. L. REV. 2085, 2087 (2010)). The available data referenced in the commenter's statement, as well as the article the commenter cited, pertains to debt and credit default swaps. It does not appear from the cited article that the analysis performed related to credit default swaps was performed with regard to asset-backed securities. Further, this commenter did not provide similar information about asset-backed securities.

[142] *See infra* Part VI.B (discussing model inputs).

[143] *See infra* Part V.E.6.

[144] IILF Letter, at 8.

[145] IILF Letter, at 8.

[146] *See* Regulation M Adopting Release, 62 FR 527; *see also Prohibitions Against Trading by Persons Interested in a Distribution,* Release No. 34–19565 (Mar. 4, 1983) [48 FR 10628, 10631 (Mar. 14, 1983)] (stating that the ''fungibility'' of certain types of securities makes manipulation of their price very difficult).

[147] *See* Regulation M Adopting Release, 62 FR 527.

[148] *See* Regulation M Adopting Release, 62 FR 527.

[149] *See* Regulation M Adopting Release, 62 FR 527 (citations omitted). The Commission stated that such rationale also applies to the existing identical exception in Rule 102(d)(2) of Regulation M. Regulation M Adopting Release, 62 FR 531.

to add an exception based on Form SF–3, as proposed, because it sufficiently focuses on creditworthiness.[150] In addition, as stated in the Proposal, a standard that relies on Form SF–3 with respect to Nonconvertible Securities would not be appropriate because the transaction requirements included in Form SF–3 are relevant only to asset-backed securities and thus would not be a sufficient measure of creditworthiness for securities that are not subject to the Form SF–3 transaction requirements.[151]

The transaction requirements included in Form SF–3 allow for shelf offerings of only those asset-backed securities that share the qualities and characteristics of the investment grade asset-backed securities currently excepted in Rule 101(c)(2): with respect to either set of securities, the principal focus of investors is the structure of a class of securities and the nature of the assets pooled to serve as collateral for those securities, rather than on the identity of a particular issuer.[152] First, eligibility for offering securities pursuant to a Form SF–3 is limited, in part, by the percentage of delinquent assets and, for certain lease-backed securitizations, by the portion of the pool attributable to the residual value of the physical property underlying the leases.[153] For an asset-backed securities offering with an effective Form SF–3, delinquent assets cannot constitute 20% or more of the asset pool. Delinquent assets may not convert into cash within a finite period of time, as required by the definition of ''asset-backed security,'' because they are not performing in accordance with their terms and management or that other action may be needed to convert the assets into cash. However, as the Commission stated at the time it adopted the 20% delinquency limitation for shelf eligibility, in principle, asset-backed securities should be primarily dependent on the pool of assets self-liquidating instead of on the ability of the entity performing collection services.[154] The application of the limitation on delinquent assets was designed to ensure that attention is focused on the ability of collateral of the underlying asset pool to generate cash flow rather than on the identity of the issuer and its ability to convert those assets into cash,[155] consistent with the Commission's original basis for excepting investment grade asset-backed securities from Rule 101.[156]

Second, Form SF–3 includes certain transaction requirements with respect to the structure of the asset-backed security being offered. Such structural requirements include: (1) a certification by the depositor's chief executive officer that, among other things, the securitization structure provides a reasonable basis to conclude that the expected cash flows are sufficient to service payments or distributions in accordance with their terms; (2) a review of the asset-backed security's pool of assets upon the occurrence of certain triggering events, including delinquencies, by a person that is unaffiliated with certain transaction parties, such as the sponsor, depositor, servicer, trustee, or any of their affiliates; and (3) a dispute resolution provision, contained in the underlying transaction documents, for any repurchase request.[157] When adopting the transaction requirements included in Form SF–3, the Commission stated that sponsors may have an increased incentive to carefully consider the characteristics of the assets underlying the securitization and accurately disclose these characteristics at the time of offering.[158] The Commission also stated that investors should benefit from the reduced losses associated with nonperforming assets because, as a result of this new shelf requirement, sponsors will have less of an incentive to include nonperforming assets in the pool.[159] Because the transactional safeguards included in Form SF–3 provide incentives for obligated parties to, among other things,[160] more carefully consider the characteristics and quality of the assets that are included in the pool,[161] asset-backed securities that are offered pursuant to an effective Form SF–3 should trade based on their yield and creditworthiness rather than on the identity of a particular issuer.[162]

The requirement regarding an effective shelf registration statement filed on Form SF–3 is an appropriate substitute for the reference to credit ratings in the Investment Grade Exception because the standard is designed to limit eligibility for that exception to only those asset-backed securities that should trade based on their yield and creditworthiness due to their particular qualities and characteristics. Because the ability of distribution participants and their affiliated purchasers to bid up the price of an asset-backed security offered pursuant to an effective Form SF–3, during a distribution, is limited by a market participant's ability to substitute the security with other securities that are similar and of comparable creditworthiness,[163] such a security is less susceptible to the types of manipulation that Regulation M seeks to prevent. The application of the transaction requirements included in the Commission's Form SF–3, therefore, should result in the offering of asset-backed securities that have similar qualities and characteristics to the investment grade asset-backed securities currently excepted under the existing provision in Rule 101(c)(2). In addition, the exception for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 carries over the standard of creditworthiness included in the Commission's Form SF–3 and helps to implement the mandate that, to the extent feasible, uniform standards of creditworthiness be used.[164]

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[150] *See, e.g., supra* notes 60–61 (contrasting the focus of creditworthiness in the eligibility criteria and offering requirements included in Form SF–3 with that of other Commission Forms, such as Form S–3 and Form F–3).

[151] *See* Proposal, 87 FR 18321.

[152] *See supra* note 149.

[153] *See* 17 CFR 239.45(b)(v), (vi); Form SF–3, General Instruction I.B.1(e) and (f).

[154] *Asset-Backed Securities,* Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506, 1517 (Jan. 7, 2005)] (''Regulation AB Release''). In adopting the 20% delinquency concentration level, the Commission codified a staff position that an asset-backed security will not fail to meet the definition of ''asset-backed security'' solely because such a security is supported by assets having total delinquencies of up to 20% at the time of the proposed offering. *See* Regulation AB Release, 70 FR 1517 (citing Bond Mkt. Ass'n, SEC Staff No-Action Letter, 1997 WL 634124 (Oct. 8, 1997) (''BMA NAL''')). This threshold was the same threshold that was applied to certain other matters affecting registration and disclosure requirements for asset-backed securities (*e.g.,* non-recourse commercial mortgage securitizations, pooling of corporate debt securities, and securitizations involving third-party credit enhancement). *See* BMA NAL, 1997 WL 634124, at * 3. The staff position was based on the premise that such a threshold for total delinquency concentration would, by itself, not present a materially greater risk of asset non-performance or default at the security level. *See* BMA NAL, 1997 WL 634124, at * 4.

[155] *See* Regulation AB Release, 70 FR 1517.

[156] *See* Regulation M Adopting Release, 62 FR 527.

[157] Form SF–3, General Instruction I.B.1(a)–(c).

[158] *See* Regulation AB II Adopting Release, 79 FR 57283.

[159] *See* Regulation AB II Adopting Release, 79 FR 57283.

[160] *See supra* notes 132–136.

[161] *See* Regulation AB II Adopting Release, 79 FR 57278.

[162] *See, e.g.,* Regulation AB II Adopting Release, 79 FR 57277–78.

[163] *See* Regulation M Adopting Release, 62 FR 527.

[164] Public Law 111–203, sec. 939A(b) (requiring agencies to ''seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness'').

Accordingly, the Commission is adopting, substantially as proposed, with a technical change,[165] an amendment to add a new exception in Rule 101(c)(2)(ii) for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3.

B. Rule 102(d)(2) of Regulation M: Implementing Section 939A(b) in Certain Exceptions for Issuers and Selling Security Holders

The Commission proposed to remove, without replacing, the Investment Grade Exception in Rule 102(d)(2) of Regulation M. The Commission stated in the Proposal that this removal without replacement was appropriate given that the retention of an exception for creditworthy Nonconvertible Securities and asset-backed securities would not likely be necessary to facilitate orderly distributions or limit disruptions in the trading market in light of issuers' limited market access needs and the apparent limited reliance on Rule 102's Investment Grade Exception, coupled with the incentive for issuers, selling security holders, and their affiliated purchasers to manipulate the market for the distributed security, regardless of the security's credit quality.[166]

Two commenters supported the proposed elimination, without replacement, of Rule 102(d)(2)'s Investment Grade Exception.[167] One commenter stated that it is ''appropriate in contexts where deference arguably should be made to independent decisions and judgment by market participants, without the crutch of reliance on credit ratings.'' [168]

One commenter objected to the proposed elimination, without replacement, of the Investment Grade Exception in Rule 102(d)(2) and stated that the ''continued availability of such an exception would be important to broker-dealers who are affiliated with an issuer but are not, for whatever reasons, serving as an underwriter or other participant in connection with the distribution.'' [169] This commenter stated that the Commission, instead, should substitute the existing standard in Rule 102(d)(2) with ''the same standards as used for purposes of the exceptions under Rule 101(c)(2).'' [170] For reasons explained below, the Commission agrees with this commenter and is replacing the Investment Grade Exception in Rule 102, rather than eliminating the exception, without replacement, as proposed. The Commission continues to believe that its original basis for excepting Nonconvertible Securities and asset-backed securities of a certain quality and character from Rule 102's prophylactic prohibitions is appropriate and that the substitute standards discussed below are appropriate to ensure that those securities are less at risk of the manipulation that Regulation M addresses.[171]

The Commission is adopting rule amendments that remove the Investment Grade Exception from Rule 102 of Regulation M and substitute in its place exceptions based on alternative standards of creditworthiness to except Nonconvertible Securities. The reasons for adding these new exceptions are discussed below with regard to Nonconvertible Securities, in Part II.B.1, and asset-backed securities, in Part II.B.2.

1. Rule 102(d)(2)(i): Nonconvertible Securities of Issuers Who Meet a Specified Probability of Default Threshold

The Commission acknowledges that eliminating the exception, without replacement, may impact entities, such as broker-dealers who are not distribution participants (and are not eligible to quality for an exception under Rule 101) but may qualify for a comparable exception under Rule 102 as a result of being an affiliate of an issuer or selling security holder and meeting the exception's conditions. The continued availability of an exception for the Nonconvertible Securities will also provide issuers and selling security holders with more flexibility during distributions as compared to the Proposal. The elimination, without replacement, of the Investment Grade Exception from Rule 102 for issuers and selling security holders could increase issuance costs or deter market participants from issuing Nonconvertible Securities with low manipulation risk.[172]

In adopting the Investment Grade Exception, the Commission stated that it determined to include the Investment Grade Exception in Rule 102 based, in part, on the rationales indicated for an identical exception to Rule 101.[173] The Commission excepted investment grade Nonconvertible Securities from Rule 101 ''based on the premise that these securities traded on the basis of their yield and credit ratings, are largely fungible and, therefore, are less likely to be subject to manipulation.'' [174] As discussed above, in Part II.A.1, the new exception in Rule 101(c)(2)(i) for Nonconvertible Securities of issuers for which the probability of default, estimated as of the sixth business day immediately preceding the determination of the offering price and over the horizon of 12 full calendar months from such day, is 0.055% or less, as determined and documented, in writing, by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution, as derived from a structural credit risk model, is an appropriate substitute standard of creditworthiness in place of the reference to credit ratings in the Investment Grade Exception for Nonconvertible Securities.

The standard of creditworthiness, which was the basis of the Investment Grade Exception for Nonconvertible Securities in Rule 102, is still appropriate to use as the basis of an

[165] The final rule amendments make a non-substantive, technical change that replaces the proposed reference to ''17 CFR 239.45'' with a reference to ''§ 239.45 of this chapter'' when referencing Form SF–3.

[166] *See* Proposal, 87 FR 18323–24.

[167] *See* Better Markets Letter, at 3–4 (stating that the proposal to eliminate, without replacing, the exception in Rule 102 for certain investment grade securities is appropriate because issuers and selling security holders have comparatively strong incentives to manipulate the price of the distributed security); IILF Letter, at 7. As discussed below, in Part II.B.1, the new exception for Nonconvertible Securities takes account of this consideration.

[168] IILF Letter, at 7.

[169] SIFMA Letter 1, at 12–13. This commenter stated that the Investment Grade Exception in Rule 102 is relied upon in the context of sticky offerings and re-openings of debt issuances. *See* SIFMA Letter 1, at 4.

[170] *See* SIFMA Letter 1, at 12. With regard to replacing the Investment Grade Exception in Rule 102 pursuant to section 939A(b)'s requirements, the Commission requested comment on whether it should adopt an exception based on either the probability-of-default-based standard for Nonconvertible Securities or the standard for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 instead of removing the Investment Grade Exception, without substituting an alternative, and whether it should adopt an exception in Rule 102 if a distribution participant determines that a security is an excepted security pursuant to Rule 101(c)(2). Proposal, 87 FR 18324 (request for comment (RFC) 35). One commenter replied, in response to RFC 35, that, to the extent the Commission receives comments that market participants on their own cannot make decisions and judgments about credit risk related to Rule 102, an exception based on probability of default would be a viable alternative. *See* IILF Letter, at 7. The Commission did not receive any such comment in response to the Proposal.

[171] *See* Regulation M Adopting Release, 62 FR 527; *see also Prohibitions Against Trading by Persons Interested in a Distribution,* Release, No. 34–19565 (Mar. 4, 1983) [48 FR 10628, 10631 (Mar. 14, 1983)].

[172] *See* Proposal, 87 FR 18333.

[173] Regulation M Adopting Release, 62 FR 531.

[174] Regulation M Adopting Release, 62 FR 527.

exception to Rule 102 for Nonconvertible Securities.[175] In addition, the standard of creditworthiness used in the exception in Rule 101(c)(2)(i), as amended, is an appropriate standard of creditworthiness to use in place of the reference to credit ratings in the Investment Grade Exception in Rule 102 pursuant to the requirements of section 939A(b). That standard, which is based on an issuer's probability of default, is designed to identify Nonconvertible Securities that are less susceptible to the manipulation that Regulation M is designed to prevent because they trade based on their yield and creditworthiness, as determined by the current financial condition of the issuer. However, given that issuers and selling security holders have the greatest interest in an offering's outcome,[176] regardless of the credit quality of the security,[177] it would not be appropriate for the exception to permit those parties to make their own probability of default determinations (by their own or a third party calculation) in order to meet the conditions of the exception.

Therefore, Rule 102(d)(2)(i), as amended, uses the same bright-line test for excepting Nonconvertible Securities. For issuers, selling security holders, and their affiliated purchasers to use the exception in Rule 102(d)(2)(i), as amended, however, they must rely on the probability of default determination made by the distribution participant acting as the lead manager (or in a similar capacity) [178] of the distribution and documented in writing pursuant to Rule 101(c)(2)(i), as amended. Rule 102(d)(2)(i), as amended, does not permit reliance on the exception if issuers, selling security holders, or their affiliated purchasers make the required probability of default determinations themselves, or rely on a determination made by a non-lead manager or any other third party. This condition to the exception means that issuers, selling security holders, and their affiliated purchasers would not be able to rely on the new Rule 102(d)(2)(i) exception when selling securities directly, unless a lead manager is involved in the distribution and had made (and documented) the qualifying probability of default determination. This condition provides for the continued availability of an exception under Rule 102 for creditworthy Nonconvertible Securities for broker-dealers who are affiliated with an issuer but are not serving as an underwriter or other participant in connection with the distribution. At the same time, this condition is designed to prevent abuse of the exception by issuers, selling security holders, and their affiliated purchasers by taking into account that these market participants have the greatest interest in an offering's outcome and generally do not have the same market access needs as underwriters.[179] In addition, the condition regarding lead-manager probability of default determinations in new Rule 102(d)(2)(i) is consistent with the condition regarding lead-manager probability of default determinations in new Rule 101(c)(2)(i).

Even though probability of default determinations made by or directly for issuers or selling security holders or affiliated purchasers cannot be used in order for such parties to rely on the new exception in Rule 102(d)(2)(i) for Nonconvertible Securities, these parties would, however, be able to avail themselves of the exception in reliance on a probability of default determination made by the distribution participant acting as the lead manager (or in a similar capacity) of the distribution pursuant to Rule 101(c)(2)(i), as amended. Similar to how the lead or managing underwriter in a firm commitment offering communicates certain pricing, allocation, and other distribution-related information to the issuer or selling security holder in connection with that particular distribution, the lead managing underwriter's communications regarding its probability of default determination may vary based on the parties and their prior course of conduct as to the frequency and manner or mode of such communication.

However, Rule 101(c)(2)(i), as amended, does not require that the lead manager making the probability of default determination share the determination with the issuer, selling security holders, or their affiliated purchasers in order for those parties to rely on the exception. Therefore, issuers, selling security holders, and their affiliated purchasers will not be able to rely on the exception for Nonconvertible Securities if the lead manager does not share the probability of default determination or there is no distribution participant to act as the lead manager for the distribution. With regard to the types of distributions covered, as a result of the condition related to lead-manager probability of default determinations, the exception for Nonconvertible Securities is available to a subset of distributions covered under the existing Investment Grade Exception [180] but more distributions than what was covered under the Proposal given that the Proposal would have removed, and not replaced, the Investment Grade Exception in Rule 102.[181] The estimated costs associated with the condition related to the lead manager making the probability of default determination are included below, in Part V.C.1.

As discussed below, in Part II.C, broker-dealers who rely on the new exception in Rule 102(d)(2)(i) are required to preserve the written probability of default determination made pursuant to Rule 101(c)(2)(i), as amended. This record preservation requirement could help facilitate Commission examinations of broker-dealers who rely on Rule 102(d)(2)(ii), as amended, and could deter their misuse of the exception through relying on determinations that do not meet the conditions of the exception or through relying on the exception when no determination has been made.

2. Rule 102(d)(2)(ii): Asset-Backed Securities Offered Pursuant to an Effective Shelf Registration Statement Filed on Form SF–3

The Commission is adopting in new Rule 102(d)(2)(ii) an exception for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3. The Commission stated in the Proposal that the incentive for issuers, selling shareholders, and their affiliated purchasers to manipulate the market of a distributed security exists regardless of the credit quality of the security.[182]

[175] *See supra* note 13 and accompanying text.

[176] *See* Regulation M Adopting Release, 62 FR 530.

[177] *See* Proposal, 87 FR 18323.

[178] *See supra* note 88.

[179] *See* Regulation M Adopting Release, 62 FR 530.

[180] *See, e.g.,* Proposal, 87 FR 18330. As discussed above, in Part II.A.1, this may be the case in, for example, self-underwritten offerings, at-the-market offerings, or other shelf offerings, to the extent such an offering meets the definition of a ''distribution'' under Rule 100(b) of Regulation M. With regard to shelf offerings, each takedown is to be individually examined to determine whether such offering constitutes a ''distribution.'' Regulation M Adopting Release, 62 FR 526. If, as a result of the amendments, the exception for Nonconvertible Securities is no longer available in connection with a distribution, and if no other exception is available, Rule 102's prohibitions would apply. Accordingly, an issuer and all of its affiliated purchasers would be subject to the applicable restricted period of Rule 102 when sales off a shelf by an issuer, or by any affiliated purchaser, constitute a distribution of securities. Similarly, when a selling security holder sells off the shelf and such sales constitute a distribution, all other shelf security holders who are affiliated purchasers of the selling security holder would be subject to the applicable restricted period of Rule 102. *See* Regulation M Adopting Release, 62 FR 531.

[181] *See* Proposal, 87 FR 18333.

[182] *See* Proposal, 87 FR 18323.

While this incentive may exist, transaction requirements included in Form SF–3 allow for shelf offerings of only those asset-backed securities that share the qualities and characteristics of the investment grade asset-backed securities that meet the Investment Grade Exception [183] and thus are less likely to be subject to the type of manipulation that Regulation M seeks to address.

In addition, in contrast to how Nonconvertible Securities would be excepted, whether an asset-backed security is rated investment grade is an objective, observable fact, as is whether an asset-backed security is offered pursuant to an effective shelf registration statement filed on Form SF–3. Reliance on the new exception in Rule 102(d)(2)(i) does not require issuers, selling security holders, or their affiliated purchasers to make a calculation in determining whether the subject asset-backed security meets the conditions of that exception (*i.e.,* that the asset-backed security is offered pursuant to an effective shelf registration statement filed on Form SF–3), in contrast to how reliance on the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i) for Nonconvertible Securities is conditioned on a calculation determining whether the issuer's probability of default meets the specified threshold. Because the Investment Grade Exception for asset-backed securities does not focus on the potential interests of those covered persons seeking to rely on the exception but rather the particular qualities of the securities themselves (*i.e.,* that the asset-backed securities are appropriate to except from Regulation M because they trade on the basis of their yield and creditworthiness, traditionally measured by credit ratings, and are largely fungible), the measure based on the Form SF–3 shelf eligibility requirements, which similarly focuses on the particular qualities of the asset-backed securities, is an appropriate substitute standard of creditworthiness to replace the reference to credit ratings in the existing Investment Grade Exception in accordance with section 939A(b)'s requirements, without having to restrict or place any further conditions on who may rely on the exception under Rule 102(d)(2)(ii), as amended.

The Commission stated that it determined to include the Investment Grade Exception in Rule 102 based, in part, on the rationales indicated for an identical exception to Rule 101.[184] As discussed above, in Part II.A.2, the Commission excepted investment grade asset-backed securities from Rule 101 because such securities trade primarily on the basis of yield and credit rating.[185] When the Commission adopted the Investment Grade Exception in Rule 101, it stated that the principal focus of investors in the asset-backed securities market is on the structure of a class of securities and the nature of the assets pooled to serve as collateral for those securities rather than on the identity of a particular issuer.[186] The Commission also stated that the Investment Grade Exception is for securities that are ''primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.'' [187]

The standard in new Rule 102(d)(2)(i) that relies on the Form SF–3 eligibility requirements continues to be derived from the premise that certain asset-backed securities are traded based on factors such as their yield and creditworthiness.[188] As discussed above, in Part II.A.2, the transaction requirements included in Form SF–3 allow for shelf offerings of only those asset-backed securities that share the qualities and characteristics of the investment grade asset-backed securities that meet the Investment Grade Exception: with respect to either set of securities, the principal focus of investors is the structure of a class of securities and the nature of the assets pooled to serve as collateral for those securities, rather than on the identity of a particular issuer.[189]

The application of the transaction requirements included in the Commission's Form SF–3, therefore, should result in the offering of asset-backed securities that have similar qualities and characteristics to the asset-backed securities currently excepted under Rule 102's Investment Grade Exception. Because the ability of issuers, selling security holders, and their affiliated purchasers to bid up the price of an asset-backed security offered pursuant to an effective Form SF–3, during a distribution, is limited by a market participant's ability to substitute the security with other securities that are similar and of comparable creditworthiness,[190] such a security is less susceptible to the types of manipulation that Regulation M seeks to prevent. In accordance with section 939A(b), it is appropriate to continue to except in Rule 102(d)(2) asset-backed securities that trade on the basis of their yield and creditworthiness.

For these reasons, the Commission is adopting in new Rule 102(d)(2)(ii) an exception for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3. The new exception in Rule 102(d)(2)(i) may be relied upon by issuers, selling security holders, and their affiliated purchasers if all conditions of the exception are met.

C. Exchange Act Rule 17a–4(b)(17): Adding a Record Preservation Requirement for Broker-Dealers in Connection With Probability of Default Determinations

The Commission proposed a new record preservation [191] requirement that broker-dealers who are distribution participants or affiliated purchasers must preserve certain records pursuant to Rule 17a–4 under the Exchange Act, the Commission's broker-dealer record retention rule. Proposed paragraph (b)(17) of Rule 17a–4 would have required broker-dealers relying on the exception for Nonconvertible Securities to preserve the written probability of default determination made pursuant to proposed paragraph (c)(2)(i) of Rule 101. Accordingly, those broker-dealers would be required to preserve for a period of not less than three years, the first two years in an easily accessible place, the written probability of default determination made pursuant to proposed paragraph (c)(2)(i) of Rule 101.[192]

One commenter stated that the proposed record preservation requirement for certain broker-dealers is ''plainly appropriate as a means of facilitating the Commission in its examination and oversight of broker-dealers who rely on the exception in Rule 101 and would be required to

[183] *See supra* notes 153–161 and accompanying text.

[184] Regulation M Adopting Release, 62 FR 531.

[185] *See* Regulation M Adopting Release, 62 FR 527.

[186] *See* Regulation M Adopting Release, 62 FR 527.

[187] *See* Regulation M Adopting Release, 62 FR 527 (citations omitted).

[188] *See* Regulation M Adopting Release, 62 FR 527.

[189] *See supra* note 149.

[190] *See* Regulation M Adopting Release, 62 FR 527.

[191] In the Proposal, this requirement was described as a ''recordkeeping'' requirement. For clarity and consistency with the title of Rule 17a–4 (''Records to be preserved by certain exchange members, brokers, and dealers''), this requirement is referred to throughout this release as a record preservation requirement.

[192] Proposal, 87 FR 18324.

conduct the new probability of default determination.'' [193]

Another commenter stated that the Commission should not adopt the proposed record preservation requirement for broker-dealers relying on new Rule 101(c)(2)(i)'s exception for Nonconvertible Securities because ''firms are already subject to extensive recordkeeping requirements [and] should continue to have flexibility in determining the precise nature and types of records they make and retain for such purpose, just as they do for purposes of the various other exceptions to Rule 101 of Regulation M.'' [194]

However, unlike the other securities-based exceptions in Rule 101, which apply to ''actively-traded securities,'' [195] ''exempted securities,'' [196] and ''face-amount certificates or securities issued by an open-end management investment company or unit investment trust,'' [197] and which are based on standards that rely on the use of publicly available information that can be verified, this exception is subject to the specific requirements in section 939A(b) to use ''standards of credit-worthiness.'' As discussed above, in Parts II.A.1 and B.1, the probability of default, as derived from structural credit risk models, is an appropriate substitute standard of creditworthiness to replace the reference to credit ratings in the existing Investment Grade Exceptions in accordance with section 939A(b)'s requirements. Due to the number of variations among structural credit risk models and their estimated inputs, the probability of default estimates may be subjective to some extent.[198] As discussed below, in Part V.A.2, creditworthiness is an appropriate standard to reflect manipulation risk because securities issued by firms with sound creditworthiness trade primarily on yield and creditworthiness (traditionally measured by credit ratings) and have low pricing uncertainty and manipulation risk. Reliance on the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i) for issuers of Nonconvertible Securities is conditioned on the use of a written probability of default calculation that has been determined and documented, in writing, by the distribution participant acting as the lead manager. This exception is in contrast to the other Regulation M exceptions that require the use of publicly available information that can be verified. Accordingly, requiring a record of the written probability of default determination to be preserved will help facilitate the Commission's examinations of broker-dealers relying on the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i). The record preservation requirement, therefore, is appropriate to help deter improper adjusting of the estimation to meet the conditions of either of the exceptions. Further, because probability of default estimates may be subjective to some extent and not comparable across different issuers or for the same issuer across different issues if estimates are based on different models, or done by different researchers or vendors, the requirement associated with reliance on new Rule 101(c)(2)(i) to preserve written probability of default determinations is designed to facilitate the Commission's examinations of broker-dealers.

Another commenter stated that the Commission could publish, or require publication of, point estimates at a particular time and as rolling averages of default probabilities during a specified period, default probability estimates that market participants derive from various models, along with default probabilities implied by both market prices and credit default swap spreads (to the extent those are traded for a particular issuance).[199] While access to such information could be informative for certain market participants and investors, the record preservation requirement set forth in new Rule 17a–4(b)(17), as stated in the Proposal, was designed to aid the Commission in its examinations of broker-dealers relying on the exception in Rule 101(c)(2)(i), as amended, by requiring such broker-dealers to retain the written probability of default determination supporting their reliance on the exception.[200] As such, a requirement for these entities to publish the information from the commenter's suggestion would not serve this purpose because such a requirement may not necessarily involve the type of information needed to meet the conditions new Rule 101(c)(2)(i) or new Rule 102(d)(2)(i) [201] and, therefore, would not facilitate the Commission's examinations of broker-dealers relying on those exceptions. In addition, the cost burden of doing so on a regular basis could be disproportionate to the infrequent usage of the exception, as these entities could incur other burdens associated with disclosing such information.[202] Accordingly, it could discourage some entities from participating in certain issues, which could increase the costs of the affected issues.[203] Similarly, for the Commission to publish this information, such that parties could rely on the information, would also not be appropriate because this approach would not facilitate its examinations of broker-dealers relying on the exception.

After reviewing the comments, the Commission is adopting Rule 17a–4(b) under the Exchange Act largely as proposed, by adding new paragraph (17), which requires broker-dealers to preserve the written probability of default determination, relied upon pursuant to the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i), as applicable. As discussed above in Part II.B.1, the new exception in Rule 102(d)(2)(i) was not originally proposed. However, proposed Rule 17a–4(b)(17) was intended to capture ''broker-dealers relying on the exception for Nonconvertible Securities'' [204] and, therefore, the Commission believes it is appropriate to apply it to both exceptions for Nonconvertible Securities that are being adopted. Moreover, broker-dealers relying on either exception should be in a position to comply with the requirements of new Rule 17a–4(b)(17) because both exceptions require that the lead manager of a distribution make and document in writing the probability of default determination pursuant to Rule 101(c)(2)(i), as amended.[205] Accordingly, the final rule adds ''or § 242.102(d)(2)(i) . . . or Rule 102 . . . as applicable'' in light of the addition of the new exception for Nonconvertible Securities in Rule 102(d)(2)(i) and that broker-dealers may be relying on the new exception either in Rule 101(c)(2)(i) or in Rule 102(d)(2)(i), depending on whether they are a covered person under Rule 101 or Rule 102. In addition, the final rule adds the text '', relied upon by such broker-dealer,'' to clarify that the written probability of default determination must be preserved in connection with a broker-dealer's

[193] Better Markets Letter, at 4.

[194] SIFMA Letter 1, at 12; *see also* SIFMA Letter 2, at 2.

[195] 17 CFR 242.101(c)(1).

[196] 17 CFR 242.101(c)(3).

[197] 17 CFR 242.101(c)(4).

[198] *See infra* Part V.C.3; *see also* Proposal, 87 FR 18334.

[199] IILF Letter, at 8.

[200] Proposal, 87 FR 18324.

[201] *See, e.g.,* 17 CFR 242.101(c)(2)(i), as amended, 242.102(d)(2)(i), as amended. Both of the new exceptions for Nonconvertible Securities in Rules 101 and 102 require that the issuer's probability of default be documented and determined, in writing, without necessarily requiring the other information included in the commenter's suggestion.

[202] *See* Proposal, 87 FR 18329; *infra* Part V.A.2.

[203] *See, e.g., infra* Part V.C.

[204] Proposal, 87 FR 18324.

[205] New Rule 17a–4(b)(17) requires broker-dealers to preserve the written probability of default determination, relied upon by such broker-dealer, pursuant to § 242.101(c)(2)(i) or § 242.102(d)(2)(i) (Rule 101 or Rule 102 of Regulation M), as applicable.

reliance on the new exception in Rule 101(c)(2)(i) or in Rule 102(d)(2)(i), as applicable.

New paragraph (b)(17) of Rule 17a–4 would affect the existing practices of broker-dealers by imposing new record preservation requirements when relying on the exception in new Rule 101(c)(2)(i) or new Rule 102(d)(2)(i). A broker-dealer who is a distribution participant acting as the lead manager (or in a similar capacity) of a distribution and uses a vendor to determine the probability of default could satisfy this record preservation requirement by maintaining documentation of the assumptions used in the vendor model, as well as the output provided by the vendor supporting the probability of default determination. Such a broker-dealer calculating the probability of default on its own could satisfy the record preservation requirement by maintaining documentation of the value of each variable in deriving the probability of default, along with a record identifying the specific source(s) of such information for each variable. Other broker-dealers, namely those that rely on the written probability of default determination of another broker-dealer acting as the lead manager (or in a similar capacity), could satisfy the record preservation requirement by maintaining a copy of the documentation described above, or by retaining a written notice it received of the probability of default determination.

The requirement to preserve, pursuant to Rule 17a–4(b), the written probability of default determination is consistent with other record retention obligations that Exchange Act rules impose on broker-dealers.[206] Exchange members and broker-dealers currently are required to comply with the three-year preservation period in Rule 17a–4(b) for other records and should have in place procedures to satisfy such preservation requirements.[207]

III. Other Issues

Certain commenters urged the Commission to take additional or different regulatory and non-regulatory actions than the approaches that were proposed, including actions that the Commission did not propose. These suggestions covered a variety of areas, including use of the term ''investors,'' [208] SEC enforcement actions,[209] other provisions of Regulation M,[210] insurance company ratings,[211] individual securities,[212] credit ratings industry reforms,[213] agency operations,[214] and nondisclosures.[215] These issues are outside the scope of the Proposal and that the final amendments to Rules 100(b), 101(c)(2), 102(d)(2), and 17a–4(b) appropriately further the Commission's objectives of promoting investor protection, enhancing market efficiency, and facilitating capital formation by implementing the requirements of section 939A(b) of the Dodd-Frank Act and facilitating the Commission during examinations of broker-dealers.

IV. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,[216] the Office of Information and Regulatory Affairs has designated these rules as not a ''major'' rule as defined by 5 U.S.C. 804(2).

V. Economic Analysis

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion exercised in implementing the mandates. Section 3(f) of the Exchange Act [217] provides that whenever the Commission is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, section 23(a)(2) of the Exchange Act [218] requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The analysis below addresses the likely economic effects of the amendments, including the anticipated benefits and costs of the amendments, and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approach taken by these amendments. Some of the benefits and costs discussed below are impracticable to quantify. For example, sticky offerings are generally not identified in the available data and may be difficult to trace in the appropriate records of the distribution participants. Therefore, much of the discussion of economic effects is qualitative.

A. Baseline

1. The Investment Grade Fixed Income Market

To assess the economic effects of the amendments, the Commission is using as the baseline the nonconvertible debt, nonconvertible preferred, and asset-backed securities markets as they exist at the time of this release, including applicable rules that the Commission has already adopted.

The affected parties include Nonconvertible Securities and asset-backed securities (collectively ''fixed-income securities'') [219] distribution and other market participants, such as issuers, selling security holders, underwriters, banks, broker-dealers, and their affiliated purchasers; fixed-income security investors, such as retail investors, mutual funds, exchange traded funds, and separate investment accounts; vendors of the relevant market data; and nationally recognized statistical rating organizations (''NRSROs''). Currently a majority of the distribution participants in the relevant markets are subscribed to a major vendor of the market data necessary to evaluate various aspects of the distribution. Further, a rating by an NRSRO is necessary in order for distribution participants to rely on the Investment Grade Exception. Today there are ten credit rating agencies registered with the Commission as

[206] *See* Proposal, 87 FR 18325.

[207] 17 CFR 240.17a–4(b).

[208] Letter from Brian (Mar. 25, 2022).

[209] Letter from Patrick Lawson (Mar. 26, 2022).

[210] SIFMA Letter 2, at 4–5.

[211] Letter from Jason Wallace (May 19, 2022).

[212] *See, e.g.,* Letter from Anthony Frattin (May 19, 2022); Kern Letter; Wang Letter; Ferguson Letter; Navari Letter.

[213] *See* Better Markets Letter, at 2.

[214] *See* Letter from Senator Thom Tillis to Vanessa Countryman, Sec'y, SEC (Nov. 4, 2022).

[215] Letter from The Delois Albert Brassell Estate and the Robert James Brassell Estate (June 1, 2022).

[216] 5 U.S.C. 801 *et seq.*

[217] 15 U.S.C. 78c(f).

[218] 15 U.S.C. 78w(a)(2).

[219] The term ''fixed-income securities'' in the Economic Analysis section refers to nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities.

NRSROs.[220] Three large NRSROs (S&P Global Ratings, Moody's Investors Service, Inc., and Fitch Ratings, Inc.) have historically accounted for most of the market share in this market. As of December 31, 2021, these three market participants accounted for 94.4% of all of the NRSRO credit ratings outstanding.[221]

The affected securities are nonconvertible debt, nonconvertible preferred, and asset-backed securities. In 2021, there were 33,798 issues of nonconvertible debt securities,[222] with 687 issuers and 301 agents involved (266 reported as participating underwriters, of which 201 were the lead underwriters; 39—as trustees, and 10—as fiscal agents).[223] Additionally, in 2021, there were 114 filed prospectuses for public offerings of asset-backed securities.[224]

2. The Investment Grade Exception

Regulation M is designed to prevent manipulative activities that could artificially influence the demand and pricing of covered securities.[225] In particular, Rules 101 and 102 of Regulation M prohibit distribution and certain other market participants from bidding for or purchasing a covered security, in connection with a distribution of securities unless an exception, such as the Investment Grade Exception, applies.[226] At the time the exception was included, the investment grade securities, that is securities characterized by sound creditworthiness, as measured by credit rating, were considered to be traded primarily on yield and credit ratings, and to be largely fungible.[227] Therefore, sound creditworthiness was considered to be a good proxy for low manipulation risk. Investment Grade issues were presumed to have low probability of default and were thus considered to have low pricing uncertainty and low manipulation risk, which formed the basis for the exception. For purposes of these amendments sound creditworthiness is a good proxy for low manipulation risk since securities issued by firms with sound creditworthiness trade primarily on yield and creditworthiness (traditionally measured by credit ratings).[228] Further, none of the commenters on the Proposal raised concern that creditworthiness would not be an adequate proxy for manipulation risk.

The application of the Investment Grade Exception to Rules 101 and 102 is primarily limited to two cases: re-openings (an offering of an additional principal amount of securities that are identical to the securities already outstanding, for example, when an issuer wishes to make a series of offerings via a re-opening to match its funding needs or when some foreign sovereign issuers conduct a re-opening for public finance purposes [229]) and sticky offerings (an offering where a lack of demand results in an underwriter being unable to sell all of the securities in a distribution, for example, when an investor failed to honor a previously expressed indication of interest; also, as stated in the Proposal, another example a commenter provided is in a best-efforts offering [230]).[231] Re-openings are used infrequently and constitute about 0.3% of the relevant securities' markets' issuance volume.[232] Sticky offerings are not identified in the relevant databases, making it difficult to assess their relative magnitude.

Re-openings are used in situations when such financing method offers the benefit of cost-effectiveness. For example, it may be cheaper for an issuer to offer a series of small offerings as opposed to one large offering, as the latter could result in a lower offering price due to the supply pressure. Further, since a re-opening issue is fungible with securities already in circulation and can be traded interchangeably with these securities in the secondary market, it provides additional liquidity benefits to the investors.[233]

As discussed above, sticky offerings typically result when a large investor fails to fulfill its expressed purchase interest in the issue, which could be due to a negative factor that transpired about the issue or issuer.[234] Any offering of the relevant security thus can become a sticky offering. In such cases it may become challenging to trade the issue based solely on the yield and maturity (otherwise it would have become possible to find another purchaser in a timely manner). This may give rise in some cases to a heightened risk of manipulation in connection with a distribution of securities even if the security is rated as investment grade.[235]

Rule 102 provides that, in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, it shall be unlawful for such person, or any affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period.[236] Issuers and selling security holders generally do not have the same market access needs as underwriters and are not expected to buy the securities they are issuing. However, as pointed out by one of the commenters, their affiliated broker-dealers, which do not serve as an underwriter, may seek to rely on Rule 102 exception.[237]

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[220] *See Current NRSROs,* U.S. Sec. & Exch. Comm'n, *available at https://www.sec.gov/about/divisions-offices/office-credit-ratings/current-nrsros.*

[221] *See Staff Report on Nationally Recognized Statistical Rating Organizations* (Feb. 2023) at 23, *available at https://www.sec.gov/files/2023-ocr-staff-report.pdf.*

[222] The nonconvertible debt securities also include preferred securities.

[223] The statistics are based on the data from Mergent. Some agents were reported as performing two or more functions, for example as an underwriter and as a lead underwriter.

[224] The information is based on EDGAR data for public offerings of asset-backed securities. It should be noted that prospectuses may contain multiple tranches, including non-offered tranches excluded from the public offering of asset-backed securities.

[225] *See supra* Part I.

[226] *See* 17 CFR 242.101(a), 242.102(a); *see, e.g.,* 17 CFR 242.101(c)(2), 242.102(d)(2).

[227] *See* Regulation M Adopting Release, 62 FR 527.

[228] There are other metrics that could serve as a proxy for manipulation risk in Rules 101 and 102, such as security public float or visibility to other market participants. One commenter for instance proposed Form S–3 and F–3 standard and a WKSI-based standard to measure manipulation risk (SIFMA Letter 1). However, unlike measures of creditworthiness, such criteria fail to capture the pricing point where the security is trading solely based on its yield and maturity and thus has low pricing uncertainty and low manipulation risk. Therefore, measures of creditworthiness are a better proxy for manipulation risk.

[229] *See* Proposal, 87 FR 18316. Note, however, that not every foreign sovereign issue is conducted in the form of re-opening.

[230] *See* Proposal, 87 FR 18316. In a 'best-effort' offering, the underwriters are not required to sell any specific number or dollar amount of securities but will use their best efforts to sell the securities offered. See Plain English Disclosure, Release No. 34–38164, (Jan. 14, 1997) [62 FR 3152 (Jan. 21, 1997)]. Note, however, that not every best-effort offering will become sticky, where the underwriter is unable to sell all of the securities in the distribution.

[231] *See* Proposal, 87 FR 18329. Note that the Commission received no comments on the types of issues that typically rely on the exception.

[232] The estimate is obtained using Mergent data for relevant securities during 2021.

[233] *See* Letter from Kenneth E. Bensten, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA to Elizabeth M. Murphy, Secretary (July 5, 2011) at 6; John Berkery & Remmelt Reigersman, *Re-openings: Issuing Additional Debt Securities of an Outstanding Series,* Mayer Brown 1–2 (2020), *available at https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/05/reopenings_-issuing-additional-debt-securities-of-an-outstanding-series.pdf. See also* Proposal, 87 FR 18329.

[234] *See* Proposal, 87 FR 18329.

[235] We note, however, that not all sticky offerings are issued by an issuer with a low creditworthiness and have a high manipulation risk. It is thus important to have a standard of creditworthiness that is able to capture most recent available information on issuer creditworthiness, such as probability of default, and account for the cases of possible sudden declines in creditworthiness.

[236] *See supra* Part I for a relevant discussion.

[237] SIFMA Letter 1, at 12–13.

The Investment Grade Exception was included in Regulation M as it was considered a good proxy for the likelihood of manipulation risk.[238] However, the reference to credit ratings in the Commission's rules may encourage investors to place undue reliance on the credit ratings. Credit ratings themselves are potentially imprecise and often lagging indicators of creditworthiness.[239]

B. Benefits of the Amendments

As mentioned above, section 939A(b) of the Dodd-Frank Act requires the Commission to ''remove any reference to or requirement of reliance on credit ratings, and to substitute in such regulations such standard of creditworthiness as the Commission determines to be appropriate.'' [240] In this amendment, the Commission will require distribution participants, issuers, selling security holders and affiliated purchasers, in order to avail themselves of these exceptions from Regulation M, to rely upon the structural credit risk models as a measure of creditworthiness.[241] These models have been used to estimate the probability of default of an issuer.[242]

Structural credit risk models typically take the issuer balance sheet measures of debt obligations as given and estimate a probability of default based on the market value and volatility of the firm's equity. The value of equity is viewed in these models as the value of a call option on firm assets where the strike price is the total notional value of debt. Since the market value of equity, the volatility of equity, and the notional value of debt can be calculated from the market trading and balance sheet data, under the structural credit risk models the volatility of the value of the assets and the market value of assets, which are not observable, can be estimated. The probability of default can be calculated as the probability that the call option will expire out-of-the-money, which occurs when the value of the company falls below the book value of the debt.

As discussed above, structural credit risk models are based on the structure of the balance sheet.[243] Since the future value of the firm is unknown, a structural credit risk model must make assumptions about the probability distribution of possible firm values in different scenarios, some of which may trigger default. These assumptions include the current firm value and the volatility of firm value, for which the observed market value of equity and the volatility of equity is often an input. Some models include assumptions over the firm's dividend policy.

For purposes of these amendments, the probability of default derived from the structural credit risk models is an appropriate proxy for creditworthiness. As discussed previously in Part V.A.2, creditworthiness is an appropriate standard to reflect manipulation risk since securities issued by firms with sound creditworthiness trade primarily on yield and creditworthiness (traditionally measured by credit ratings) and have low pricing uncertainty and manipulation risk. The Commission received several comments supporting the probability of default as a standard for Rules 101 and 102 exception.[244] However, one commenter opposed this option and suggested a standard based on Forms S–3 and F–3 or on WKSI standard.[245] However, these alternatives are not good measures of sound creditworthiness as compared to probability of default because they fail to reflect the pricing point where a security is traded solely on its yield and maturity. Thus, the probability of default based on structural credit risk models is a more appropriate proxy for creditworthiness, and thereby for manipulation risk.

Consistent with the Proposal, the Commission is adopting a 0.055% probability of default threshold. The Commission requested and received comments on this proposed threshold level. Specifically, one commenter expressed support of the proposed threshold and also noted that at any given date, the composition and population of any selected sample meeting the threshold could change; [246] as such some variation of the estimated percentages of the captured universe of securities eligible for the existing Investment Grade Exception is to be expected. Another commenter expressed that the threshold should be increased to 0.5% because it believes the exceptions as amended should be crafted to capture as many of the securities covered under the existing investment grade exceptions as possible; this commenter did not address the corresponding increase in the percentage of currently ineligible securities or the costs of that increase.[247] No other commenters suggested a different or lower threshold and, overall, the commenters did not identify any economic effects of the proposed threshold level that were not considered in the Proposal.

The Commission acknowledges that the percentage of investment grade securities that would be captured under a specific threshold fluctuates over time and as conditions change that affects the various inputs into the models. As of March 2023, the 0.055% probability of default threshold captured

[238] *See supra* Part I.

[239] We note that the SEC staff took a similar position in the COVID–19 Market Monitoring Group, *Credit Ratings, Procyclicality and Related Financial Stability Issues: Select Observations,* SEC Staff (July 15, 2020) (''Cost of debt capital is driven by a wide range of financial and non-financial factors and forces; ratings downgrades are generally lagging indicators of cost of debt capital.''), *available at https://www.sec.gov/news/public-statement/covid-19-monitoring-group-2020-07-15.*

[240] Public Law 111–203, sec. 939A(a). The Commission has issued several releases concerning the removal of references to credit ratings: *Security Ratings,* Release No. 34–64975 (July 27, 2011) [76 FR 46603 (Aug. 3, 2011)]; *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934,* Release No. 34–71194 (Dec. 27, 2013) [79 FR 1522 (Jan. 8, 2014)]; *Removal of Certain References to Credit Ratings under the Investment Company Act,* Release No. IC–30847 (Dec. 27, 2013) [79 FR 1316 (Jan. 8, 2014)]; *Asset-Backed Securities Disclosure and Registration,* Release No. 34–72982 (Sept. 4, 2014) [79 FR 57184 (Sept. 24, 2014)]; *Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule,* Release No. IC–31828 (Sept. 16, 2015) [80 FR 58124 (Sept. 25, 2015)].

[241] *See, e.g.,* the seminal model by Robert C. Merton, *On the Pricing of Corporate Debt: The Risk Structure of Interest Rates,* 29 Journal of Finance 449, 449–70 (1974), along with related successive refinement models such as Fischer Black & John C. Cox, *Valuing Corporate Securities: Some Effects of Bond Indenture Provisions,* 31 J. Fin. 351, 351–67 (1976); Robert Geske, *The Valuation of Corporate Liabilities as Compound Options,* 12 J. Fin. & Quantitative Analysis 541, 541–52 (1977); and Oldrich A. Vasicek, *Credit Valuation, KMV* (Mar. 22, 1984), among others.

[242] For example, the Merton (1974) Model and the Successor Models are included in the curriculum for such credentials as the Chartered Financial Analyst. *See, e.g., Credit Analysis Models,* ≤CFA Inst. (2022), *available at https://www.cfainstitute.org/en/membership/professional-development/refresher-readings/credit-analysis-models.* One commenter, however, suggested that ''most of our member firms do not use them [the credit risk models] for other purposes either, to the extent such models are used at all, they serve merely as a supplement to member firms' own proprietary credit analysis as part of their decision making on whether to extend a loan or other credit.'' (SIFMA Letter 1 at 5). See also Part II.A.1 for a relevant discussion.

[243] An alternative set of models used to derive probability of default are 'reduced-form models'. The reduced-form models rely on statistical analysis rather than the balance sheet to determine a firm's creditworthiness. However, compared to structural credit risk models, they lack in rigorous theoretical justification as well as economic interpretation of the resulted relationships between the model inputs. *See, e.g.,* Edward Altman, Andrea Resti, & Andrea Sironi, *Default Recovery Rates in Credit Risk Modeling: A Review of the Literature and Empirical Evidence,* 33 Econ. Notes 183 (2004) (discussing the competing models), *available at https://onlinelibrary.wiley.com/doi/10.1111/j.0391-5026.2004.00129.x.*

[244] *See, e.g.,* IILF Letter, Bloomberg L.P. Letter, and Better Markets Letter.

[245] *See* SIFMA Letters 1 and 2 and the relevant discussion in Part II.A.1.

[246] *See* Bloomberg L.P. Letter, at 2.

[247] *See* SIFMA Letter, at 10.

approximately 76% of the investment grade securities in the final sample of nonconvertible Fixed-Income Securities used (1996 distinct investment grade issues with probability of default below 0.055% out of 2637 total investment grade rated issues in the sample).[248] This threshold also captured approximately 24% of non-investment grade issues (64 out of 269 non-investment grade issues in the sample).

This estimation differs from that in the Proposal. In the Proposal, we observed, using data from October 2021, that the 0.055% threshold captured about 90% of investment grade securities (2436 out of 2710 issues) and about 37% of non-investment grade issues (125 of 341 non-investment grade issues).[249] Overall, at the time of the analysis of data as of March 2023, 2060 issues met the proposed exception as compared with the 2637 issues under the current exception.

Given the reaction of commenters to the proposed 0.055% threshold [250] and that there is an unavoidable trade-off between capturing securities that are ineligible for the existing Investment Grade Exception and leaving out some securities that are currently eligible, the proposed threshold is intended to strike a reasonable balance between these two statistical realities over time.[251]

Nonconvertible debt securities and nonconvertible preferred securities of issuers for which the probability of default, estimated as of the sixth business day immediately preceding the determination of the offering price and over the horizon of 12 full calendar months from such day, is 0.055% or less, as determined and documented, in writing, by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution, as derived from a structural credit risk model are to be excepted from Rules 101 and 102.

An advantage of using probabilities of default implied by structural credit risk models instead of NRSRO credit ratings is that these model-implied probabilities of default generally use current estimates of equity valuation and volatility based on the recent trading activity, and hence incorporate more recent news affecting the valuation and perceived volatility of the firm. In contrast, credit rating agencies are generally slower than the market in updating credit ratings and outlooks and thus may reflect less up-to-date information.[252]

The Proposal did not limit which distribution participants are allowed to produce probability of default estimations for the purposes of the exception. In order to ensure consistency and reliability of the estimates within any particular distribution and reduce the potential subjectivity and non-uniformity of the estimates the amendments specify that only lead managers are responsible for estimating the probability of default for a given distribution.[253] Lead managers would have flexibility of either calculating the probability of default internally using structural credit risk models, given the wide availability of software products available on the market that perform such calculations, or obtaining an estimate from a vendor. One of the benefits of the amendment is that the lead managers will have the flexibility of selecting the model they find most appropriate to assess the creditworthiness of issuers for the purposes of using the exception.[254] This means the lead managers will not have to rely on a credit rating for the issue in order to determine its eligibility for Rules 101 and 102 exception and will no longer have to rely on an NRSRO's choice of the model for such purposes.[255] Furthermore, multiple vendors currently provide estimates of the probability of default based upon structural credit risk models as a part of default packages that include various market data and metrics.[256]

Removing and replacing the references to credit ratings from Rules 101 and 102 of Regulation M may also have a benefit of expanding the number of options available to lead managers compared to what they would have under the requirements of the Investment Grade Exception. Specifically, the exceptions' requirement will no longer rely on a limited number of vendors providing credit ratings, which may reduce possible negative consequences from limited competition. Structural credit risk models as a measure for creditworthiness could therefore serve as a better proxy for manipulation risk than credit ratings because, by prescribing a methodology rather than a metric generated by only a certain category of regulated vendors (that is, NRSROs), distribution lead managers may have more options for either using a vendor-supplied structural credit risk model or using their own proprietary version of a publicly available structural credit risk model.

Under the final rule amendments, the structural credit risk models cannot be applied to asset-backed securities due to

[248] The investment grade status for nonconvertible securities issued between 2018 and 2023 was obtained from Mergent (as of the last available Mergent update through Mar. 2023) while the probability of default estimates were obtained for a cross-section of securities available in Bloomberg (as of Mar. 28, 2023). Please refer to Mario Bondioli, Martin Goldberg, Nan Hu, Chengrui Li, Olfa Maalaoui Chun, & Harvey J. Stein, *The Bloomberg Corporate Default Risk Model (DRSK) for Public Firms* (working paper Aug. 28, 2021), *available at https://ssrn.com/abstract=3911300* (retrieved from SSRN Elsevier database), for methodology description of Bloomberg probability of default measure.

[249] *See* Proposal, 87 FR 18330.

[250] As discussed above, one commenter expressed general support of the proposed 0.055% threshold (*see* Bloomberg L.P. Letter, at 2) while another commenter suggested increasing the level to 0.5% (*See* SIFMA Letter 1, at 10).

[251] As pointed out by one commenter, some variation of the estimates is unavoidable, and ''this highlights the importance of selecting an objective, data driven model that is consistently applied over time and documented by the distribution participant.'' *See* Bloomberg Letter, at 2.

[252] We note that the SEC staff took a similar position in the COVID–19 Market Monitoring Group, *Credit Ratings, Procyclicality and Related Financial Stability Issues: Select Observations,* SEC Staff (July 15, 2020) (''Cost of debt capital is driven by a wide range of financial and non-financial factors and forces; ratings downgrades are generally lagging indicators of cost of debt capital.''), *available at https://www.sec.gov/news/public-statement/covid-19-monitoring-group-2020-07-15*. Some academic studies find evidence that structural credit risk models may be able to respond to aggregate and firm specific news faster than credit ratings. Also, such models are able pick up on differences in default risk *within* a credit rating bucket. However, credit ratings do not necessarily imply probabilities of default and thus may not be directly comparable to probability of default estimated using a structural credit risk model. *See* Jing-zhi Huang & Hao Zhou, *Specification Analysis of Structural Credit Risk Models* (Fed. Res. Bd., Fin. & Econ. Discussion Series, 2008–552008), *available at https://www.federalreserve.gov/pubs/feds/2008/200855/200855pap.pdf;* Moody's Analytics, *EDF Overview* (2011) (outlining the approach by Moody's KMV), *available* at *https://www.moodysanalytics.com/-/media/products/EDF-Expected-Default-Frequency-Overview.pdf;* Giuseppe Montesi & Giovanni Papiro, *Risk Analysis Probability of Default: A Stochastic Simulation Model,* 10 J. Credit Risk 29 (2014).

[253] Some of the costs associated with this option are discussed in the Costs Section of the Economic Analysis.

[254] However, this will not be the case for other distribution participants who are not considered the lead manager of the distribution, which may deter such participants from relying on the exception. Further, this may result in lead managers' selecting a model that allows them to rely on the exception but is not necessarily the best model of the securities' creditworthiness and manipulation risk. These issues are discussed in more detail in *infra* Part V.C.

[255] Even though the lead manager would have to use a structural credit risk model, there are many versions of such models available, and the specific model parameters can be selected as well, providing considerable flexibility of the estimates as compared to the specific choices used in the assessments by NRSROs.

[256] Vendors offer a number of commercial applications based on structural credit risk models. The probability of default calculated by structural credit risk models, such as the Merton (1974) Model and the Successor Models, can also be calculated by lead managers without the use of a vendor. One commenter, however, suggested that currently firms seldom use probability of default models in connection with issuances of the relevant securities. *See* SIFMA Letter 1 at 5.

the complexity of the structure of such instruments.[257] Even though one commenter suggested that probability of default can be estimated for asset-backed securities [258] such estimation based on structural credit risk models is not routinely used due to the complexity of the structure of these securities and the corresponding complex application of such models. Further, another commenter supported proposed Form SF–3 standard for the Investment Grade Exception with respect to asset-backed securities.[259] The final amendments provide that securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 should also be excepted from Rules 101 and 102. The Form SF–3 shelf eligibility requirements provide objective criteria that can also ensure that the securities are consistent with the Commission's original basis for the Investment Grade Exceptions. Asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 are less at risk of the manipulation that Regulation M addresses. Specifically, the Form SF–3 shelf eligibility requirements limit the number of nonperforming assets in the asset-backed security pool, require review of the pool assets if certain conditions are met, and require certification by the chief executive officer, among other things.

As the Commission noted when adopting Form SF–3, the Form incentivizes sponsors to carefully review and disclose the underlying assets' characteristics, reducing the overall uncertainty about the asset-backed security [260] and, with respect to these final amendments, the risk of manipulation. The Commission received no comments that suggest otherwise. Asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 have similar qualities and characteristics to the investment-grade asset-backed securities currently excepted in Rule 101(c)(2).[261] A review of recent EDGAR database filings confirms that almost all asset-backed securities issued pursuant to an effective shelf registration statement filed on Form SF–3 have investment grade ratings.[262]

C. Costs of the Amendments

The Commission recognizes that some of the affected underwriters, their affiliates, as well as issuers, selling security holders and affiliated purchasers may bear costs from the amendments. The amendments may alter the universe of securities that are eligible for the new exceptions. If some distribution participants decide not to participate in certain issues because of the rule amendments, the costs of the affected issues may increase. For example, when fewer banks or broker-dealers are available, the underwriters may be able to charge higher fees. Additionally, as the result of the amendments, fewer issues may take place or issuers may rely more on private markets,[263] potentially limiting issuers' ability to raise capital and affecting investors in the relevant securities as the available security selection and liquidity may be reduced.

There are several types of costs that could arise: (1) costs associated with calculations or obtaining the probability of default estimate; (2) costs associated with preserving records related to the probability of default estimation; (3) costs due to the probability of default being an imperfect proxy for creditworthiness, (4) asset-backed securities' costs associated with the amendments, (5) indirect and other costs of the amendments. We discuss these costs in detail below.

1. Costs Associated With Obtaining the Estimate of the Probability of Default

Lead managers may incur costs related to determining the probability of default. Consistent with the Paperwork Reduction Act (''PRA'') section,[264] the Commission estimates that it will take a lead manager 3 hours to establish a system to gather the data serving as the inputs and then perform the analysis necessary to calculate the probability of default of the issuer whose securities are the subject of the distribution, for an aggregate cost of $218,889 [265] Consistent with the PRA section,[266] the Commission also estimates that it will take a lead manager one hour to gather the inputs required to calculate probability of default each time it participates in a distribution of Nonconvertible Securities. There were 33,798 offerings of Nonconvertible Securities in 2021. Therefore, it is estimated that annually lead managers will spend maximum of $12,268,674 [267] in the aggregate complying with this requirement if all lead managers choose to estimate the probability of default internally.

However, some lead managers may rely on third party vendors rather than internally calculate the probability of default. Any costs associated with using a vendor to obtain probability of default estimate, however, should be small, as the vendors typically already have subscriptions available to provide calculations regarding the probability of default based on structural credit risk models.[268] Furthermore, lead managers, in particular those that choose to determine the probability of default estimate internally, are likely to already have the computational resources necessary to conduct such analysis internally. Therefore, the total costs for the lead managers of complying with the requirement should be below $12,268,674.

Further, since the rule amendments specify that only the lead manager can supply the estimate of the probability of default for the purposes of relying on the exception, some issues where there is no distribution participant to act as the lead manager for the distribution, such as with self-underwritten offerings, at-the-market offerings, or other shelf offerings, may not be able to rely on the

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[257] See a relevant discussion in *supra* Part II.B.2.

[258] *See* IILF Letter, at 6.

[259] SIFMA Letter 1, at 11.

[260] *See supra* notes 121–125 and accompanying text.

[261] One commenter opposed use of SF–3 standard for asset-backed securities and suggested relying on the probability of default instead (IILF Letter, at 7). However, probability of default calculations based on a structural credit risk model are complex for this type of securities due to their complex structure and are not routinely used. Another commenter in fact expressed support of using SF–3 standard for asset-backed securities (SIFMA Letter 1, at 11).

[262] Based on EDGAR database filings from 2022.

[263] *See* SIFMA letter 1, at 5.

[264] *See infra* Part VI.

[265] The Commission estimates the wage rate based on salary information for the securities industry compiled by SIFMA. *See Management & Professional Earnings in the Securities Industry—2013,* SIFMA (Oct. 7, 2013). These estimates are modified by the Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. These figures have been adjusted for inflation through Jan. 2023 using data published by the Bureau of Labor Statistics' Consumer Price Index inflation calculator, *available at https://www.bls.gov/data/inflation_calculator.htm.* 201 lead managers × 3 hours × $363 hour for a compliance manager = $218,889.

[266] *See infra* Part VI.C.1.

[267] Cost estimated is based on the sum of 33,798 offerings multiplied by 1 burden hour multiplied by $363, for a compliance manager. *See Management & Professional Earnings in the Securities Industry—2013,* SIFMA (Oct. 7, 2013). These estimates are modified by the Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. These figures have been adjusted for inflation through Jan. 2023 using data published by the Bureau of Labor Statistics' Consumer Price Index inflation calculator, *available at https://www.bls.gov/data/inflation_calculator.htm.*

[268] *See infra* note 256. One commenter suggested that firms rarely use probability of default models in connection with issuances of the relevant securities. However, probability of default estimates are typically provided by the vendors in a package with other data firms are often subscribed to.

exception. These issues may therefore be subject to Regulation M restrictions and may have to rely on private markets and may face potentially higher issuing costs or not take place.[269]

2. Costs Associated With Maintaining Records Related to the Probability of Default Estimation

Broker-dealers relying on the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i) must preserve the written probability of default determination made pursuant to Rule 101(c)(2)(i), as amended. Consistent with the PRA section,[270] the Commission estimates that it will take a distribution participant 25 hours to update the applicable policies and systems required to account for capturing the records made pursuant to new Rule 101(c)(2)(i), for an aggregate cost of $2,731,575.[271] Consistent with the PRA section,[272] the Commission also estimates that it will take a distribution participant 10 hours to maintain such records as well as to make additional updates to the applicable record preservation policies and systems to account for the rules. Therefore, it is estimated that annually broker-dealers will spend $1,092,630[273] in the aggregate complying with this requirement.

3. Costs Associated With Structural Credit Risk Model Based Probability of Default Being an Imperfect Proxy for Creditworthiness

As discussed previously, the structural credit risk models are designed to measure creditworthiness, and creditworthiness itself is considered a good measure of manipulation risk. There are costs that are currently present in the relevant markets associated with creditworthiness being an imperfect proxy for manipulation risk. However, in the absence of a better proxy for manipulation risk, creditworthiness has continued to successfully serve the purpose of measuring such risk for many years. This is also supported by the comments stating that the investment grade standard has been successfully used in Rules 101 and 102 exception.[274] The final rule amendments are not expected to alter those costs and the discussion that follows focuses instead on the costs associated with the structural credit risk models as a proxy for creditworthiness.

The use of any model to estimate creditworthiness necessarily provides an imperfect measure. Structural credit risk models are no exception. We note, however, that models such as structural credit risk models often are a part of the analysis involved in obtaining a credit rating.[275]

Some ways to implement structural credit risk models make use of historical trading data to produce a reliable estimate of the model input parameters. These data may not be available for certain infrequently traded securities. In some circumstances, the market for a security has not yet been established and sufficient trading data are unavailable, making it difficult to apply the exception.

Additionally, structural credit risk models rely on a number of parameter estimates such as firm market value and volatility, which could be difficult to assess as these values change with market conditions and business fluctuations. A changing term structure of interest rates and noise trading in the market can further distort the probability of default estimates. Incorrect parameter estimates may result in the incorrect estimates of default probability and allow distribution participants to rely on the exception for risky issues or prevent distribution participants from relying on the exception for safe issues. Implied probabilities of default are sensitive to market prices and estimates of market volatility and consequently tend to be counter cyclical, increasing during market downturns, which are often also periods of increased uncertainty. A constant threshold which is not time-varying will potentially result in fewer firms qualifying for the exception during market downturns, which may result in more issuances during this period not qualifying or firms choosing not to issue, hence increasing their cost of capital or limiting their access to capital.

While credit rating downgrades are also countercyclical occurring more frequently during market downturns, they tend to be slow in incorporating updates.[276] Thus, the impact of the counter cyclicality of default probabilities implied by structural credit risk models could be stronger relative to using credit ratings: during periods of distress, using these probabilities of default will likely result in fewer firms with an investment grade credit rating falling below the threshold, and thus fewer firms qualifying for the exception relative to using credit ratings. Lead managers who make probability of default determinations pursuant to new Rule 101(c)(2)(i) could make reasonable adjustments to model parameters and inputs to recalculate the probability of default as market conditions change, mitigating the costs discussed above.

Due to the number of variations among structural credit risk models and their estimated inputs, the probability of default estimates may be subjective to some extent and not comparable across different issuers or for the same issuer across different issues if estimates are based on different models, or done by different researchers or vendors. The latter may affect market participants' ability to effectively rely on the estimates to make comparative assessments across multiple securities. However, this is also true of the credit ratings that often rely on similar models, which mitigates these costs of the amendments relative to the market baseline.

Further, as a result of the Rules 101 and 102 amendments, all underwriters as well as issuers, selling security holders and affiliated purchasers will rely on the lead manager's assessment of the probability of default in order to use the exception.[277] This should mitigate the subjectivity and non-uniformity of the estimation concerns for the same

[269] Such costs, however, cannot be quantified due to lack of available data.

[270] *See supra* Part VI.C.2.

[271] 301 distribution participants × 25 hours × $363 hour for a compliance manager = $2,731,575. *See Management & Professional Earnings in the Securities Industry—2013,* SIFMA (Oct. 7, 2013). These estimates are modified by the Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. These figures have been adjusted for inflation through Jan. 2023 using data published by the Bureau of Labor Statistics' Consumer Price Index inflation calculator, *available at https://www.bls.gov/data/inflation_calculator.htm.*

[272] *See supra* Part VI.C.2.

[273] Cost estimated based on the sum of 301 distribution participants multiplied by 10 burden hours multiplied by $363, for a compliance manager. *See Management & Professional Earnings in the Securities Industry—2013,* SIFMA (Oct. 7, 2013). These estimates are modified by the Commission staff to account for an 1800-hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. These figures have been adjusted for inflation through Jan. 2023 using data published by the Bureau of Labor Statistics' Consumer Price Index inflation calculator, *available at https://www.bls.gov/data/inflation_calculator.htm.*

[274] *See, e.g.,* Rothwell, at 2 and ABA Letter, at 15–17.

[275] *See, e.g.,* John Y. Campbell, Jens Hilscher, & Jan Szilagyi, *In Search of Distress Risk,* 63 J. Fin. 2899 (2008), *available at https://scholar.harvard.edu/files/campbell/files/campbellhilscherszilagyi_jf2008.pdf.*

[276] We note that the SEC staff took a similar position the COVID–19 Market Monitoring Group, *Credit Ratings, Procyclicality and Related Financial Stability Issues: Select Observations,* SEC (July 15, 2020) ("Cost of debt capital is driven by a wide range of financial and non-financial factors and forces; ratings downgrades are generally lagging indicators of cost of debt capital."), *available at https://www.sec.gov/news/public-statement/covid-19-monitoring-group-2020-07-15.*

[277] *See supra* Part II.B.1.

issue and to some degree across issues for the same issuer to the extent the same parties are engaged by the issuer for different issues. This requirement allows the lead manager to perform estimations which determine if the resulted probability of default falls below the threshold for all the distribution participants and their affiliates and thus the availability of the exception. Some of these participants may decide to withdraw if the exception is not available. However, the lead manager is interested in the best outcome of the distribution and therefore has strong incentives to encourage the participation of these entities in the distribution, mitigating the above concern. This may, on the other hand, incentivize lead managers to select models and estimation specifics in such a way to ensure the resulted estimates are below the threshold, potentially allowing issues of issuers with low creditworthiness and high manipulation risk to rely on the exception. The public availability of alternative probability of default estimates available for the investors through multiple vendors, however, should mitigate this concern.

In addition, as discussed above in reference to the selected threshold, the proposed amendment may expand the universe of issuers of nonconvertible securities that qualify for the exception and include issuers that did not receive an investment grade credit rating, but have a structural credit model implied probability of default that falls below the threshold. The debt prices of these firms may be prone to manipulation if the price of their debt is relatively more sensitive to the idiosyncratic risks of the issuers.

Additionally, this amendment may create potential opportunities for new products offered by the vendors designed specifically for a given issue or issuer. A custom designed estimate paid for by a party with an interest in the outcome of the distribution may lead to potential conflicts of interest since the vendor is incentivized in this case to produce an estimate which will allow the issuer, their affiliates and selling security holders, and other distribution participants to rely on the exception. However, the existing major vendors supplying probability of default estimates have numerous clients currently using this information for business purposes other than the Rules 101 and 102 exception. Therefore, given the reputational concerns it is unlikely that these vendors will produce a product to cater specifically to the use of these estimates for purposes of relying on the Rules 101 and 102 exception.

Additionally, the model input estimates or assumptions may be selected by the lead manager in such a way as to produce the desired estimation result if the model is estimated internally and may result in lead managers' selecting the models so as to be able to rely on the exception.[278] This may result in an additional cost of adding some manipulation risk to the relevant markets if manipulation prone issues are allowed to rely on the exception as a result.

Finally, the threshold of 0.055% for the exception is based on model assumptions and available data. Some commenters expressed support for the proposed threshold level selection,[279] while one commenter suggested a higher level.[280] Future market evolution may result in this threshold becoming either too large or too small, allowing risky issues to rely on the exception or preventing less risky issues from using it. One commenter expressed a similar concern about a set-level threshold specification in the rules.[281] The threshold may vary by industry, with the threshold being more restrictive in some industries relative to the original NRSRO investment grade designation. Moreover, probabilities of default as implied by structural credit risk models tend to be counter-cyclical and can spike in periods of crisis due to decreases in market valuation and increases in equity volatility. Consequently, during such periods, fewer investment grade firms generally fall below the threshold. Credit ratings by NRSROs are also countercyclical but tend to be slow-moving, since credit rating changes often lag updates to firm conditions that will impact cost of capital.[282]

[278] The definition of structural credit risk models for purposes of new Rule 101(c)(2)(i) is limited to commercially or publicly available models, which would limit a distribution participant's ability to develop its own models to achieve favorable results.

[279] *See* Bloomberg L.P. Letter. at 2, which provides analysis supporting the proposed probability of default threshold. Additionally, IILF Letter, at 6 suggests that the proposed threshold is in a reasonable range.

[280] *See* SIFMA Letter 1 at 10.

[281] *See* IILF Letter, at 6.

[282] We note that the SEC staff took a similar position in the COVID–19 Market Monitoring Group, *Credit Ratings, Procyclicality and Related Financial Stability Issues: Select Observations,* SEC Staff (July 15, 2020) (''Cost of debt capital is driven by a wide range of financial and non-financial factors and forces; ratings downgrades are generally lagging indicators of cost of debt capital.''), *available at https://www.sec.gov/news/public-statement/covid-19-monitoring-group-2020-07-15.*

4. Costs Associated With Asset-Backed Securities' Amendments

The amendments may render some asset-backed securities ineligible to rely on the exception from the Regulation M. This may increase issuance costs for the underwriters as well as issuers, selling security holders and affiliated purchasers. For instance, broker-dealers may reduce an offering's size or increase fees if the exception to Regulation M is no longer available.[283] Additionally, issuers may need to establish new business relationships due to Regulation M restrictions. Furthermore, some issuers may decide not to issue the affected securities if the exceptions to Regulation M are no longer available. As a result, some asset-backed securities' issues may not take place, which could affect issuers' ability to raise capital and could affect investors in the relevant markets by potentially reducing the selection of the available asset-backed securities.

5. Indirect and Other Costs of the Amendments

Besides the direct effects on the distribution participants and affected securities discussed above the final rule amendments may also generate indirect effects including on investors in these securities and NRSROs. For instance, distribution participants other than lead managers may want to verify the estimates provided by the lead manager by either obtaining the estimate from a vendor or making the calculations internally, which will result in additional costs for these participants.[284]

Additionally, the lead managers, although not required, may need to expend resources in terms of their staff time and resources in order to notify other distribution participants, their affiliated purchasers, issuers, selling security holders, and their affiliated purchasers of their probability of default

[283] Such changes in fees or changes in size cannot be reasonably quantified due to lack of available data on the respective changes (before and after an occurrence) in the relevant values.

[284] These costs are estimated as $363 per participant per distribution if estimates are obtained internally. Consistent with the PRA, the Commission estimates that it would take one hour per issue to calculate probability of default. Cost estimated is based on 1 burden hour multiplied by $363, for a compliance manager. *See Management & Professional Earnings in the Securities Industry—2013,* SIFMA (Oct. 7, 2013). These estimates are modified by the Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. These figures have been adjusted for inflation through Jan. 2023 using data published by the Bureau of Labor Statistics' Consumer Price Index inflation calculator, *available at https://www.bls.gov/data/inflation_calculator.htm.*

determinations that were estimated pursuant to Rule 101(c)(2)(i).

The Commission estimates that it will take 0.25 hours per lead manager per issue (8,450 hours annually) [285] to notify other distribution participants of the probability of default estimates. Therefore, the total estimated cost for the lead managers associated with notifying other distribution participants is estimated as $1,732,250.[286]

Further, if issuer participation in the relevant security issues, for example in the case of re-openings or issues that are more likely to become sticky offerings, becomes limited, some issues may not take place that otherwise would. Investors may additionally face a more limited choice of investment instruments as a result. This may also affect liquidity of their portfolios in the case of re-openings, since re-openings can offer additional liquidity benefits as the securities offered in re-openings are interchangeable with the existing issues. However, as already discussed in the case of re-openings, these costs are expected to be minimal as re-openings are used infrequently.

The rule amendments do not rely on an NRSRO rating in order to determine if an issue is eligible for the exception. This may diminish NRSROs' clientele to the extent NRSROs choose not to provide structural credit risk model-based estimates of the probability of default for their existing clients opting to rely on the exception. However, the amendment may increase the clientele of the vendors that supply relevant data and metrics to the lead managers or other distribution participants who wish to verify the lead manager estimates, if such vendors already supply probability of default estimates or choose to offer this estimate as a part of their services. In addition, if firms do not solicit credit rating services from NRSROs beyond the estimate of a probability of default implied by a structural credit risk model, investors will not be able to benefit from the information provided by a credit rating report and ongoing coverage of the firm that otherwise will be provided through the distribution participant.

[285] 33,798 issues times 0.25 hours.

[286] 8,450 hours * $205 hour for a junior business analyst wage = $1,732,250 *See Management & Professional Earnings in the Securities Industry—2013,* SIFMA (Oct. 7, 2013). These estimates are modified by the Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. These figures have been adjusted for inflation through January 2023 using data published by the Bureau of Labor Statistics' Consumer Price Index inflation calculator, *available at https://www.bls.gov/data/inflation_calculator.htm.*

D. Efficiency, Competition, and Capital Formation

As discussed previously, lead managers will have flexibility in selecting the structural credit risk model to access creditworthiness as a measure of manipulation risk for the business. This may encourage issuers to issue securities in relevant markets, as well as participation of other distribution participants, such as selling security holders and affiliated purchasers. As a result, this could improve competition between issuers for investors as well as competition between lead managers for underwriting business.

Further, widely available estimates of the probability of default as well as an option of internal model estimation could lead to a more competitive environment in the provision of models as the requirement to rely on proprietary credit risk models of a small number of NRSROs is removed. The improved competition, market participation and efficiency ultimately should lead to more efficient capital formation as the access to and functioning of the relevant fixed income markets improves.

However, it is possible that a new business model could emerge in the relevant markets that leads to conflicts of interest and neutralizes the effects discussed above. For instance, lead managers could contract with a vendor or a credit rating agency directly to create a custom estimate of the probability of default. This could result in a business model where an interested party pays for the supplied estimate and where vendors may be incentivized to produce an estimate designed to fit the desired estimation result. Thus issuers that otherwise will not be able to rely on the exception could end up being excepted potentially increasing the manipulation risk in the relevant markets, which in turn could negatively affect competition and capital formation. The reputational concerns, however, would generally prevent vendors from generating estimates specifically designed for the needs of a small number or a single customer.

Additionally, the positive effects discussed above could be offset by the fact that only lead managers can obtain an estimate of the probability of default for the distribution. Some issues where there is no distribution participant to act as the lead manager for the distribution, such as with self-underwritten offerings, at-the-market offerings, or other shelf offerings'' may not have the exceptions available.[287] This may deter participants from such distributions and in some cases result in securities being issued in private markets or issues not taking place. This may negatively affect the competition and capital formation in the relevant market.

Some issuers may also face higher costs or no longer be able to use the exception, for example, due to imperfect model estimates because of market fluctuations or changing market. High costs of issuance or inability to rely on the exception may deter participants from issuing the affected securities, which could affect competition and capital formation in the relevant markets. Further, potential negative effects of non-uniform estimates and subjectivity additionally reduce these benefits. As discussed previously, variations in model assumptions, parameters, or data sample used necessarily introduce an element of subjectivity in the final estimates and leads to differences in the estimates across different issues or issuers. Finally, potentially increased issuance costs due to some asset-backed securities being ineligible for the exception may also negatively affect market participation and competition of the relevant markets.

[287] *See supra* Part V.C.1.

E. Reasonable Alternatives

Alternative 1 discussed below deals with the probability of default threshold, alternatives 2–4 discuss alternative approaches to using structural credit risk models as a standard of creditworthiness to measure manipulation risk. Alternative 5 discusses elimination of the exception from Rule 101, alternative 6 deals with asset-backed securities, alternative 7 discusses Rule 102 options, while the last alternative discussed the record preservation requirement.

1. Alternative Threshold for Probability of Default

The Probability of Default threshold of 0.055% was chosen in an effort to maximize investment grade securities captured and minimize the non-investment grade securities captured. However, a different threshold could be used in the Rule exception, which would capture different proportions of investment and non-investment grade securities. For example, based on data as of March 2023, a higher threshold of 0.5% is estimated to capture about 97% of investment grade securities (2550 out of 2637 investment grade issues) and about 70% of non-investment grade issues (188 out of 269 non-investment grade issues). A lower threshold of 0.03% is estimated to capture about 64% of investment grade securities (1675 out of 2637 investment grade

issues) and 11% of non-investment grade issues (29 out of 269 non-investment grade issues).

The advantage of a higher threshold is that it captures a larger set of investment grade securities, but at the expense of also capturing an additional set of non-investment grade securities, which could be prone to manipulation risk. Increasing the threshold would allow more investment grade securities to rely on the exception at expense of a potentially higher manipulation risk; on the other hand, decreasing the threshold would limit the ability of some of the investment grade securities to use the exception, but would also limit the number of non-investment grade securities allowed to rely on the exception and, as a result, also limit manipulation risk.

The Commission proposed 0.055% threshold level, which scoped in about 90% of investment grade issues and about 37% of non-investment grade issues.[288] One of the commenters suggested increasing the threshold in order to capture a larger percentage of the previously eligible investment grade issues,[289] another commenter suggested that the proposed threshold level is appropriate,[290] while none of the commenters suggested decreasing the threshold. Furthermore, at any given date, the proportion of currently eligible securities that would be captured varies. Manipulation risk remains the primary concern of Regulation M. Because the originally proposed threshold of 0.055% remains appropriate for these purposes, and acknowledging the variation in eligible securities that would be captured over time, increasing (or decreasing) this threshold for the primary aim of capturing more (or fewer) of currently eligible securities does not justify changing this threshold.

Rather than providing a specific number as a threshold, a method for distribution participants to use in calculating such a threshold could be specified instead. For example, such method could involve calculating a set of probability of default estimates for a sample of Nonconvertible Securities with characteristics such as yield and maturity similar to the distribution participant's securities issued over a specified time interval and comparing it to a specified standard of creditworthiness. A longer time interval of the data sample would capture more issues and improve statistical accuracy at expense of having market conditions potentially changing and generating incorrect estimates. A shorter time interval of the sample ensures the market conditions have not changed but includes fewer issues resulting in a smaller sample and lower statistical accuracy. One of the commenters expressed similar ideas advocating for an estimation method rather a fixed threshold level, which would result in a more flexible threshold level.[291]

The main advantage of specifying a method as opposed to a number for the threshold is its flexibility with respect to changing market conditions. The main disadvantage of this alternative is subjectivity of the analysis involved, which may lead to non-uniform application of the Regulation M exceptions across issues or issuers if the estimated threshold differs considerably across issues or issuers; or incentivize market participants to adjust the threshold estimation to be able to rely on the exception. Some commenters expressed a concern for the estimates' subjectivity and non-uniformity as discussed previously. This alternative could introduce additional subjectivity and non-uniformity and thus is sub-par to the originally proposed option.[292]

2. Exception Based on Security Characteristics

As an alternative replacement for the reference to investment grade securities, the Commission considered analysis that could be based on security characteristics, such as (1) total amount of issue outstanding (public float); (2) yield to maturity of the security during a past trading period; or (3) empirical duration.[293] Other relevant security characteristics that could be used are outlined in the 2011 Proposal.[294] Such analysis could be performed internally or externally and could be additionally verified by a third party. All of these alternatives were included in the Proposal and the Commission received no comments in regards to these alternatives. Below we discuss public float, yield to maturity and empirical duration criteria in more detail.

- Exception Based on the Total Amount of Issue Outstanding (Public Float).

To the extent that it is more difficult to manipulate price of a larger issue, public float could be used as an alternative criterion to reflect manipulation risk. This criterion has the advantage of being straightforward and easy to evaluate. Due to its simplicity, it lacks the estimation issues associated with other measures such as the probability of default. However, determination of a threshold for public float to select securities for the exception is complicated due to its considerable variation across issuers or industries. A specific threshold selection could potentially disadvantage smaller issuers—especially during periods of market downturns when valuations are low. Additionally, public float is not inherently an indication of low credit risk since a distressed firm can have a large amount of debt.

- Exception Based on Yield to Maturity.

Securities that are traded primarily on yield and maturity have low manipulation risk, as discussed before, since their pricing does not reflect issuer specific risks. Yield to maturity, therefore, can be used as an alternative criterion to evaluate manipulation risk. However, using yield to maturity as a criterion for securities eligible for the exception is also problematic. Even though this criterion is similarly easy to obtain and lacks any major estimation issues, selecting a threshold is not straightforward. For instance, yield to maturity differs considerably by industry. Selecting a fixed threshold may result in some industries being under-represented and others over-represented in the pool of eligible issues. Moreover, yield to maturity often moves with risk-free rates; thus fewer firms would be excepted during periods of high interest rates. The default-free component of yield to maturity makes this measure a very noisy proxy of credit worthiness.

- Exception Based on Empirical Duration.

Empirical duration is another alternative proxy that could be used to evaluate Nonconvertible Securities for an exception from Regulation M. Negative empirical duration might be an indication that a Nonconvertible Security or its issuer is of low creditworthiness. A Nonconvertible Security with negative empirical duration is less affected by changes in interest rates than Nonconvertible Securities of creditworthy issuers and trades similar to equity securities. Although negative empirical duration may demonstrate that a particular issuer or security is not creditworthy, it has some limitations that affect the viability

[288] Based on the data as of Oct. 2021. Based on Mar. 2023 data, 0.055% threshold scopes in about 76% of investment grade issues (1996 out of 2637 issues) and about 24% or non-investment grade issues (64 out of 269 issues).

[289] SIFMA Letter 1, at 7 and 10, *see also* a relevant discussion in Part II.B.1.

[290] *See* Bloomberg L.P. Letter, at 2.

[291] *See* IILF Letter, at 7.

[292] *See* SIFMA Letter 1, at 5, Better Markets Letter, at 4, and the relevant discussion in Part II.D.

[293] Empirical duration is bond duration calculated based on historical data rather than a formula. Typically, it is estimated using a regression analysis of the relationship between market bond prices and Treasury yields.

[294] 2011 Proposing Release, 76 FR 26557–64.

of negative empirical duration as a substitute for the reference to credit ratings in the Investment Grade Exception. In particular, this measure relies heavily on statistical analysis, requires the Nonconvertible Security to be traded, and may lack intuitive interpretation, which renders empirical duration a poor proxy for the type of manipulation that Regulation M is designed to prevent.

3. Exception Based on Issuer Characteristics

The Commission also considered an exception based on issuer characteristics, for example, the interest coverage ratio, the WKSI standard, as suggested in the 2008 Proposing Release,[295] a Form S–3/F–3-based standard, or a criterion based on a reduced-form credit risk model, as an alternative to the structural credit risk models. We discuss these alternatives below.

• Exception Based on the WKSI Standard.

The Commission could adopt a standard based on the amount of the issuer's total securities outstanding or based on the WKSI standard as a criterion to determine eligibility for the exception. The issuers that fall under the WKSI definition or with sufficient amounts of total securities issued or outstanding are large and established firms that typically have sound creditworthiness. The Commission included this alternative in the Proposal. One commenter expressed some support for this alternative.[296] The advantage of this characteristic is its simplicity, uniformity, and the lack of subjectivity of the analysis. However, the WKSI standard as discussed in the 2008 Proposing Release, for example, was heavily criticized for allowing risky high-yield issues to be eligible for the exception and preventing issues by smaller but otherwise creditworthy issuers from relying on the exception, which remains a considerable concern.[297] Even though one of the commenters suggested a standard based on the WKSI standard due to its simplicity, uniformity and lack of subjectivity,[298] such a standard would fail to capture the pricing point where securities trade solely based on their yields and maturity and not on the issuer characteristics, where pricing uncertainty and manipulation risk are at their minimum. Thus, such a standard would be a sub-par measure of manipulation risk as compared to the probability of default.

• Exception Based on Forms S–3 and F–3.

One commenter stated that the complexity of the proposed probability of default calculations would impose additional regulatory burdens that could be avoided if the exception, instead, relied on a standard based on readily verifiable and publicly available information.[299] This commenter proposed using Form S–3 or Form F–3 as a standard for the exception given the uniformity, simplicity and a lack of subjectivity of such a standard.[300] The Form S–3 or Form F–3 eligibility criteria are intended to access whether an issuer is widely followed,[301] rather than an issuer's creditworthiness. A widely followed issuer may be more likely to have a low manipulations risk, making this a reasonable alternative criterion to consider for the Investment Grade Exception. However, such a standard does not differentiate securities that are traded solely on their yield and creditworthiness from securities that trade also on the issuer identity and thus have a high manipulation risk. Therefore, probability of default is a preferred standard to rely upon in the assessment of manipulation risk for the purposes of the Investment Grade Exception.

• Exception Based on the Interest Coverage Ratio.

Another possible issuer-based criterion for exception eligibility is the interest coverage ratio. This alternative was included in the Proposing Release and no commenters expressed a view on this option. A high interest coverage ratio typically indicates the issuer's ability to repay debt and can be used as a criterion to reflect creditworthiness. It has the advantage of being a simple and easy to calculate value. However, the interest coverage ratio is an accounting measure that can result in inconsistent outcomes as it is based on the reported earnings rather than cash flows. Reported earnings may differ based on accounting practices of the firm. Structural credit risk models have an advantage over interest coverage ratio since they are not dependent on reported earnings, which are heavily influenced by accounting practices.

• Exception Based on Reduced-Form Credit Risk Model.

An alternative to using structural credit risk models is reduced-form credit risk models.[302] The latter models could be a good measure of creditworthiness and of manipulation risk to the extent that creditworthiness is a good proxy for manipulation risk. This alternative was discussed in the Proposal. One of the commenters proposed a similar alternative relying on debt security prices, yields, or credit spreads instead of using a structural credit risk model for the probability of default estimation.[303] Unlike structural models, reduced-form models do not assume default occurs when firm value falls below a threshold. The default is instead assumed to follow an unobserved process and the default model can be fitted to the market data. The advantage of these models is they do away with some of the unrealistic requirements of structural credit risk models, for example when the firm value, its volatility or other required parameters are unobserved.

Even though such models can be considered more flexible and may provide better fit for the observed default events, their ability to predict future defaults may not necessarily exceed that of the structural models. In addition, unlike structural models, they suffer from a lack of theoretical background of the assumed relationships, or the intuitive interpretation of the model dependencies and why the defaults occur. Unrestricted use of these models might also provide more opportunity to choose a reduced-form model specification which enables use of the exception. Further, some commenters expressed a concern for a lack of consistency and uniformity across issues or issuers in using probability of default standard for the exception.[304] Since reduced-form models are more flexible and less structured than structural credit risk models, such concerns would be more pronounced in

[295] 2008 Proposing Release, 73 FR 40095–97.

[296] *See* SIFMA Letter 1 at 9.

[297] ABA Letter, at 15–17 and Letter from Deborah A. Cunningham and Boyce I. Greer, Co-chairs, Securities Industry and Financial Markets Association (''SIFMA'') Credit Rating Agency Task Force, to Florence E. Harmon, Acting Secretary (Sep. 4, 2008) at 13.

[298] *See* SIFMA Letter 1 at 9.

[299] *See* SIFMA Letter 1 at 5.

[300] *See* SIFMA Letter 1, at 5–8 as well as the related discussion in Part II.B.1.

[301] Form S–3 and Form F–3 Release, 76 FR 46607.

[302] The reduced-form credit risk models are discussed, for example, in Robert Litterman & Thomas Iben, *Corporate Bond Valuation and the Term Structure of Credit Spreads,* 17 (3) Fin. Analysts J. 52, 52–64 (1991); Robert A. Jarrow & Stuart M. Turnbull, *Pricing Derivatives on Financial Securities Subject to Default Risk,* 50 J. Fin. 53, 53–86 (1995); Robert A. Jarrow, David Lando, & Stuart M. Turnbull, *A Markov Model for the Term Structure of Credit Risk Spreads,* 10 Rev. Fin. Stud. 481, 481–523 (1997); Darrell Duffie & Kenneth J. Singleton, *Modeling the Term Structures of Defaultable Bonds,* 12 Rev. Fin. Stud. 687, 687–720 (1999).

[303] IILF Letter, at 2.

[304] *See* SIFMA Letter 1, at 5, Better Markets Letter, at 4.

a standard that is based on the reduced-form models.

4. Exception Based on Issuer and Issue Characteristics

The Commission considered, as another alternative, an analysis based on both security and issuer characteristics; for example, characteristics outlined in Exchange Act Rule 15c3–1. This alternative was discussed in the Proposal and the Commission received no comments in regard to this option. Rule 15c3–1 specifies a set of factors to determine a minimum amount of credit risk broker-dealers can use to determine if a security can qualify for lower haircuts: (1) credit spreads; (2) securities-related research; (3) internal or external credit assessments; (4) default statistics; (5) inclusion in an index; (6) enhancements and priorities; (7) price, yield and/or volume; or (8) asset-class specific factors.[305] Some of these factors, such as default statistics or credit assessments, measure issuer creditworthiness, while others, such as price, yield, or volume, measure the manipulation risk present in each specific issue, providing a good overall assessment of manipulation risk.

The advantage of this alternative is that it would align the exception with already existing standards that broker-dealers might apply to determine whether a security has a minimal amount of credit risk. The standard in Rule 15c3–1 was adopted in 2013 as a replacement for a reference to investment grade securities pursuant to section 939A of the Dodd-Frank Act. Such test could have minimum additional costs for broker-dealers who already have all the necessary procedures in place for its application.

The Rule 15c3–1 standard is commonly used for seasoned securities and, therefore, includes a longer time period to obtain information about issues that may not be available for the new issuances and for seasoned (actively traded) distributions that may have only a one-day restricted period also subject to Regulation M. Moreover, the Rule 15c3–1's minimal credit risk standard is based on a set of eight different factors, some of which include price or volume, with respect to each specific issue. Depending on these other participants' systems and regulatory obligations, it may be costly for them to replace the investment grade standard with the minimal credit risk standard. This could result in a situation where different distribution participants are facing different costs,[306] possibly deterring some market participants.

5. Elimination of the Investment Grade Exception From Rule 101

The Commission also considered eliminating the Investment Grade Exception for Fixed-Income Securities from Rule 101. Elimination of the exception was discussed as an alternative in the Proposal and the Commission did not receive any direct comments on this option. However, as discussed in Part II, commenters broadly supported the Commission's efforts to find an alternative standard of creditworthiness in place of the references to credit ratings in Rule 101's Investment Grade Exception (as opposed to removing the Investment Grade Exception, without a replacement).[307] The advantage of this alternative is eliminating the situations when manipulation-prone securities fall under the exception due to limitations of proxies used to select the securities to be excepted. For instance, as discussed above, there are various limitations of the structural credit risk models' applications, which may limit the ability of certain issuers to rely on the exception or allow issuers with a higher risk of having their securities manipulated to avoid Regulation M. If the exception is eliminated, any limitations of such a proxy for manipulation risk are eliminated as well. In addition, this approach could ultimately relieve lead managers from the need to spend time or costs to implement, understand, and calibrate any standard such as a structural credit risk model.

However, this approach raises a number of concerns. Specifically, eliminating the exception could make some offerings in the excepted securities considerably more costly. For example, with respect to re-openings, broker-dealers who might otherwise elect to re-open a bond offering may determine not to do so to avoid restrictions of Regulation M that could arise during such a re-opening if it becomes a sticky offering. This could increase the cost of the issue that has to rely on the next-best alternative structure. Further, an alternative transaction structure, if selected, may decrease the liquidity of the securities being issued because they would not be fungible with the previously issued securities. This may also result in some distribution participants, such as broker-dealers, deciding not to participate. This could limit the number of available broker-dealers, potentially increasing fees faced by the issuers. Further, if certain issues do not take place under the amendments, it could reduce the selection of available securities for the investors in the relevant markets and may limit issuers' ability to raise capital.

However, these costs might be mitigated because a party subject to the prohibitions of Rule 101 could structure its buying activity before or after the applicable restricted period so as not to incur any costs associated with relying on the exception.

The above arguments apply to all currently excepted investment grade securities because any such issue can become a sticky offering and the underwriters have to account and adjust for this possibility ex-ante. In a scenario where an underwriter is unable to sell its allotted securities to the public on or promptly after the pricing date, there is no exception on which to rely, the underwriter/broker-dealer would likely ex-ante adjust the cost of issuance to reflect this added risk. Broker-dealers could be more cautious in structuring potentially sticky offerings if they know they will be required to comply with Rule 101 (and have no exceptions available), by reducing an offering's size or increasing fees as a risk premium. This could potentially raise the cost of investment grade offerings. However, this could also decrease the probability of an offering to become sticky, potentially reducing manipulation risk in the relevant markets.

The removal, without replacement, of the Investment Grade Exception could also affect the liquidity of the Fixed-Income Securities if re-openings of issues already in circulation are more costly, potentially reducing issuers' reliance on this financing structure, which negatively affects the investors in the relevant markets.

This alternative could also disrupt some established business relationships. In certain circumstances new relationships may need to be established. For example, if an offering becomes sticky, absent Investment Grade Exception to rely on some broker-dealers may be limited in their ability to trade relevant securities and decide to withdraw, in which case the issuer may need to seek a different broker-dealer. This would increase costs of the affected security offerings, including the new broker dealer fees or the search costs, especially when the market has a limited number of available broker-dealers.

[305] *See Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934,* Release No. 34–71194 (Dec. 27, 2013) [79 FR 1522, 1527–28 (Jan. 8, 2014)].

[306] This is unlike the structural credit risk model based probability of default that would imply the same costs for all the participants who obtain the estimated values.

[307] *See, e.g.,* SIFMA Letter 1, at 2; Bloomberg L.P. Letter, at 1.

6. Alternative for Asset-Backed Securities

As an alternative for asset-backed securities the Commission considered using a standard based on the value at risk. This alternative was included in the Proposal and no commenter expressed any view on this standard. Value at risk measures the percentage loss of the security in the worst case scenarios over a specified time period. It can be estimated by performing a simulation over the underlying securities' pool and determining the cash flows available to the asset-backed security in each scenario. A number of commercially available options can be used to perform this analysis. Value at risk can be a good indicator of manipulation risk since low value at risk indicates that the majority of the cash flows are sufficiently assured. The price of the asset-backed security in this case is more certain and is less subject to manipulation risk.

However, value at risk is by construction estimated for a specified time period and thus only accounts for the potential losses during such period, while losses may also occur after this time period. In this case the price of the asset-backed security may depend on issue-specific factors and be prone to manipulation despite the estimated value at risk over the specified time period being low. This may allow securities with high manipulation risk to rely on the exception.

One of the commenters proposed as an alternative to use probability of default-based standard for asset-backed securities calculated using prices and credit spreads.[308] However, probability of default is typically not used for these securities due to the complexity of their structure and corresponding complexity of the calculations. Further, another commenter supported proposed Form SF–3 standard to use for the asset-backed securities due to its uniformity and simplicity.[309]

7. Alternatives for Rule 102 Exception

The Commission also considered and proposed eliminating, without replacing, the Investment Grade Exception in Rule 102. Disruption to the trading market may be limited because distribution participants will still be able to rely on the exception from Rule 101 if they meet the requirements of the proposed rules. However, one of the commenters pointed out that eliminating the exception from Rule 102 may affect issuer-affiliated broker-dealers that do not act as an underwriter and may need to rely on the Rule 102 exception.[310] Eliminating the exception from Rule 102 may increase issuance costs or deter market participants from issuing such securities. Therefore, elimination of the exception from Rule 102 was not the best option in comparison to the alternative selected.

8. Alternative for the Record Preservation Requirement

The Commission considered not adding the record preservation requirement. The option of not adding the record preservation requirement for broker-dealers was suggested by one of the commenters due to the additional burdens it creates for the broker-dealers.[311] However, the record preservation requirement may help ensure an estimate of the probability of default is produced for all the distribution participants to rely upon to determine eligibility of the issue for the exception. The record preservation requirement also helps address concerns about the existence of some subjectivity involved in the selection of a particular structural credit risk model and data sample specifics by the lead managers, and the possibility of lead managers selecting these specifics so as to generate a probability of default estimate below the threshold level. The potential consequences of not including a record preservation requirement, therefore, could be that issues with high manipulation risk are allowed to rely on the exceptions from Regulation M. It is also intended to aid the Commission staff in examinations of the broker-dealers in evaluation of the specific model and data used to determine the probability of default of the issue in addition to exception eligibility.

VI. Paperwork Reduction Act

Certain provisions of the final amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[312] The hours and costs associated with determining whether a Nonconvertible Security qualifies for the new exception in Rule 101(c)(2)(i) and preserving the corresponding records under Rule 17a–4(b)(17) constitute PRA burdens.

In accordance with the PRA, the Commission is submitting the final amendments to the rules to the Office of Management and Budget (''OMB'') for review.[313] The Commission published a notice requesting comment on these collections of information requirements in the Proposal and submitted these requirements to the OMB for review in accordance with the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The titles and control numbers for these collections of information are as follows:

Rule	Title	OMB control no.
Rule 101	Rule 101, 17 CFR 242.101 (Activities by Distribution Participants).	3235–0464
Rule 17a–4	Records to be Preserved by Certain Brokers and Dealers	3235–0806

These PRA burdens are distinct from the existing OMB-approved collection of information burden estimates under Rules 101, 102, and 17a–4 because the Commission has not estimated that respondents incur PRA burdens when determining whether a security qualifies for the Investment Grade Exception, nor did Rule 17a–4 include a recordkeeping requirement in connection with reliance on the Investment Grade Exception.[314]

The Commission did not receive any comments on the Proposal's PRA analysis. While one commenter did reference the potential burden of the

[308] *See* IILF Letter, at 6.

[309] *See* SIFMA Letter 1, at 11.

[310] *See* SIFMA Letter 1, at 12.

[311] *See* SIFMA Letter 1, at 11.

[312] 44 U.S.C. 3501 *et seq.* The burdens associated with the information collection requirements are referred to as ''PRA burdens.''

[313] *See* 44 U.S.C. 3507; 5 CFR 1320.11.

[314] In the Proposal, the Commission proposed to eliminate the Investment Grade Exception under Rule 102 of Regulation M, without proposing an alternative standard in its place. However, as discussed above, in Part II.C, the Commission is adopting an exception that is based on an issuer's probability of default in both Rule 102 and Rule 101.

proposed amendments generally,[315] no commenters specifically addressed the Commission's estimates of burdens and costs in the Proposal's PRA analysis. In addition, the Commission's estimates of the collection of information for the amendments, as adopted, have been updated from the estimates included in the Proposal, as appropriate, with the updated estimates based on the modifications in the adopted rule and based on more recent data.

The Commission is adopting in Rules 101 and 102 the proposed exception that is based on an issuer's probability of default, as described above in Parts II.A and B, to replace the Investment Grade Exceptions. The Commission is also adopting a corresponding record preservation requirement in Rule 17a–4(b), which requires broker-dealers to preserve the written probability of default determination, relied upon pursuant to the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i), as applicable.

As discussed above, Regulation M is designed to preserve the integrity of the securities trading market as an independent pricing mechanism by prohibiting activities that could artificially influence the market for an offered security. Subject to exceptions, Rule 101 prohibits distribution participants and their affiliated purchasers,[316] and Rule 102 prohibits issuers, selling security holders, and their affiliated purchasers, from directly or indirectly bidding for, purchasing, or attempting to induce another person to bid for or purchase a covered security during a restricted period.[317] Rule 17a–4 requires a broker-dealer to preserve certain records if it makes or receives them.[318]

In accordance with the requirements of section 939A(b), the Commission is adopting amendments to Rules 101 and 102 of Regulation M that remove the Investment Grade Exceptions and add, in their place, new exceptions for Nonconvertible Securities for which the issuer's probability of default, estimated as of the sixth business day immediately preceding the determination of the offering price and over the horizon of 12 full calendar months from such day, is 0.055% or less, as determined and documented, in writing, by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution, as derived from a structural credit risk model.[319] The Commission is also adopting Rule 17a–4(b)(17), which requires broker-dealers to preserve the written probability of default determination, relied upon pursuant to the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i), as applicable, for a period of not less than three years, the first two years in an easily accessible place.[320]

The Commission is also adopting identical new exceptions in Rules 101(c)(2)(ii) and 102(d)(2)(ii) for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3.[321] The discussion of estimates that follows is limited to the new information collection requirements that result from the final amendments related to the probability of default determinations in Rule 101(c)(2)(i), as amended, as well as the record preservation thereof in reliance on the new exceptions provided in Rule 101(c)(2)(i) or Rule 102(d)(2)(i) pursuant to Rule 17a–4(b)(17). The Commission is not estimating that the new exception for asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 in Rules 101(c)(2)(ii) and 102(d)(2)(ii) will increase or decrease the existing approved information collections because whether an asset-backed security is offered pursuant to an effective shelf registration statement filed on Form SF–3 is an objective, observable fact that would not incur any PRA burden.

A. Respondents

The respondents under the amended rules are lead managers who choose to make a probability of default determination in order to rely on the exception for Nonconvertible Securities and other broker-dealers who use the lead manager's probability of default determination in relying on an exception for Nonconvertible Securities. As noted in Part V.A.1, there were 201 lead managing underwriters and 100 other non-lead manager broker-dealers of Nonconvertible Securities in 2021.[322] The Commission assumes that, on balance, these numbers will remain consistent given the capital, expertise, and relationships needed to serve as the lead underwriter of a Nonconvertible Securities offering. The Commission, therefore, is estimating that 301 respondents will be subject to PRA burdens under the amendments. The respondents under the amendments to Rule 101(c)(2)(i) are lead managers who make probability of default determinations. The Commission, therefore, is estimating that 201 respondents will be subject to PRA burdens under Rule 101(c)(2)(i), as amended. The respondents under the amendments to Rule 17a–4(b)(17) are broker-dealers who rely on the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i). The Commission, therefore, is estimating that 301 respondents will be subject to PRA burdens under new Rule 17a–4(b)(17).[323]

B. Use of Information

The information collected under the amendments ensures that the Nonconvertible Securities that are least likely to be subject to the type of manipulation that Regulation M seeks to address are excepted from Rules 101 and 102. Further, the Commission believes that the information contained in the records required to be preserved pursuant to Rule 17a–4(b)(17) will facilitate the Commission in conducting examinations of broker-dealers who rely on the new exceptions in Rule 101(c)(2)(i) or Rule 102(d)(2)(i).

C. Collection of Information

As discussed below, the Commission believes that respondents will incur PRA burdens under the amendments to Rule 101(c)(2)(i) because distribution participants who are acting as the lead manager (or in a similar capacity) of a distribution and make a probability of default determination are required for each distribution of Nonconvertible Securities to determine the subject issuer's probability of default in order to rely on the exception. These respondents may also incur PRA burdens in their probability of default determinations. Respondents who are broker-dealers and rely on the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i) will incur PRA burdens under the requirements set forth in new Rule 17a–4(b)(17) because they are required to preserve records of the written probability of default determination.

1. Burden and Cost Estimates Related to the Rule 101 Amendments

Rule 101(c)(2)(i), as amended, permits lead managers to gather the data serving as the inputs and then perform the analysis necessary to calculate the probability of default of the issuer

[315] SIFMA Letter 1, at 5.

[316] 17 CFR 242.101.

[317] 17 CFR 242.102.

[318] 17 CFR 240.17a–4.

[319] 17 CFR 242.101(c)(2)(i), as amended, 242.102(d)(2)(i), as amended.

[320] 17 CFR 240.17a–4(b)(17), as amended.

[321] 17 CFR 242.101(c)(2)(ii), as amended, 242.102(d)(2)(ii), as amended.

[322] *See supra* Part V.A.1.

[323] [201 lead manager broker-dealers] + [100 non-lead manager broker-dealers] = 301 respondents under new Rule 17a–4(b)(17).

whose securities are the subject of the distribution to meet the conditions of the exception.[324] This requirement will result in respondents incurring a PRA recordkeeping burden. This process will likely be highly automated, and that respondents will initially comply with this requirement by reprograming systems to create a means to calculate electronically the probability of default based on manually gathered and entered inputs for financial modeling. The respondents who make probability of default determinations will be broker-dealers serving as lead managers and are likely to have experience in using their own proprietary version of a publicly available structural credit risk model. Accordingly, the initial configuration of systems will be handled internally and take 3 hours per respondent. The Commission also assumes that broker-dealers serving as lead managers already have the software and systems in place required to make the calculations.[325] The Commission therefore estimates that the total industry-wide initial burden for configuring systems to make and probability of default estimates is 603 hours.[326]

An issuer's probability of default is forward-looking and changes over time, so the Commission believes that respondents will manually gather the inputs required to calculate an issuer's probability of default each time it participates in a distribution of Nonconvertible Securities. There were 33,798 offerings of Nonconvertible Securities in 2021.[327] Because financial modeling generally, and the probability of default calculation more specifically, is well-known by industry participants, the Commission believes that respondents have employees who are familiar with how to gather the required model inputs. The Commission, therefore, estimates that it will take lead-manager respondents roughly one hour per distribution of Nonconvertible Securities to determine and document, in writing, the probability of default determinations. Accordingly, the Commission estimates that calculating the probability of default pursuant to Rule 101(c)(2)(i), as amended, will result in an aggregate annual ongoing industry-wide burden of 33,798 hours. The Commission estimates that the total PRA burden resulting from the final amendments to Rule 101 is 34,401 hours in the first year[328] and 33,798 hours thereafter.

The Commission does not believe that the amendments to Rule 101(c)(2)(ii) excepting asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 will result in respondents incurring PRA burdens because whether an asset-backed security has an effective shelf registration statement filed on Form SF–3 is an objective, observable fact.[329] Further, there is no corresponding record preservation requirement for respondents documenting reliance on the exception for asset-backed securities under Rule 101(c)(2)(ii), as amended.

2. Burden and Cost Estimates Related to the Rule 17a–4 Amendments

New Rule 17a–4(b)(17) requires broker-dealers to preserve the written probability of default determination, relied upon pursuant to the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i), as applicable, for a period of not less than three years, the first two years in an easily accessible place.

The Commission estimates that this record preservation requirement imposes an initial burden of 25 hours per respondent for updating the applicable policies and systems required to account for preserving the records made pursuant to Rule 101(c)(2)(i), as amended. Accordingly, the Commission estimates that the total industry-wide initial burden for this requirement is 7,525 hours.[330] The Commission also estimates that respondents will incur an ongoing annual burden of 10 hours per firm for maintaining such records, as well as to make additional updates to the applicable record preservation policies and systems to account for preserving the records pursuant to new Rule 17a–4(b)(17), resulting in a total ongoing industry-wide burden of 3,010 hours.[331] The Commission, therefore, estimates that the total PRA burden resulting from the amendment to Rule 17a–4 is 10,535 hours in the first year[332] and 3,010 hours per year thereafter.

PRA SUMMARY TABLE

Industry-wide burden due to amendments to	Initial burden hours	Ongoing annual burden hours/year (after first year)	Total PRA burden hours in first year
Rule 101	603	33,798	34,401

[324] The Commission recognizes that some respondents may choose to utilize the probability of default estimates that are calculated and made available by a third-party vendor rather than make the determination themselves. In the Proposal, the Commission noted that the Commission's burden estimates for the adopted amendments to Rule 101 are based on respondents gathering the required data and calculating the probability of default, internally, without the use of third-party vendors, because the Commission lacks granular information from which to base an estimate of the proportion of respondents that would use vendors. The Commission requested comment on the extent to which respondents may use third-party vendors, as well as the costs and time burdens of using such services. *See* Proposal, 87 FR 18326 n.129. However, the Commission did not receive comments in response to this request. For purposes of estimating the PRA burdens under the final rules as amended, the Commission continues to assume that all respondents will make the probability of default determination internally with data they have gathered, rather than use third party vendors. As discussed above, in Part II.A.1, there may be distributions with more than one distribution participant acting as the lead manager (or in a similar capacity), but only one of the distribution participants acting as the lead manager would be permitted to make the probability of default determination for the particular distribution. *See supra* note 91. Therefore, for purposes of the PRA estimations in this release, only one lead manager on any distribution for purposes of these calculations is assumed.

[325] Further, respondents who choose to utilize probability of default estimates that are calculated and made available by a third-party vendor will already have access to the vendor's software and systems containing these estimates, typically as part of an existing subscription, so they will not need to procure further services or subscriptions from these vendors to access any such determinations. However, as noted above, for purposes of estimating these PRA burdens, the Commission assumes all respondents would make their own calculations and not use third party vendors. This assumption is being made to provide an estimate reflecting for the more costly of the two approaches.

[326] [201 lead managers] × [3 hours] = 603 hours. The Proposal included 237 respondents, which was taken from available data from 2020. The number included herein reflects the number from the available data from 2021, as discussed above, in Part V.A.1. In addition, under the Proposal, the 237 figure included non-lead manager broker-dealers who would have been eligible, under the proposed Rule 101(c)(2)(i), to make probability of default determinations in order to meet the Nonconvertible Securities exception's conditions.

[327] This number was obtained from Mergent, a financial data provider.

[328] [603 hours (initial burden)] + [33,798 hours (ongoing annual burden)] = 34,401 hours.

[329] *See* 17 CFR 239.45.

[330] [301 respondents] × [25 hours] = 7,525 hours.

[331] [301 respondents] × [10 hours] = 3,010 hours.

[332] [7,525 hours (initial burden)] + [3,010 hours (ongoing annual burden)] = 10,535 hours.

PRA SUMMARY TABLE—Continued

Industry-wide burden due to amendments to	Initial burden hours	Ongoing annual burden hours/year (after first year)	Total PRA burden hours in first year
Rule 17a–4	7,525	3,010	10,535

D. Collection of Information Is Mandatory

The information collections for making probability of default determinations under the amendments to Rule 101 are mandatory for reliance on exceptions in Rule 101(c)(2)(i) or Rule 102(d)(2)(i). In addition, the information collections involving the preservation of written probability of default determinations under the amendments to Rule 17a–4 are mandatory if a broker-dealer relies on the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i).

E. Confidentiality of Responses to Collection of Information

The Commission would not typically receive confidential information as a result of these collections of information. To the extent that the Commission receives—through its examination and oversight program, through an investigation, or by some other means—records or disclosures from a distribution participant regarding the probability of default determination, such information would be kept confidential, subject to the provisions of applicable law.

F. Retention Period for Record Preservation Requirement

Pursuant to new Rule 17a–4(b)(17), a broker-dealer is required to preserve the written probability of default determination, relied upon pursuant to the new exception in Rule 101(c)(2)(i) or Rule 102(d)(2)(i), as applicable, for a period of not less than three years, the first two years in an easily accessible place.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [333] requires Federal agencies, in promulgating rules, to consider the impact of those rules on ''small entities,'' [334] a term that includes ''small businesses.'' [335] Section 603(a) [336] of the Administrative Procedure Act,[337] as amended by the section 604(a) of the RFA requires the Commission to undertake a final regulatory flexibility analysis of rules it is adopting, unless the Commission certifies that the rules would not have a significant impact on a substantial number of small entities.[338]

Small entities include broker-dealers with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[339] or, if not required to file such statements, a broker-dealer who had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time it has been in business, if shorter), and is not affiliated with any person (other than a natural person) who is not a small business or small organization.[340] A small business or small organization, for purposes of ''issuers'' or ''person'' other than an investment company, is defined as a person who, on the last day of its most recent fiscal year, had total assets of $5 million or less.[341] In the Proposal, the Commission certified, pursuant to section 605(b) of the RFA, that the proposed amendments to Rules 101 and 102 would not have a significant economic impact on a substantial number of small entities.[342] The Commission requested but did not receive any comments on the certification as it related to the entities impacted by Rule 101 or Rule 102 of Regulation M, or by Rule 17a–4 under the Exchange Act.

Based on the Commission's analysis of the existing information relating to broker-dealers who are subject to Rules 101, 102,[343] and 17a–4, it is unlikely that any broker-dealer categorized as a ''small business'' or ''small organization'' under Rule 0–10 could serve as an underwriter or other distribution participant, as they would almost certainly have insufficient capital to participate in underwriting activities. In addition, the Commission continues to believe that none of the various persons affected by the amendments would qualify as a small entity under the Rule 0–10 definition as it is unlikely that any issuer of that size had investment grade securities that were eligible for the Investment Grade Exception. Accordingly, the Commission believes it is unlikely that, in the future, a small entity may become impacted by the amendments because broker-dealers who enter this market are likely to have at least $500,000 in total capital, as described above, or to be affiliated with a person who is not a small business or small organization as defined under Rule 0–10, and because issuers of securities that are eligible for the new exceptions provided in Rules 101(c)(2) and 102(d)(2) are likely to have total assets greater than $5 million.

For the foregoing reasons, the Commission certifies, pursuant to section 605(b) of Title 5 of the U.S. Code, that the amendments to Rules 100, 101, 102, and 17a–4 will not have a significant economic impact on a substantial number of small entities.

Statutory Authority

The final amendments contained in this release are being adopted under the authority set forth in sections 939 and 939A of the Dodd-Frank Act and

[333] 5 U.S.C. 601 *et seq.*

[334] 5 U.S.C. 605(b).

[335] Although section 601(b) of the RFA defines the term ''small business,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small business'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in 17 CFR 240.0–10 (''Rule 0–10''). Rule 0–10 also provides that the Commission may, if warranted by the circumstances, use a different definition for particular rulemakings. *See* 17 CFR 240.0–10.

[336] 5 U.S.C. 603(a).

[337] 5 U.S.C. 551 *et seq.*

[338] 5 U.S.C. 605(b).

[339] *See* 17 CFR 240.17a–5(d).

[340] *See* 17 CFR 240.0–10(c).

[341] 17 CFR 242.0–10(a).

[342] *See* Proposal, 87 FR 18337.

[343] As discussed above, in Part II.B, broker-dealers who are affiliated with the issuer and do not meet the definition of ''distribution participant'' under Rule 100(b) of Regulation M may be covered persons under Rule 102. Even if those broker-dealers had net capital over $500,000, they would not be small entities under Rule 0–10 because they are affiliated with an issuer (of investment grade securities) that is not a small entity.

sections 3(b), 15, 23(a), and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 242

Broker-dealers, Fraud, Issuers, Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.17a–4 also issued under secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78a, 78d–1, 78d–2; sec. 14, Pub. L. 94–29, 89 Stat. 137 (15 U.S.C. 78a); sec. 18, Pub. L. 94–29, 89 Stat. 155 (15 U.S.C. 78w);

* * * * *

■ 2. Amend § 240.17a–4 by adding paragraph (b)(17) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(17) The written probability of default determination, relied upon by such broker or dealer, pursuant to § 242.101(c)(2)(i) or § 242.102(d)(2)(i) of this chapter (Rule 101 or Rule 102 of Regulation M), as applicable.

* * * * *

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 3. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78n, 78*o*(b), 78*o*(c), 78*o*(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 4. Amend § 242.100 in paragraph (b) by adding in alphabetical order a definition for ''Structural credit risk model'' to read as follows:

§ 242.100 Preliminary note; definitions.

* * * * *

(b) * * *

Structural credit risk model means any commercially or publicly available model that calculates, based on an issuer's balance sheet, the probability that the value of the issuer will fall below the threshold at which the issuer would fail to make scheduled debt payments, at or by the expiration of a defined period.

* * * * *

■ 5. Amend § 242.101 by revising paragraph (c)(2) to read as follows:

§ 242.101 Activities by distribution participants.

* * * * *

(c) * * *

(2) *Certain nonconvertible and asset-backed securities.* (i) Nonconvertible debt securities and nonconvertible preferred securities of issuers for which the probability of default, estimated as of the sixth business day immediately preceding the determination of the offering price and over the horizon of 12 full calendar months from such day, is 0.055% or less, as determined and documented, in writing, by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution, as derived from a structural credit risk model, pursuant to § 242.101(c)(2)(i); or

(ii) Asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 (§ 239.45 of this chapter); or

* * * * *

■ 6. Amend § 242.102 by revising paragraph (d)(2) to read as follows:

§ 242.102 Activities by issuers and selling security holders during a distribution.

* * * * *

(d) * * *

(2) *Certain nonconvertible and asset-backed securities.* (i) Nonconvertible debt securities and nonconvertible preferred securities of issuers for which the probability of default, estimated as of the sixth business day immediately preceding the determination of the offering price and over the horizon of 12 full calendar months from such day, is 0.055% or less, as determined and documented, in writing, by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution, as derived from a structural credit risk model, pursuant to § 242.101(c)(2)(i); or

(ii) Asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF–3 (§ 239.45 of this chapter); or

* * * * *

By the Commission.

Dated: June 7, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–12591 Filed 6–16–23; 8:45 am]

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